

Before the Hearings Panel

In the Matter of the Resource Management Act 1991 (**Act**)

And

In the Matter Hearing 22: Infrastructure for Stage 1 of the Proposed District Plan (the 'Stage 1 PDP')

Summary / Update Statement of Nicholas Colyn Grala on behalf of Cindy and Tony Young and Parkmere Farms

Dated 15 October 2020

Overview of key conclusions of my evidence

1. Cindy and Tony Young and Parkmere Farms (the 'Submitters') made further submissions (submitter references FS1221.8 and FS1283.8) in opposition to the submission made by Waka Kotahi New Zealand Transport Agency ('Waka Kotahi') that sought a new rule framework to be applied to land use within 100m of a state highway carriageway or legal boundary of a railway corridor (the 'Noise Sensitive Overlay') (submitter reference 742.244).
2. If the submission were to be accepted, this would result in the following restrictions being applied to the submitters properties (in addition to thousands of other properties within the Waikato District):
 - a. The construction of all buildings for a sensitive land use within 100m of a state highway carriageway or legal boundary of a railway corridor having to be designed and constructed to achieve the specific internal design sound levels.
 - b. The alteration of all buildings for a sensitive land use within 100m of a state highway carriageway or legal boundary of a railway corridor must be designed and constructed to achieve specific internal design sound levels; and
 - c. All subdivision having to locate building platforms further than 100m from a state highway carriageway or legal boundary of a railway corridor (irrespective of intended use).
3. Both further submissions opposed the Noise Sensitive Overlay on the basis that acoustic insulation requirements for sensitive land uses are inappropriate, noting that the setback requirements for sensitive activities in relation to a state highway are already addressed in various rules within the different zones.

4. Setbacks are already the primary mechanism for managing sensitive land uses located near to significant infrastructure within the Proposed District Plan. These setbacks are already considerably larger than those for normal sites and would apply in addition to the Noise Sensitive Overlay rule framework that is being sought by Waka Kotahi. I note in Mr Woods's evidence on behalf of Waka Kotahi that he has partially resiled from this position and has suggested deleting the setback rules that were notified in the Proposed District Plan from:
 - a. The designated boundary of the railway corridor;
 - b. The boundary of a national route (although I note he is still seeking retention of the setback from a regional arterial); and
 - c. The designated boundary of the Waikato Expressway.
5. Mr Mackie has largely relied on the rules regarding the rail corridor for the Lakeside Plan Change 20 (Te Kauwhata) as justification for his recommendation to accept the Noise Sensitive Overlay. This is flawed because the Proposed District Plan would apply it across the district as opposed to a discrete parcel of land and for a specific development - meaning the applications and context are vastly different and should not be viewed as a form of precedent.
6. Hearings Panels in both Auckland and Whangarei have already rejected similar Noise Sensitive Overlay rule frameworks in other District Plans (mainly) due to:
 - a. An absence of rigorous and robust s32 analysis –the Overlays would affect a very large group of property owners and a cost-benefit analysis of the implications and who would bear costs was not undertaken.
 - b. Equity and fairness concerns – because the Overlays would affect thousands of properties and that the obligation (and cost) should be placed, at least in part, on infrastructure

providers to manage their impacts in terms of noise.

- c. Natural Justice concerns – this was based on a concern in relation to the thousands of properties that would be affected by the provisions and whether they were aware of the possible consequences of the provisions (which may diminish or constrain their right to be heard)

Calculation of costs and benefits

7. The Section 42A Report provided what can only be described as a high level S32AA assessment the Noise Sensitive Overlay. A more detailed and robust Section 32AA evaluation is required for the Panel to make an informed decision on whether the Noise Sensitive Overlay provisions are the most appropriate way to achieve the relevant objective(s).
8. The additional evaluation should also include a more detailed analysis of the effectiveness of the already proposed setback provisions within the Proposed Waikato District. The latter should also quantify the extent of noise attenuation that will regardless be achieved under the Building Act.
9. Mr Wood provided a s32A assessment to support his statement¹ which provides a more detailed evaluation of the different options for achieving the objectives including their effectiveness, efficiency, costs and benefits. The assessment partially fills the vacuum that existed prior. However, I note that the assessment is not location specific and has not been tailored to an application within the Waikato District like I would expect it to be.

