

**TO:** Environment Select Committee

**SUBMISSION ON:** Urban Development Bill ("**Bill**")

**FROM:** New Zealand Airports Association ("**NZ Airports**")

**ADDRESS FOR SERVICE:** See address for service below

**DATE:** 14 February 2020

### **SUMMARY**

1. NZ Airports welcomes the opportunity to make a submission on the Bill, having submitted on the Kāinga Ora – Homes and Communities Bill in 2019 and participated in previous consultation processes in relation to the establishment of the Housing and Urban Development Authority (now Kāinga Ora).
2. NZ Airports has serious concerns with the extent of the powers proposed to be granted to Kāinga Ora under the Bill. As regular participants in the resource management system, both as applicants and submitters, our members are wary of proposals to create "faster and easier" consenting processes that seek to bypass critical checks and balances developed through the Resource Management Act 1991 ("**RMA**").
3. Of critical importance to NZ Airports, the Bill's proposed mechanisms to streamline the urban development process do not provide for the existing protections which exist for airports in RMA plans and policy documents, and do not sufficiently recognise the importance of the ongoing operations of New Zealand's airports. Airports are essential infrastructure, and play a crucial role in the social and economic well-being of our communities.
4. The Bill proposes to provide Kāinga Ora with powers to enable urban development to be established without having due regard to the needs of existing infrastructure and associated planning controls that apply in the vicinity of airports. The location of urban development, in particular sensitive activities like housing, near airports is highly problematic. It can, and does, give rise to material constraints on airport infrastructure as a result of reverse sensitivity effects. Such constraints threaten to undermine the current operations and future development of New Zealand's airports.
5. Equally, areas subject to the effects of aircraft noise are not appropriate for development as exposure to high noise levels can cause adverse health and wellbeing effects. The effects of aircraft noise, by their nature, extend beyond the boundaries of airports and cannot be internalised or fully mitigated (particularly in relation to any outdoor spaces). Without adequate safeguards to restrict urban development within areas affected by aircraft noise, the Bill could result in the occupants of new urban developments being subject to adverse effects. This seems counter to the Bill's purpose.
6. To ensure that urban development enabled under this Bill appropriately recognises and provides for the importance of airport infrastructure to New Zealand's cities and regions, the potential effects of such development on airports and communities must be carefully considered in the early stages of the development process, and in particular when Kāinga Ora is assessing possible areas for development projects.

7. NZ Airports seeks amendments to the Bill to ensure that, against the backdrop of Kāinga Ora's extensive powers, urban development occurs in locations that will not give rise to undue constraints on the continued operation, and future development, of New Zealand's airports. In particular, NZ Airports seeks:
- (a) amendment of the principles for specified development projects ("**SDP**") to recognise the need to ensure that urban development enabled under the Bill is established in locations that promote the health and wellbeing of communities;
  - (b) amendments to ensure that all of New Zealand's airports whose infrastructure may be affected by development projects have the benefit of the Bill's provisions relating to nationally significant infrastructure, either by expanding the definition of nationally significant infrastructure or adding a new definition of "regionally significant infrastructure";
  - (c) expansion of the Bill's existing requirement for Kāinga Ora to consider potential constraints on urban development relating to nationally significant infrastructure to include a requirement to take into account constraints arising from the adverse effects generated by such infrastructure as well as the existing planning provisions relating to nationally significant infrastructure and its effects;
  - (d) qualification of Kāinga Ora's ability to override, add to, or suspend existing planning instruments to ensure that any such modifications do not undermine the ongoing operation of nationally significant infrastructure, by requiring the written consent of the relevant requiring authority;
  - (e) robust notification and appeal processes, including the introduction of a requirement for the owners or operators of nationally significant infrastructure to be notified where a SDP will affect their operations, and an ability for submitters on draft development plans to appeal the responsible Minister's decision to the Environment Court; and
  - (f) introduction of greater limitations on Kāinga Ora's power to acquire land that is held for existing public works, and in particular the addition of robust protections for land that is currently held for national significant infrastructure (like airports) under the Public Works Act 1981 ("**PWA**").
8. In our view, these suggested changes are entirely consistent with the various protections and exceptions provided for nationally significant infrastructure elsewhere in the Bill, and work to close gaps in these provisions. We discuss these changes in further detail below.

