

20 March, 2020

Waikato District Council  
Private Bag 544  
NGARUAWAHIA 3742

Our Ref: M17241

**BEFORE THE WAIKATO DISTRICT HEARINGS PANEL**

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of submissions by McCracken Surveys Limited  
and on behalf of W Hodgson and Leo Koppens

SUBMISSION STATEMENT OF PHILIP BARRETT FOR WILLIAM HODGSON & LEO KOPPENS

## A Introduction

1. My name is Philip Barrett. I am employed as a resource management consultant by Cheal Consultants & McCracken Surveys Ltd), Hamilton and act on behalf of Mr William Hodgson and Leo Koppens. I hold the qualifications of Bachelor of Arts (Hons) and Master of Resource & Environmental Planning from Massey University. Over the last 24 years I have worked for the Department of Conservation, as a private consultant and held senior positions in two district councils. I am a full member of the NZPI.
2. My evidence addresses the matters raised in McCracken Surveys Limited submission 943 and further submission FS1253.33 Waikato Regional Airport.
3. Mssrs Hodgson and Koppens were party to Waikato District Council Plan Change 14 Environment Court proceedings that endorsed the mediation decision that resulted in the wording of Operative District Plan controlled activity Rule 27.62.1(c) & (d) –

(c) *if the land being subdivided is inside the Airport Noise Subdivision Control Boundary or inside the SEL 95 Boundary, the average net site area of all allotments created by the subdivision is at least 1.1ha, and*

(d) *if the land being subdivided straddles the Hamilton Airport Noise Outer Control Boundary, the maximum number of allotments created by the subdivision is the smallest nearest whole number calculated by the formula:*

$$\text{new lots} = \frac{\text{area (ha) outside}^*}{0.5} + \frac{\text{area (ha) inside}^*}{1.1}$$

*\*outside and inside Hamilton Airport Noise Subdivision Control Boundary*

4. Mr Hodgson wishes to speak to the history of the making of the rule. Mr Koppens (submitter number 820) is available to answer questions.
5. Matters to be Raised
  - i. Reverse sensitivity  
*Definitions: Reverse sensitivity involves the vulnerability of an existing activity to legal attack from newly located activities that are adjacent and which are incompatible.*
  - ii. Response to council Section 42A report.
  - iii. No complaints covenants.

## B Statement

### 1. Reverse Sensitivity

1.1 The Waikato Regional Airport Limited (WRAL) submission (#741) seeks the deletion of Proposed District Plan Rule 23.54.2 RD1 (a)(ii), (a)(iii), (b) and NC1 in preference of a prohibited activity status. The reasons provided include:

- (a) *There is no change to resource management issues to suggest that the Proposed Plan should be any different.*
- (b) *The issue is the potential reverse sensitivity effects of aircraft noise on residential development.*
- (c) *The prohibited subdivision rules have been in the Waikato District Plan since about Regional Airport Ltd in consultation with Waikato District Council and a group of Tamahere landowners.*
- (d) *The rules are designed to maintain the density of development within the Airport Subdivision Control Boundary generally at its current level.*
- (e) *To relax this subdivision rule and allow a higher density could lead to additional houses being built in an area where they are subject to adverse noise effects from aircraft and could exacerbate reverse sensitivity conflicts.*

- (f) *The prohibited activity subdivision rule was the subject of scrutiny and decision making in 2001 and again in 2011 as part of Variation 14 to the Waikato District Plan.*

*The inclusion of the prohibited subdivision rule will:*

- i) be consistent with the purpose and principles of the RMA*
- ii) promote the sustainable management of natural and physical resources*
- iii) enable people to provide for their social and economic well-being*
- iv) meet the reasonably foreseeable needs of future generations*
- v) be consistent with sound resource management practices.*

