

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2020-AKL

**I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

IN THE MATTER

of the Resource Management Act
1991 (the "RMA")

AND

IN THE MATTER

of an appeal under Clause 14 of the
First Schedule of the Act against the
decision of the Waikato District
Council on the Proposed Waikato
District Plan

BETWEEN

**WAIKATO REGIONAL AIRPORT
LTD**

Appellant

AND

WAIKATO DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL BY WAIKATO REGIONAL AIRPORT LIMITED AGAINST
DECISIONS ON THE PROPOSED WAIKATO DISTRICT PLAN**

28 February 2022

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1 INTRODUCTION

- 1.1 Waikato Regional Airport Ltd ("WRAL") appeals against parts of the decision ("Decision") by Waikato District Council ("WDC") on the Proposed Waikato District Plan ("PDP").
- 1.2 WRAL made a submission¹ and further submissions² on the PDP.
- 1.3 WRAL is not a trade competitor for the purposes of section 308D of the RMA.
- 1.4 WRAL received notice of the decision on the PDP on 17 January 2022.
- 1.5 The decision subject to appeal was made by WDC.
- 1.6 WRAL is appealing those parts of the Decision identified in paragraph 2.1 below.

2 PARTS OF THE DECISION BEING APPEALED

- 2.1 The parts of the decision that WRAL is appealing against are:
 - (a) How the Hamilton Airport is referenced in the PDP; and
 - (b) The wording of Policy RLZ-P10 - Reverse sensitivity.

3 GENERAL REASONS FOR THE APPEAL

- 3.1 The Decision appropriately provided for some of the matters raised in WRAL's submission and further submission on the PDP. However, to the extent the Decision does not provide for the relief sought in this notice of appeal, WRAL considers that the Decision:
 - (a) Does not promote the sustainable management of resources, and does not achieve the purpose of the RMA;
 - (b) Is contrary to Part 2 and other provisions of the RMA;
 - (c) Does not represent the efficient use and development of natural and physical resources;

¹ Dated 9 October 2018 and attached as **Annexure A**.

² Dated 15 July 2019 and attached as **Annexure B**.

- (d) Does not manage natural and physical resources in a manner that enables the community to provide for its social and economic wellbeing;
- (e) Will not meet the reasonably foreseeable needs of future generations;
- (f) Does not give effect to relevant provisions of higher order planning documents (including the Waikato Regional Policy Statement (“RPS”));
- (g) Does not appropriately avoid, remedy or mitigate adverse effects on the environment; and
- (h) Does not represent the most appropriate means of exercising the Council’s functions and is therefore not appropriate under s32 and other provisions of the RMA.

3.2 Without derogating from the generality of the above, WRAL appeals the following specific parts of the Decision on the following grounds.

4 DETAILED REASONS AND RELIEF SOUGHT

Correct Reference to Hamilton Airport

- 4.1 The PDP includes various (incorrect) references to the Hamilton Airport including Waikato Regional Airport (Ltd), Waikato Regional Airport or the Hamilton International Airport. The correct distinctive term for the airport is “Hamilton Airport”.
- 4.2 WRAL is the entity that operates Hamilton Airport and reference to it is correctly used in Part 3: Area-specific matters/Designations, as WRAL is the requiring authority responsible for the designation. However, reference to WRAL elsewhere in the PDP is not appropriate.
- 4.3 Elsewhere in the PDP reference to the airport has been corrected to Hamilton Airport in accordance with WRAL’s submission but there remain inconsistencies. The terminology of the PDP should be corrected to ensure consistency throughout the PDP, as sought in the relief below.

Policy RLZ-P10 - Reverse sensitivity

4.4 WRAL seeks that Policy RLZ-P10 - Reverse sensitivity be amended to more precisely relate to the effects it is trying to avoid or mitigate against, for the following reasons:

- (a) The purpose of the Airport Subdivision Control Boundary (“ASCB”) and SEL 95 Boundary overlays, as marked on the planning maps, is to manage and limit the amount of development or sensitive receivers within those overlays and therefore the potential for reverse sensitivity effects.
- (b) Hamilton Airport is defined as regionally significant infrastructure in the RPS, which means that the following objectives and policies are directly relevant, as they seek to protect the efficient and effective operation of the Airport now and in the future:
 - (i) Policy 6.6 Significant infrastructure and energy resources;
 - (ii) Implementation method 6.6.1 Plan provisions;
 - (iii) Implementation method 6.1.8(c) Information to support new urban development and subdivision; and
 - (iv) Implementation method 6.6.5 Measures to avoid adverse effects.
- (c) The Operative Waikato District Plan (“ODP”) included a subdivision standard that required subdivision of properties within the ASCB or inside the SEL 95 Boundary to achieve a 1.1ha minimum average lot size, otherwise the subdivision would be a prohibited activity. This provision was introduced into the ODP, as part of Plan Change 19³ which allowed additional rural residential subdivision opportunities in Tamahere. Outside of the ASCB the density enabled was 5,000m² lots. The intent of the 1.1ha averaging requirement was to ensure that the density of landholdings in the ASCB did not increase to a level greater than which existed at that time. The averaging requirement was reaffirmed in 2010⁴ when the ASCB was amended slightly.
- (d) When the PDP was notified, the intent of rule framework was maintained in terms of the minimum averaging requirement, but the activity status was

³ Notified in 2000 with solution agreed in 2003 via a consent order.