## **NZ AIRPORTS – WHO WE ARE**

9. NZ Airports members<sup>1</sup> operate 42 airports across the country, including the international gateways to New Zealand and the domestic airports making up the national air transport network. NZ Airports' members have extensive experience dealing with resource management processes and issues, and in particular with managing the environmental

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<sup>1</sup> Our member airports include Ardmore Airport, Ashburton Airport, Auckland Airport, Chatham Islands Airport, Christchurch Airport, Dunedin Airport, Gisborne Airport, Hamilton Airport, Hawke's Bay Airport, Hokitika Airport, Invercargill Airport, Kapiti Coast Airport, Kaikohe Airport, Katikati Airport, Kerikeri Airport, Marlborough Airport, Masterton Airport, Matamata Airport, Motueka Airport, Nelson Airport, New Plymouth Airport, Oamaru Airport, Palmerston North Airport, Queenstown Airport, Rangiora Airport, Timaru Airport, Rotorua Airport, Takaka Airport, Taupo Airport, Tauranga Airport, Wairoa Airport, Wanaka Airport, Whanganui Airport, Wellington Airport, West Auckland Airport, Westport Airport, Whakatane Airport, and Whangarei Airport.

effects that can arise from the operation, maintenance and development of New Zealand's airports.

10. Airports are essential infrastructure, and play a crucial role in the social and economic well-being of our communities. Safeguarding the long-term growth of air travel and freight is a critical factor for many regions. If airport operations are unduly constrained (through, for example, poor planning of the land uses around airports), this can limit an airport's ability to contribute to local and regional economies, which can then have negative flow-on economic effects for those communities and regions. It is vital that any new mechanisms to provide for streamlined urban development processes include adequate safeguards to ensure the ongoing and effective operation and development of New Zealand's airports.
11. NZ Airports has provided feedback on several recent resource management and urban development reforms, including the Resource Management Issues and Options paper, the Resource Management Amendment Bill, Action for Healthy Waterways, the Kāinga Ora – Homes and Communities Bill, and the proposed National Policy Statement for Urban Development. Our members have also been extensively involved in regional and district plan review processes in Auckland, Christchurch, and Queenstown, along with other regions and districts throughout New Zealand.

#### **NZ AIRPORTS' INTEREST IN THE BILL**

12. NZ Airports provided feedback on the Urban Development Authorities Discussion Document ("**Discussion Document**") in 2017, at an earlier stage of the legislative process for this Bill. We have also more recently submitted on the Kāinga Ora – Homes and Communities Bill. Such participation is necessary given the critical role the planning framework plays in airport operations.
13. NZ Airports has a direct interest in the ways in which planning frameworks can affect the current and future operation of New Zealand's airports. NZ Airports has consistently been wary of legislative processes intended to create "faster and easier" consenting processes that may bypass aspects of the RMA's well-established planning and consenting processes in order to promote and facilitate development. Such an approach can often have unintended consequences for critical infrastructure, primarily in the form of reverse sensitivity effects on airport operations.

#### **Reverse sensitivity**

14. Reverse sensitivity is a well-established planning concept, and refers to the susceptibility of established, effects-generating activities (which often cannot internalise their effects) to complaints or objections arising from the location of new sensitive activities nearby. Such complaints can lead to operational constraints on the established activity, and may hinder future development or expansion.
15. Selecting appropriate locations for new urban development is therefore critical to the ongoing operation of significant infrastructure like airports. Airports provide significant economic benefits to the regions and communities they serve, including through employment opportunities and contributions to GDP. If airport operations are unduly constrained by reverse sensitivity or other adverse effects, this can have negative flow-on effects for our communities and regions.

