

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2024] NZEnvC 067

IN THE MATTER OF an appeal under clause 14 of Schedule 1
of the Resource Management Act 1991

BETWEEN WAIKATO REGIONAL AIRPORT
LIMITED

(ENV-2022-AKL-000075)

Appellant

AND WAIKATO DISTRICT COUNCIL

Respondent

Court: Alternate Environment Judge L J Newhook sitting alone under s
279 of the Act

Last case event: 20 February 2024

Date of Order: 5 April 2024

Date of Issue: 5 April 2024

CONSENT ORDER

A: Under section 279(1)(b) of the Resource Management Act 1991, the
Environment Court, by consent, orders that:

- (1) Policy RLZ-P10 and Parts 1, 2 and 3 of the PDP decisions version be
amended as set out in **Appendix 1** to this order (additions marked as
underlined and deletions as ~~strikethrough~~); and



(2) The appeal is resolved in its entirety.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to an appeal by Waikato Regional Airport Limited (**WRAL**) against parts of the decisions of the Waikato District Council (**Council** or **Respondent**) in respect of the Proposed Waikato District Plan (**PDP**).

Background

[2] WRAL is the entity which operates the Hamilton Airport. WRAL's original submission sought the following amendments to the PDP as notified:

- (a) Amendment to APP1 – Acoustic insulation¹ to update various (incorrect) references to the airport with the term 'Hamilton Airport'; and
- (b) Deletion of rule 23.4.2 RD1 and NC1² in the notified version of the PDP and replacement with a prohibitive subdivision rule.

[3] In the section 42A report for Hearing 12: Country Living Zone, the report author noted that in the Operative Waikato District Plan (**ODP**),³ subdivision within the Airport Subdivision Control Boundary that creates allotments with an average net size area of less than 1.1ha was classified as a prohibited activity.⁴ The Airport Subdivision Control Boundary is an overlay marked on the planning maps which sits over certain parts of the Rural lifestyle zone (**RLZ**) (formerly the Country living zone), as well as other zones, within close proximity of the airport. The purpose of the

¹ Appendix 1 Acoustic Insulation of the notified version of the PDP.

² Rule SUB-R63 in the decisions version of the PDP.

³ Rule 27.5(i) of the Operative Waikato District Plan.

⁴ Section 42A Report – Hearing 12: Country Living Zone, at [648].

overlay is to limit the amount of development, and therefore the number of people, that will be exposed to increased noise from aircraft.⁵ The report author recommended rejecting WRAL's submission point on SUB-R63⁶ as they were not satisfied that a prohibited activity status for lots that do not meet the rule (i.e., cannot meet the 1.1ha average) was the most appropriate approach, given the high threshold for prohibited status.⁷

[4] With respect to WRAL's submission point in paragraph [2](a) above, the section 42A report author for Hearing 2: Plan structure and all of plan recommended that the relief be accepted so as to remove ambiguity regarding the naming of the Airport in the PDP.⁸

[5] In the PDP hearings, WRAL highlighted the need to control reverse sensitivity effects on the airport and considered that the most effective way to achieve this was by limiting the potential for new dwellings to be built within the Airport Subdivision Control Boundary. Provided that policy 5.6.3,⁹ in the Infrastructure and Energy chapter of the notified PDP, was amended to ensure protection of the airport, WRAL expressed agreement with the non-complying activity status for subdivision within the Airport Subdivision Control Boundary.¹⁰ Without this policy amendment, WRAL considered that the prohibited subdivision rule in the ODP should be retained.

[6] On 17 January 2022, an Independent Hearing Panel (**IHP**) on behalf of the Respondent acknowledged that there was a gap in the policy framework of the PDP to address reverse sensitivity and agreed with WRAL that reverse sensitivity relating to the airport should be explicitly addressed by a policy.¹¹ Accordingly, the IHP inserted a new policy, RLZ-P10, which addressed reverse sensitivity and explicitly referenced the Airport Subdivision Control Boundary.

⁵ Ibid, at [643].

⁶ Ibid, at [655].