⁴ Via Variation 14 to the Waikato District Plan in support of NoRs and plan changes lodged relating to the Obstacle Limitation Surfaces, noise boundaries and Runway Protection Area.

reduced from prohibited to non-complying. There was no supporting objective or policy framework to substantiate the non-complying activity status, as it related to Hamilton Airport.

- (e) WRAL's submission consequently requested that the prohibited activity status be maintained for subdivision inside the ASCB or inside the SEL 95 Boundary, reflecting the rules and policy framework of the ODP. The reasons for that submission were to minimise any increase in potential of new sensitive receivers that could be subject to reverse sensitivity effects from aircraft noise and that removal of the ASCB control would undermine the existing integrated cross-boundary approach developed by the three councils (Waikato, Waipa and Hamilton City) to manage the effects of Hamilton Airport's operations on the receiving environment.
- (f) The evidence presented by WRAL⁵ at the PDP hearings was that a non-complying activity status could/should achieve the same purpose as a prohibited activity *provided* that there was a strong policy basis to support it. Such an approach would enable true exceptions or minor variations from the land use pattern to be considered, but would not result in the higher density subdivision outcome enabled for the balance of the Rural lifestyle zone ("RLZ").
- (g) The Decision on the PDP⁶ agreed that a non-complying activity status was the most appropriate activity status, and that there was a gap in the policy framework to address reverse sensitivity, particularly when considering the RPS requirements of protecting the Hamilton Airport.
- (h) The Decision specifically records⁷ that "*reverse sensitivity relating the Airport should be explicitly addressed by a policy*". The Decision also records that the policy⁸ should read as follows:

"5.6.19 Policy – Reverse Sensitivity

(a) Avoid or minimise the potential for reverse sensitivity through:

(i) the use of setbacks, the design of subdivision and development

(ii) limiting subdivision within the Airport Subdivision Control Boundary."

⁵ Evidence in Chief of Kathryn Drew on behalf of WRAL.

⁶ Decision Report 18: Country Living Zone at paragraph 115.

⁷ Decision Report 18: Country Living Zone at paragraph 115.

⁸ As previously contained in Chapter 6 – Infrastructure and Energy (as notified).

- (i) In giving effect to the National Planning Standards and through the redrafting of the PDP format, there is no longer a Chapter for Infrastructure and Energy, but there are multiple chapters that cover a range of topics such as telecommunications and radiocommunications, transportation, all infrastructure and the national grid⁹. None of these chapters specifically address the Hamilton Airport, nor is there a policy framework in these chapters relating to the Hamilton Airport.
- (j) The policy framework that most appropriately gives effect to the PDP decision is that now contained in the RLZ¹⁰, which reads as follows:

“RLZ – P10 – Reverse Sensitivity

(1) Avoid or minimise the potential for reverse sensitivity through:

 - (a) The use of setbacks, the design of subdivision and development*
 - (b) Limiting subdivision near the Waikato Regional Airport.”*
- (k) Policy RLZ-P10 as drafted in the Decision, does not appropriately give effect to the Decision.
- (l) The use of the term “near” in Policy RLZ-P10 is vague and uncertain and open to interpretation as to what it means or does not mean. The term “near” provides little guidance as to the relevance of the policy in relation to subdivision within the ASCB.
- (m) With the ASCB being defined and the rule specifically relating to subdivision within the ASCB, it makes good resource management sense that the policy framework also refers to the ASCB.
- (n) Policy RLZ-P10 also uses the incorrect term to describe the Hamilton Airport as set out above.

5 RELIEF

- 5.1 The Appellant seeks the following relief, or such consequential and/or related relief as may be necessary or appropriate to give effect to its concerns:
 - (a) That Waikato Regional Airport Ltd, or Waikato Regional Airport references are replaced with the reference Hamilton Airport at the following sections of the PDP:

⁹ Part 2 of the PDP – Decisions Version - Sections 3-12.

¹⁰ Part 3 of the PDP – Decisions Version – Section 6.

- (i) Part 1: Introduction and general provisions / Interpretation
 - Definition of Regional Significant Infrastructure refers to the Hamilton International Airport at clause (I).
 - (ii) Part 2: District-wide matters / Subdivision / SUB – Subdivision
 - SUB-63(1) at the matters of discretion refers to the “effects on the operation of the airport”.
 - (iii) Part 3: Area-specific matters / Zones / Rural zones / RLZ – Rural lifestyle zone
 - Policy RLZ-10 Reverse Sensitivity
- (b) That Policy RLZ-P10 Reverse sensitivity is amended to refer specifically to limit subdivision within the Airport Subdivision Control Boundary in accordance with the Decision Report 18: Country Living Zone.

6 ANNEXURES

6.1 The following documents are attached to this notice:

- (a) A copy of the Appellant’s submission;
- (b) A copy of the Appellant’s further submission;
- (c) A copy of the part of the decision relevant to the above appeal;
- (d) A list of names and addresses of persons to be served with a copy of this notice.

WAIKATO REGIONAL AIRPORT LTD by its solicitors,
ChanceryGreen:



Jason Welsh
28 February 2022

To: The Registrar at the Environment Court in Auckland
And to: Waikato District Council
And to: Submitters on the Proposed Plan (see **Annexure D**)

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must -

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission/further submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.