## **Airport effects areas**

16. Designations provide an essential tool for many airports to enable them to manage their operations effectively. However, a common challenge for airports in managing effects on their operations from other activities (ie reverse sensitivity) is the misconception that airports can simply rely on their designations to control these issues. Designations only control land use activities within their boundaries, and cannot be relied upon to ensure that urban development (and in particular housing) in proximity to airports is appropriately managed.
17. Most airports in New Zealand rely heavily on district planning controls around airports to avoid or manage adverse effects on their operations due to incompatible (eg sensitive) activities locating in proximity to airports. For example, many of our members have "effects areas" defined around their airports in existing district plans, including noise boundaries and obstacle limitation surfaces, which control the type and scale of activities that can locate near airports. Effects areas have been developed and / or maintained over many years, with extensive public and community consultation and input (as part of, and in addition to, consenting and planning processes under the RMA).
18. These effects areas are based on extensive modelling, empirical analysis and case law, all of which clearly demonstrate that high aircraft noise effects areas are not appropriate areas to establish sensitive activities such as dwellings or schools. Exposure to noise levels at or above 65 dB Ldn, for example, can cause adverse health and wellbeing effects. The high levels of aircraft noise experienced in this area also means that the location of sensitive activities has the very real potential to give rise to reverse sensitivity effects on airports. This approach is also consistent with New Zealand Standard 6805:1992 Airport Noise Management and Land Use Planning, which provides guidance to local authorities in relation to airport planning.
19. It is critical that the effects areas surrounding many of New Zealand's airports are well understood and maintained and their effectiveness is not undermined through inappropriate development. The location of urban development within airports' effects areas without due consideration to the potential effects of such development on airports, and vice versa, has the potential to undermine the protections these areas provide for ongoing airport operations.

## **NATIONALLY SIGNIFICANT INFRASTRUCTURE**

20. The Bill recognises and provides for nationally significant infrastructure in a range of ways. NZ Airports generally supports the various provisions included in the Bill relating to nationally significant infrastructure, including:
  - (a) Clauses 34 and 35, which require consideration of nationally significant infrastructure that will be, or is likely to be, affected by a SDP, and engagement with the owner or operator of that infrastructure.
  - (b) Clause 67, which provides that if an existing designation within a project area is for nationally significant infrastructure, Kāinga Ora must notify the relevant requiring authority and include the designation without change in the draft development plan, unless the requiring authority specifies otherwise.
  - (c) Clause 70, which requires Kāinga Ora to consult operators of nationally significant infrastructure when preparing draft development plans.

- (d) Clause 170, which provides that Kāinga Ora must consult, and obtain the written consent of, the operator of any nationally significant infrastructure that will, or is likely to, be affected by any work relating to a SDP.
- (e) Clause 219, which excludes the development of nationally significant infrastructure from Kāinga Ora's powers to require development contributions.

21. While these provisions are encouraged, the Bill's current definition of "nationally significant infrastructure" is unduly narrow, with the effect being that many of New Zealand's smaller airports will not receive the benefit of these protections.
22. The Bill defines "nationally significant infrastructure" as including "airports used for regular air transport services by aeroplanes capable of carrying more than 30 passengers".<sup>2</sup> This definition reflects that provided under the Civil Aviation Authority Rules, Part 139, for airports that meet the requirements for aerodrome certification.<sup>3</sup> NZ Airports sought that this definition be incorporated into the Bill's definition of nationally significant infrastructure in its previous engagement with the Ministry on the proposed urban development legislation, and appreciates its inclusion in the final Bill.
23. However, this definition does not capture all of those airports that are either requiring authorities under the RMA and / or are considered "significant assets" of local authorities under the Local Government Act 2002.<sup>4</sup> Incorporation of these definitions was also sought by NZ Airports, in order to capture those airports that, while not necessarily providing regular connections to other airports in New Zealand, are significant to future local authority planning and for the provision of services to their local communities, particularly in smaller centres.
24. To remedy this gap in the Bill, NZ Airports seeks that either:

- (a) the Bill's definition of "nationally significant infrastructure" be amended as follows:

**nationally significant infrastructure** means any of the following:

[...]

- (g) airports that are:

- (i) used for regular air transport services by aeroplanes capable of carrying more than 30 passengers;\_or

- (ii) requiring authorities under the Resource Management Act 1991;\_or

- (iii) significant assets of local authorities under the Local Government Act 2002.

- (b) or, in the alternative, all references to "nationally significant infrastructure" are amended to read "regionally or nationally significant infrastructure", with a corresponding amendment to clause 9 to provide a new definition of "regionally significant infrastructure" as follows:

**regionally significant infrastructure** means any of the following:

[...]

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<sup>2</sup> Clause 9.

<sup>3</sup> Civil Aviation Rules, Part 139, Subpart B – Certification Requirements, at 139.51(b).

<sup>4</sup> Section 5.

(X) airports that are requiring authorities under the Resource Management Act 1991 or significant assets of local authorities under the Local Government Act 2002.

25. In the following sections, NZ Airports' other concerns with the Bill are outlined in further detail. Where "nationally significant infrastructure" is referred to below, it should be read in the context of NZ Airports' view that the definition insofar as it relates to airports should be broadened as proposed above to ensure that it appropriately captures our member airports.