⁷ Ibid, at [652].

⁸ Section 42A Report – Hearing 2: Plan structure and all of plan, at [155] and [167].

⁹ Policy 5.6.3 Subdivision within the Country living zone in the notified version of the PDP.

¹⁰ Decision Report 18: Country living zone, at [22].

¹¹ Ibid, at [115].

[7] In reformatting the PDP to give effect to the National Planning Standards, there is no longer a chapter for Infrastructure and Energy and instead there are multiple chapters that cover a range of topics. It is acknowledged that none of these chapters specifically address the Hamilton Airport, nor is there a policy framework in these chapters relating to the airport. The policy framework that most appropriately gives effect to the IHP's decision in Decision Report 18 is RLZ-P10, which is within the RLZ. It is noted however that RLZ-P10, as drafted in the decisions version of the PDP, does not refer to limiting subdivision 'within the Airport Subdivision Control Boundary' and instead refers to 'near the Waikato Regional Airport'.

[8] With respect to WRAL's submission on the naming of the airport, the IHP accepted the s42A report authors recommendations and amended APP1 accordingly.¹²

[9] WRAL subsequently filed this appeal. Consistent with the position advanced at the hearings, the Appeal seeks the following amendments:

- (a) Amendment to Parts 1, 2 and 3 of the decisions version of the PDP to replace reference to 'WRAL' or 'Waikato Regional Airport' with reference to 'Hamilton Airport'. This relief is sought on the basis that WRAL is the entity that operates Hamilton Airport and reference to it is correctly used in Part 3: Area-specific matters/Designations of the PDP, as WRAL is the requiring authority responsible for the designation. However, reference to WRAL elsewhere in the PDP is not appropriate. While elsewhere in the PDP reference to the airport was corrected to Hamilton Airport in accordance with WRAL's submission and Decision Report 18, there remain inconsistencies. The Appeal therefore seeks that the terminology of the PDP be corrected to ensure consistency throughout the PDP; and
- (b) Amendment to Policy RLZ-P10 to refer specifically to limiting subdivision within the Airport Subdivision Control Boundary to appropriately give effect to the IHP's decision in Decision Report 18.

¹² Decision Report 32: Miscellaneous matters, at [7.16].

[10] This relief has been assigned to Topic 5.2: Infrastructure reverse sensitivity / setbacks – Hamilton Airport.

[11] The consent order resolves the appeal in its entirety.

Agreement reached

[12] Following the filing of the appeal, WRAL and Council entered into direct discussions and reached agreement on both appeal points. However, the appeal by Jason Howarth¹³ sought to delete and/or amend policy RLZ-P10. Following Court assisted mediation on 8 February 2024, Mr Howarth agreed to withdraw his appeal in Topic 5.2 and its interest in the WRAL Appeal. Interested party Mr Hartley also agreed to withdraw his interest in Mr Howarth's appeal. These withdrawals were communicated to the Court on 9 February 2024. Accordingly, WRAL and Council are now able to enter into this agreement to resolve the Appeal in its entirety.

[13] The details of the agreement reached are as follows:

- (a) Amend RLZ-P10 to provide clarity and certainty as to the application of the policy and give appropriate effect to the IHP's decision in Decision Report 18:

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 Ltd~~ within the Airport Subdivision Control Boundary.

- (b) Amend the Interpretation and SUB – Subdivision chapters and APP1 in Part 4: Schedules and appendices to correct the existing inconsistencies and refer to the correct distinctive term for the Airport.

Section 32AA evaluation

[14] Given the narrow nature of the two appeal points, being that the amendments are minor in terms of scale and significance, the parties do not consider it necessary to do a full section 32AA assessment. With respect to the second appeal point, the

¹³ Howarth Consulting Ltd v Waikato District Council (ENV-2022-AKL-000027).

parties agree that the proposed amendment to RLZ-P10 provides more clarity and efficiency in terms of where the policy applies. Correcting the references to Hamilton Airport is also considered effective and efficient in terms of s32AA. The changes are considered to be appropriate.