¹ Annexure B – Assessment of Plan Provisions to Provide for Human Health and Amenity in accordance with Section 32 of the Resource Management Act 1991, Draft version dated September 2020.

10. For example, the cost evaluation for applying the Noise Sensitive Overlay provisions has only been undertaken at the individual dwelling level and is then applied as a percentage of overall construction cost². In my view, this needs to be converted to a dollar figure and then extrapolated out to the number of properties that the provisions will affect across the district to identify the actual likely cost of the provisions (for new development and alteration of existing) . This exercise would also need to apply to the benefits of the provisions and would only then provide the Panel with a full picture (of evidence) to decide on whether the Noise Sensitive Overlay is appropriate and best achieves the purpose of the Act. This has also been identified by Mr Stickney in his rebuttal statement³.

Extent of properties affected

11. Mr Mackie has misinterpreted the main thrust of my primary statement⁴, being that the Noise Sensitive Overlay provisions will apply to thousands of properties within the Waikato District without a detailed and robust s32 evaluation being undertaken. These provisions would apply to these properties irrespective of when the rules may be triggered or what condition the state highway may be in. Furthermore, based on the small number of further submissions received on the Noise Sensitive Overlay provisions, I suspect most of these property owners are completely unaware of the implications of the Noise Sensitive Overlay provisions. This raises issues around natural justice and fairness for the 1,698 and 2,741 properties that are located within 100m of a state highway or rail line respectively.

² Mr Wood, Statement of Evidence, Annexure B s32A, page 9

³ Mr Stickney, Rebuttal Statement, paragraph 4.4

⁴ Mr Mackie, Section 42a Rebuttal Report paragraphs 21-22

Distribution of costs

12. Mr Wood estimates a cost of at least \$150M to retrospectively mitigate noise exposure for approximately 50% of persons exposed to noise above 64dBA⁵. I am unsure whether this has been calculated based on the extent of noise barriers required within the Waikato District and who is paying for the cost. The assessment also notes that private individuals or developers can build noise fences for a lower cost but does not provide any evidence to support this assertion.

13. The s32 assessment finds that Option B (the Noise Sensitive Overlay provisions) is the most preferred option⁶, citing that the provisions recognise that the management of road noise is a shared responsibility. Notwithstanding whether this is an appropriate position in the first place (and whether the rules are nuanced enough to reflect where and to what extent Waka Kotahi have invested in upgrades to achieve lower road noise), the Noise Sensitive Overlay provisions appear to contradict this by transferring the obligation (and cost) of managing noise to the affected landowners and community.

Justification and effect of the rules

14. Both KiwiRail and Waka Kotahi cite reverse sensitivity as the justification for the rules, but no evidence has been provided to demonstrate that reverse sensitivity issues are manifesting within the Waikato District.

⁵ Mr Wood, Statement of Evidence, Annexure B s32A, page 12

⁶ Mr Wood, Statement of Evidence, Annexure B s32A, page 19

15. Mr Wood sought the addition of a new Outdoor Noise Rule in his evidence. I agree with Mr Stickney's assessment of this rule that it has the potential to result in undesirable and adverse visual and amenity effects (as well as being an inequitable way in which to manage the issue, particularly in relation to alterations or additions to existing activities)⁷.

16. I share the concerns that Mr Stickney has raised around the clarity, suitability, and feasibility of the Noise Sensitive Overlay rules⁸. A good example of this is the requirement for alterations to an existing dwelling to be designed and constructed with acoustic insulation, regardless of the scale or nature of those alterations. In this scenario, the sensitive land uses are lawfully established in their current locations prior to the establishment of the adjoining transport infrastructure. The potential for reverse sensitivity effects simply does not exist in these situations, which makes it inappropriate for any objectives, policies or rules (to manage reverse sensitivity) to apply to them.

Conclusion

17. I remain unsupportive of including the Noise Sensitive Overlay provisions because they have still not been subject to the detailed evaluation that is necessary to demonstrate they are the most appropriate way to achieve the purpose of the Act.



Nicholas Colyn Grala
15 October 2020

⁷ Mr Stickney, Rebuttal Statement, paragraph 1.2

⁸ Mr Stickney, Rebuttal Statement, paragraph 3.4