*Engagement requirements with nationally significant infrastructure*

26. Subject to the amendments set out above, NZ Airports generally supports clauses 33 to 35, which set out Kāinga Ora's obligations to engage with the owners and operators of nationally significant infrastructure that will be, or is likely to be, affected by a SDP. However, clause 36 undermines the intention and efficacy of these provisions by granting Kāinga Ora the power to decide if it has satisfied its own engagement obligations.
27. Clause 36 allows Kāinga Ora to engage with key stakeholders (which include the owners and operators of nationally significant infrastructure, like airports) at an early stage in the development process, before the initial assessment of a SDP is even undertaken, and then have no further obligations to engage with those stakeholders as the project evolves. Such an approach is entirely inappropriate, and removes a fundamental check on Kāinga Ora's development powers. NZ Airports is concerned that the ability for Kāinga Ora to decide that it has fulfilled its engagement obligations would result in a failure to consider and provide for new and emerging effects or issues with a SDP as it develops. NZ Airports strongly opposes any removal of the right of key stakeholders to be consulted on subsequent changes to a SDP that could adversely affect their interests.
28. NZ Airports seeks that Kāinga Ora be required to engage with key stakeholders (including the owners and operators of nationally significant infrastructure) on an ongoing basis, to ensure that any issues that may arise as a project develops are considered as part of that engagement. To this end, we request the following addition to clause 36:

[...]

- (3) **Subsection (1)** only applies where the relevant person(s) identified under **sections 33(b) and 35** agree that Kāinga Ora's engagement obligations have been satisfied through early engagement.

**SPECIFIED DEVELOPMENT PROJECTS**

29. The Bill proposes to establish a new SDP process, which is intended to provide a streamlined process for complex urban development projects. Once established through this process, Kāinga Ora will have extensive development powers to progress a SDP, including the ability to override existing plan provisions, designations and notification requirements that would ordinarily apply to such a development.
30. Given the extent of the development powers available to Kāinga Ora once a SDP is established, it is critical that the SDP process is robust and involves meaningful engagement with airport operators where development is proposed in proximity to an airport. Such engagement is needed to ensure that the SDP process does not allow for urban development to occur in locations that could materially constrain airport infrastructure and undermine existing planning protections under the RMA.

## Principles for SDPs

31. Clause 5 of the Bill sets out the principles that guide all decision-making in relation to SDPs. These include providing, or enabling, the integrated and effective use of land,<sup>5</sup> and quality infrastructure and amenities that support community needs.<sup>6</sup>
32. The location of urban development is a critical factor in the ability of any SDP to achieve a sustainable, inclusive and thriving community. In relation to airports in particular, it is well recognised that developments placed within areas subject to the effects of aircraft noise may not achieve healthy living environments for our communities.<sup>7</sup> As discussed above, this is because exposure to high levels of aircraft noise can cause adverse health and well-being effects.
33. NZ Airports therefore considers that clause 5 requires explicit recognition of the need to establish urban development in locations that promote the health and wellbeing of communities, as follows:
- (1) In achieving the purpose of this Act, all persons performing functions or exercising powers under it in relation to specified development projects, or urban development projects selected or assessed as potential specified development projects, must—
    - (a) have particular regard to providing, or enabling,—
      - [...]
      - (vi) urban development in locations that promote the health and wellbeing of communities; and [...]
34. In our view, the addition of this principle would be consistent with the Bill's stated purpose, as well as Kāinga Ora's operating principles under the Kāinga Ora – Homes and Communities Act.<sup>8</sup>
35. If amended as sought by NZ Airports, clause 5 would ensure that those exercising powers and functions in relation to SDPs were required to have particular regard to effects on health and wellbeing in all of their decision-making, which would include the potential adverse effects of aircraft noise on the health and amenity of communities. Mandatory consideration of such effects, at the initial assessment phase in particular, would appropriately discourage the establishment of urban development in locations where new communities would be exposed to high levels of aircraft noise. This is a positive outcome from a health and wellbeing perspective, and would also provide greater protection to airports from potential reverse sensitivity effects.

## Initial assessment of SDPs

36. As a first step in the SDP process, Kāinga Ora is required to carry out an initial assessment to evaluate the feasibility of a proposed SDP and define the project area and objectives.<sup>9</sup> Among other things, in carrying out this assessment, Kāinga Ora is required to:<sup>10</sup>

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<sup>5</sup> Clause 5(1)(a)(i).