Consideration

[15] In making this order the Court has read and considered:

- (a) The notice of appeal dated 28 February 2022; and
- (b) The Joint Memorandum of the parties dated 20 February 2024.

[16] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order; and
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[17] The Court is satisfied that the changes sought are within the scope of the Appellant's submission and appeal.

Order

[18] The Court orders, by consent, that:

- (a) The Interpretation, SUB – Subdivision and RLZ – Rural lifestyle zone chapters and APP1 in Part 4: Schedules and appendices of the PDP decisions version be amended as set out in **Appendix 1** to this order (additions marked as underlined and deletions as ~~striketrough~~);

- (b) The appeal is otherwise dismissed; and
- (c) There is no order as to costs.



L J Newhook
Alternate Environment Judge



Appendix 1: Tracked change version of the agreed amendments to the PDP decisions version

Interpretation chapter:

Term	Definition
Regionally significant infrastructure	<p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> (a) Pipelines for the distribution or transmission of natural or manufactured gas or petroleum; (b) Infrastructure required to permit telecommunications as defined in the Telecommunications Act 2001; (c) Radio apparatus as defined in section 2(1) of the Radio Communications Act 1989; (d) The national electricity grid, as defined by the Electricity Industry Act 2010; (e) A network (as defined in the Electricity Industry Act 2010); (f) Infrastructure for the generation and/ or conveyance of electricity that is fed into the national grid or a network (as defined in the Electricity Industry Act 2010); (g) Significant transport corridors as defined in Map 6.1 and 6.1A of the Waikato Regional Policy Statement; (h) Lifeline utilities, as defined in the Civil Defence and Emergency Management Act 2002, and their associated essential infrastructure and services; (i) Municipal wastewater treatment plants, water supply treatment plants and bulk water supply, wastewater conveyance and storage systems and, municipal supply; (j) Dams (including Mangatangi and Mangatawhiri water supply dams) and ancillary infrastructure; (k) Flood and drainage infrastructure managed by Waikato Regional Council; and (l) Hamilton International Airport

SUB – Subdivision chapter:

SUB-R63	General subdivision	
RLZ – Rural lifestyle zone	<p>Activity status: RDIS</p> <p>Activity specific standards:</p> <ul style="list-style-type: none"> (a) Subdivision of land wholly inside the Airport Subdivision Control Boundary, or wholly or partially inside the SEL 95 Boundary identified on the planning maps must comply with all of the following standards: <ul style="list-style-type: none"> (i) Where the, the average net site area (excluding access legs) of all 	<p>Activity status where compliance not achieved: NC</p>

	<p>proposed lots must be at least 1.1ha;</p> <p>(ii) Where the land being subdivided straddles the Airport Subdivision Control Boundary, the maximum number of proposed titles must be the smallest nearest whole number calculated by the following formula:</p> $\text{Proposed allotments} = \frac{\text{area (ha) outside} *}{0.5} + \frac{\text{area (ha) inside} *}{1.1}$ <p>* outside and inside Airport Subdivision Control Boundary</p> <p>Council's discretion is restricted to the following matters:</p> <p>(a) Adverse effects on amenity values;</p> <p>(b) Effects on the operation of the <u>Hamilton Airport</u>;</p> <p>(c) The provision of infrastructure, including water supply accessible for firefighting;</p> <p>(d) The subdivision layout and design in regard to how this may impact on the operation, maintenance, upgrading and development of infrastructure assets, or give rise to reverse sensitivity effects on existing land transport networks.</p> <p>(e) Measures to minimise reverse sensitivity effects, including on adjoining GRUZ – General rural zone land.</p>	
--	---	--

RLZ – Rural lifestyle zone chapter:

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 Ltd~~ within the Airport Subdivision Control Boundary.

APP1 – Acoustic insulation:

...

2. Hamilton Airport

2.1 Standards for Permitted Activities inside the Hamilton Airport Noise Outer Control Boundary (~~previously referred to as the Waikato Regional Airport Noise Outer Control Boundary~~)

...