<sup>6</sup> Clause 5(1)(a)(ii).

<sup>7</sup> See discussion by Gendall J in relation to special housing areas in *Ayrburn Farm Developments Ltd v Queenstown Lakes District Council* [2016] NZHC 693 at [57].

<sup>8</sup> As set out in the Kāinga Ora – Homes and Communities Act 2019, s14(1).

<sup>9</sup> Clause 33.

<sup>10</sup> Clause 33(a)-(c).

- (a) identify high level constraints and opportunities for the project;
- (b) seek to engage key stakeholders; and
- (c) consider the identified constraints and opportunities, feedback received, and anything else it considers relevant, and refine (if necessary) the key features it is considering for the project.

37. When considering the constraints and opportunities for a potential SDP, the matters that may be taken into account by Kāinga Ora include nationally significant infrastructure that is within or otherwise relevant to the project area.<sup>11</sup> NZ Airports generally supports the inclusion of nationally significant infrastructure here. It is important that Kāinga Ora carefully consider the potential constraints on SDPs near airports, particularly in relation to the ability to provide adequate levels of amenity for dwellings subject to high levels of aircraft noise.

38. NZ Airports also supports the identification of owners and operators of nationally significant infrastructure that will be, or is likely to be, affected by a proposed SDP as "key stakeholders" with whom Kāinga Ora is required to engage with.<sup>12</sup> Kāinga Ora is also required to seek to engage with operators of "any other infrastructure" that may be affected by an SDP.<sup>13</sup> These obligations will ensure that airports and other major infrastructure operators are consulted early in the SDP process, when the feasibility, objectives and area of an SDP are being assessed and determined by Kāinga Ora.

39. However, while NZ Airports is generally supportive of these aspects of the initial assessment stage, our members are concerned that the requirement to consider nationally significant infrastructure and engage with infrastructure operators may extend to consideration of the effects generated by such infrastructure (eg aircraft noise). If the constraints of a proposed SDP are assessed without due consideration of such effects there is a risk of inappropriately located urban development that is unsuitable for the people who will be living, working and studying in those areas, and has the potential to significantly inhibit the ongoing operations and future development of New Zealand's airports.

40. Kāinga Ora must be required to consider planning instruments relevant to a proposed project area. As discussed above, infrastructure providers like airports work closely with local authorities to develop "effects areas" and other planning tools to manage current and future effects. Kāinga Ora should consider these planning instruments both in relation to those instruments' application to a project area, as well as their application to adjacent land. This is necessary to enable Kāinga Ora to better assess the potential effects on activities like infrastructure.

41. NZ Airports therefore seeks that the Bill be amended as follows:

**34 Kāinga Ora identifies constraints and opportunities**

(1) For the purposes of **section 33(a)**, the matters are –

- (a) each of the following, to the extent that it is within or otherwise relevant to the project area that Kāinga Ora is considering (**the proposed project area**):

[...]

<sup>11</sup> Clause 34(1)(a)(ii).

<sup>12</sup> Clause 35(3)(f).

<sup>13</sup> Clause 35(3)(g).

- (ii) nationally significant infrastructure, including the adverse effects generated by such infrastructure;

[...]

(2) Kāinga Ora must also identify –

- (a) the existing planning instruments and iwi planning documents that apply within, or are otherwise relevant to, the proposed project area; and [...]

### **Consideration of relevant standards and policies**

42. Under the RMA, regional and territorial authorities are required to consider management plans and strategies prepared under other statutes when developing policy statements and plans.<sup>14</sup> This reflects the need to consider core national directions and plans beyond those provided under the RMA framework that may relate to affected areas. As currently proposed, the Bill has no similar requirement.
43. Including a requirement to consider national standards, policies and reports under other legislation would assist Kāinga Ora in gaining a broader understanding of the constraints and opportunities of a proposed project area. This is particularly important considering the possible limitations on Kāinga Ora's knowledge of project areas. These documents often speak to specific regional or operational planning concerns for discrete activities, of which Kāinga Ora may otherwise be unaware. For example, this could capture the New Zealand Standards for Noise and Vibration (such as NZS 6805: 1992 Airport Noise Management and Land Use Planning) and the National Airspace Policy and Plan. This would assist Kāinga Ora in fully understanding the effects of neighbouring activities, like core infrastructure, on proposed project areas, and vice versa.
44. NZ Airports requests the following addition to the matters Kāinga Ora must identify when considering the constraints and opportunities of a proposed project area:

#### **34 Kāinga Ora identifies constraints and opportunities**

(2) Kāinga Ora must also identify –

[...]

- (c) New Zealand Standards, management plans, strategies and policies prepared under other Acts, to the extent they are relevant to the proposed project area and surrounding activities.

45. Similarly, in relation to Kāinga Ora's preparation of development plans (discussed further below), NZ Airports seeks that the standards and policy documents discussed above are included alongside the documents that Kāinga Ora is required to consider under clause 69 of the Bill. While this clause currently includes a list of documents and reports under other Acts, it is not exhaustive, and Kāinga Ora should be directed to consider other documents relevant to the specific context of a particular project.
46. Specifically, NZ Airports seeks the following amendment:

#### **69 Relevant considerations**

- (1) In preparing a development plan, Kāinga Ora must have regard to each of the following documents, to the extent that they are relevant to the

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<sup>14</sup> RMA, ss 61, 66, 74, 191.

specified development project, and surrounding activities, to which the plan relates:

[...]

- (g) New Zealand Standards, management plans, strategies and policies prepared under other Acts.

## DRAFT DEVELOPMENT PLANS

47. Once a SDP is established, Kāinga Ora is required to prepare a draft development plan outlining the development powers that will be used to achieve the project objectives for that SDP.<sup>15</sup> If there is an existing designation for nationally significant infrastructure within a project area, Kāinga Ora must notify the relevant requiring authority and include the designation without change in the draft development plan, unless the requiring authority specifies otherwise.<sup>16</sup> NZ Airports strongly supports the retention of this protection for existing designations of nationally significant infrastructure.
48. Despite this, there is no corresponding protection for planning controls surrounding airports. Rather, draft development plans can override, add to, or suspend objectives, policies, methods, and rules in planning instruments to achieve the objectives of the SDP.<sup>17</sup> While such modifications cannot go beyond the scope of the relevant planning instrument(s), there is nothing to prevent Kāinga Ora from overriding provisions that are critical to the ongoing operation of New Zealand's airports.
49. NZ Airports is opposed to such an approach. As set out above, many of our members have participated extensively in RMA planning processes to ensure that there are robust planning controls within their effects areas to prevent incompatible land uses from establishing in proximity to airports and to protect against reverse sensitivity effects. Such controls are equally important to ensure that landowners and occupiers are not subject to the adverse effects of aircraft noise. The ability to modify these controls to promote "quick" urban development is entirely inappropriate, as it would undermine the purpose of those provisions by enabling types of development (in particular housing) to establish in areas that they would otherwise be prevented or restricted from locating within. For example, in its report on the Proposed Auckland Unitary Plan, the Independent Hearings Panel emphasised the importance of restricting the establishment of sensitive land uses within areas of high aircraft noise. As the Panel noted, such controls are needed "to protect public health, as:<sup>18</sup>
- [...] noise mitigation for the interior of buildings is useful but the effectiveness of this is limited by lifestyle preferences for open windows, doors and outdoor living space, and therefore cannot be fully relied upon to mitigate effects.
50. The hearing process proposed in the Bill for draft development plans provides few checks and balances on the ability of Kāinga Ora to override planning provisions in order to achieve its project objectives. For example, although draft development plans are publicly notified and submissions on the plan are considered by an Independent Hearing Panel ("IHP"), the IHP may only make recommendations to Kāinga Ora – its decision is not binding.<sup>19</sup> Further, if the responsible Minister considers that the IHP's recommendations would limit the ability of decision-makers to achieve the project objectives, the Minister can require the IHP to

<sup>15</sup> Clause 61(1).

<sup>16</sup> Clause 67.

<sup>17</sup> Clause 62(4).

<sup>18</sup> Auckland Unitary Plan Independent Hearings Panel Report to Auckland Council – Hearing topic 045: Airports (July 2016) at 5.2(ii).

<sup>19</sup> See clauses 76 to 82.

reconsider the draft development plan and its recommendations before providing its approval.<sup>20</sup>

51. In other words, Kāinga Ora and the responsible Minister have significant powers to ensure that decisions on the draft development plan align with their objectives for a particular project, potentially at the expense of existing planning provisions.

52. If Kāinga Ora has the ability to override or suspend existing planning provisions, this power must be qualified to ensure that any such modifications do not undermine the ongoing operation and future viability of New Zealand's airports and other critical infrastructure. NZ Airports' seeks that either:

(a) clause 66 be amended as follows:

**66 Provisions that modify planning instruments**

(2) Any objectives, policies, methods or rules of a development plan that override, or **add** to, or suspend any provisions of a regional policy statement or a plan made under the Resource Management Act 1991 must –

[...]

(d) if relevant, enable the provision of all necessary infrastructure for a specified development project, both within and outside the project area; and

(e) not override, or add to, or suspend any provisions that protect the operation of nationally significant infrastructure, without the written consent of the relevant requiring authority.

(b) or clause 67 is amended to reflect that any planning provisions within a project area that protect nationally significant infrastructure must be included in the draft development plan without change unless the nationally significant infrastructure provider specifies otherwise.

53. In our view, this approach is entirely consistent with the various protections and exceptions provided for nationally significant infrastructure elsewhere in the Bill.

**HIERARCHY OF DESIGNATIONS AND REQUIRING AUTHORITY CONSENT**

54. As part of the requiring authority powers granted to Kāinga Ora, with the exception of designations for nationally significant infrastructure or defence areas,<sup>21</sup> where a Kāinga Ora designation overlaps with another designation, Kāinga Ora is not required to obtain the written approval of another requiring authority under section 176 of the RMA before it may do anything under its designation.<sup>22</sup>

55. NZ Airports supports the exception provided for nationally significant infrastructure in this regard. It is essential that Kāinga Ora is required to obtain the written permission of requiring authorities for nationally significant infrastructure designations before being able to do any works that may prevent or hinder the ongoing operation of such infrastructure.

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20 See clauses 83 to 86.

21 Clause 139(3).

22 Clause 139(1).

56. However, the Bill also provides that, for the purposes of section 177 of the RMA, any designation for which Kāinga Ora is the requiring authority must be treated as the earliest designation that applies in a project area.<sup>23</sup> The earlier requiring authority's power to undertake works within the area subject to a later designation under section 177(1)(b) applies "notwithstanding section 176(1)(b)" and without the need for the earlier requiring authority to obtain written consent from the requiring authority of the later designation.
57. The Bill would therefore give Kāinga Ora the power to do works in accordance with its designation within the area of another requiring authority's designation - including nationally significant infrastructure designations - without having to obtain written approval. The requirement for Kāinga Ora to obtain the written consent of requiring authorities for designations for nationally significant infrastructure under section 176 would therefore be redundant. In addition, requiring authorities, including for nationally significant infrastructure, would be required to obtain the written approval of Kāinga Ora before undertaking works in accordance with their designations, even where their designation has been in place for decades.
58. These provisions undermine the very purpose of designations under the RMA, and threaten to stifle the ability of requiring authorities to continue to provide the essential infrastructure authorised under their designations.
59. These are perverse outcomes, and cannot have been the legislative intent in drafting this aspect of the Bill. Such an approach undermines the various provisions in the Bill that seek to recognise and provide for nationally significant infrastructure. NZ Airports requests that clause 139 be amended as follows:

**139 Further modifications to Part 8 of Resource Management Act 1991**

- (1) Despite section 176(1) of the Resource Management Act 1991, Kāinga Ora need not obtain the written permission of another ~~requirement~~ requiring authority to do anything in accordance with a designation held by Kāinga Ora.
- (2) However, the other requiring authority must obtain the permission of Kāinga Ora under section 176(1)(b) of the Resource Management Act 1991 before it does anything in accordance with its designation.
- ~~(3) Subsection (1) does not apply if the designation is for nationally significant infrastructure or a defence area.~~
- (4-3) In applying section 177 of the Resource Management Act 1991, a designation for which Kāinga Ora is the requiring authority—
- (a) must be treated as the earliest designation that applies in the project area; but
- (b) must not be treated as having been introduced earlier than an existing heritage order recorded in the district plan that applies in the project area.
- (4) Subsections (1) and (3) do not apply if the designation is for nationally significant infrastructure or a defence area.

<sup>23</sup>

Clause 139(4).

## PARTICIPATION AND APPEAL RIGHTS

60. The Bill proposes to place restrictions on the ability of interested parties to participate in the urban development process, namely through limiting the circumstances in which notification is required and decisions made under the Bill may be appealed.

### *Limited appeal rights*

61. NZ Airports has serious concerns with the proposed limitations on participation and appeal rights under the Bill. Under the Bill, submitters on a draft development plan are only able to appeal the responsible Minister's approval of that plan. No right of appeal is granted in respect of either Kāinga Ora's or the IHP's recommendations.<sup>24</sup> Further, submitters may only appeal the Minister's decision to approve a draft development plan to the High Court on a question of law.<sup>25</sup> There is no ability to appeal based on the merits of that decision.
62. Reverse sensitivity effects are often overlooked by local authorities in deciding whether to grant consent for a development. Kāinga Ora (or consent authorities appointed in relation to SDPs), with far less experience than councils in considering the various complex effects of a development project, and a clear focus on achieving project objectives, are unlikely to sufficiently recognise and provide for such effects if airports are not able to participate fully in the development and consenting process. The ability to appeal decisions made on SDPs provides a critical safeguard to ensure the powers granted under the Bill are appropriately used.
63. NZ Airports seeks that the Bill be amended to allow merits appeals to the Environment Court in relation to final draft development plans.

### *Composition of IHPs*

64. NZ Airports is concerned with the current membership requirements for IHPs under the Bill, for the reasons set out in paragraph 49 above. Clause 2(4) of Schedule 3 addresses the requisite knowledge required across IHP members. Currently, this does not include engineering, geotechnical or other development or infrastructure knowledge.
65. While it is important for IHPs to include commissioners with knowledge relating to the interests of mana whenua, communities and economic matters, it is also critical that IHP members sufficiently understand and appreciate the operation, and importance, of existing infrastructure within or near a project area.
66. NZ Airports requests that clause 2(4) of Schedule 3 be amended as follows:

- (4) The members of the IHP, collectively, must have knowledge of—
  - (a) the various communities within the project area, including mana whenua groups; and
  - (b) the existing activities and significant infrastructure that is within the project area or will be, or is likely to be, affected by the project; and
  - (bc) economic matters that affect property development; and [...]

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<sup>24</sup> Clause 88(1).

<sup>25</sup> Clause 88(1).

*Preclusion of notification for consent applications*

67. Kāinga Ora is not required to comply with the notification provisions of the RMA in respect of applications for resource consent relating to SDPs, where a rule in a development plan or a plan as modified by the development plan precludes notification.<sup>26</sup> This effectively grants Kāinga Ora the ability to preclude public participation in resource consent processes for certain activities.
68. Given Kāinga Ora's ability to consider applications for resource consent non-notified, there is a real risk that significant infrastructure providers, such as airports, will not be afforded the opportunity to participate in resource consent processes for activities seeking to establish within their effects areas. While our members take a proactive approach to monitor development around their airports, we rely on consent authorities to notify applications that seek to establish activities that are contrary to the controls provided in effects areas.
69. If SDPs are established within airports' effects areas, which NZ Airports does not support for the reasons outlined above, we seek that the development plans for SDPs within these areas include a requirement to notify the owner or operator of nationally significant infrastructure of applications for resource consent. Such a change would be consistent with the existing protections for nationally significant infrastructure contained within the Bill.

**LAND ACQUISITION POWERS**

70. The Bill proposes to grant Kāinga Ora the power to request that the Minister for Land Information acquire land on which an existing public work is located.<sup>27</sup> NZ Airports is concerned that this power will enable Kāinga Ora to acquire land that is currently held for airport purposes (being a public work) under the PWA.
71. Many of our members have extensive landholdings surrounding their infrastructure. This land has been developed for uses that are consistent with and form an integral part of modern airport operations. Such landholdings also form an important part of many airports' effects areas. For the reasons set out above, these areas are critical to the effective management of potential reverse sensitivity effects and it is essential that their efficacy is not undermined through inappropriate urban development.
72. The ability of Kāinga Ora to acquire airport landholdings for urban development purposes removes one of the key protections for airports against potential reverse sensitivity effects associated with the location of incompatible land uses nearby. The Bill does not currently provide any real checks or balances on this power, other than the standard PWA objection process. In our view, the lack of provision for land held for nationally significant infrastructure is inconsistent with the existing protections for such infrastructure provided in the Bill and developed under the RMA.

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<sup>26</sup> Clause 125(3).

<sup>27</sup> See clauses 250 to 253.

## **CONCLUSION**

73. NZ Airports seeks the opportunity to appear at Select Committee hearings in support of this submission.

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