- 1.2 In regard to (a) above there has been a substantial change to the airport environment from when the rule was first negotiated at mediation. At that time there was still the potential for international flights (jet aircraft). The approved 3000m runway extension that required high intensity approach lights (allowing night time instrument landing) in 2011 was in response to that expectation. At that time the airport modelled it's future on overseas airports such as Gold Coast and Avalon and Stansted airports in the United Kingdom. Notably the designation 15 year lapse period within which to construct the extension was successfully appealed (ENV-2011-AKL-000234) on the grounds that WRAL could not say when in that period the runway would be extended resulting in an unacceptably burden (limitations on land use) on neighbours.
- 1.3 Understanding changes is not a criticism of the optimism of the airport at that time or events since that time (no international flights powered by jet engines; runway extension did not happen; Air New Zealand cut flights between Hamilton and Auckland) but simply highlights a factual understanding that the airport environment has changed considerably. This change is recognised by the Waikato Regional Airport Group 2018 in their Annual Report wherein it is stated that the 10 year strategic plan activities "*are all aligned to our core purpose of enabling air services to the Waikato region*" but with no expectation of receiving international flights to the airport as was the case in 2010. While the airport remains a viable and important regional hub, the context in which the rule was established has changed.
- 1.4 The degree of potential reverse sensitivity has changed from when the rule was first established. The Hamilton Airport Noise Management Plan 2016 that contains the makeup of the Airport Community Liaison Group and the Complaints Procedures and Dispute Resolution process automatically deems complaints supplied to the local councils are given in confidence. I do not have access to that information which is central to the decision to be made.
- 1.5 Certainly the WRAL submission did not back claims of reverse sensitivity. Documented complaints (number, location – especially Tamahere and reason for complaints) would reasonably establish that Tamahere subdivision and growth was and is a detriment to the past, current and future successful operation of the Airport. Waikato Regional Airport Group 2018 reported a strong operational and financial performance for the 2017/2018 financial year that extends back to at least 2010 when international flights were still operating (2008 Air New Zealand took over Freedom Air's international operations; 2009 Air New Zealand cancelled international flights to Australia; Pacific Blue commenced international flights to Australia).
- 1.6 It would be helpful to any evidence based planning decision to know whether or not reverse sensitivity is a factual issue to be considered.
- 1.7 It is a fact that the growth of the Tamahere community has happened while the airport itself has recorded growth over the last decade. It seems apparent and logical

that growth of the airport and the Tamahere community can continue simultaneously and that future subdivision and residential development will not hinder that growth. The Tamahere community, in the absence of evidence to the contrary or sufficient evidence that shows Tamahere resident complaints are at a level of concern to WRAL and therefore that Rule 23.54.2 RD1 (a)(ii) & (a)(iii)) is necessary for resource management purposes, accepts they live in close proximity to an airport. Without relevant and reliable evidence that reverse sensitivity is a factual issue that warrants maintenance of the rule, to retain the rule is disproportionately favourable to WRAL (as it was for the designation 15 year period) at the expense of the Tamahere community ability to grow.

- 1.8 WRAL submission (d) above states the *rules are designed to maintain the density of development within the Airport Subdivision Control Boundary generally at its current level*. The Airport Subdivision Control Boundary and SEL 95 Noise Control were determined at the time acknowledging the then airport operations which included jet aircraft. The current absence of jet aircraft brings into question the relevance of these boundaries as they affect private property and consequently if reconfigured would not extend to the current boundaries diminishing the potential for reverse sensitivity.
- 1.9 Council planning report states that there are 53 landowners with land areas greater than 1.1ha. It is difficult to logically reconcile that without some degree of knowledge and confidence that reverse sensitivity exist, that keeping the rule will be consistent with the purpose and principles of the RMA 1991.
- 1.10 A final note is that the potential 53 landowners that have land areas in excess of 1.1ha are at times unable to utilise their land without themselves experiencing reverse sensitivity from adjoining neighbours complaining about matters such as animal smells, vehicle movements, farm machinery and at times wandering livestock. The current and proposed subdivision rule has an unintended effect for these landowners. The point being that it is difficult to manage these lots in a country living environment.
- 1.11 Complaining neighbours might expect and prefer residential housing to low level farming activities. Allowing further subdivision of these sites would not be contrary to country living character. The 1.1ha lots are not required to support country living character, that was not purpose of the rule.

## **2. Response to Council s42A report**

- 2.1 The council Section 42A report comments the McCracken Surveys submission did not seek any specific decision. The submission stated opposition to the rule (implicit is the deletion of Rule 23.4.2 General subdivision RD1 (a)(ii), (a)(iii)). Opposition to the rule also dictates that there is opposition to the Section 42A report recommending keeping the rule set.
- 2.2 At page 172 of the Section 42A report the supporting argument appears to be that relaxing the rule to allow 5000m<sup>2</sup> net site area allotments will increase the potential housing stock within the Airport Subdivision Control Boundary or inside the SEL 95 Boundary. The comment seemingly relies on the status quo that reverse sensitivity is an actual issue and that the increase of housing potential of some 84 lots (Council report analysis) within the boundaries has an unacceptable outcome for the functioning of the airport.

- 2.3 This analysis is at odds with WRAL annual reporting for the last 10 years. There is no evidence to require a “special rule” for an environmental reverse sensitivity effect that is an unproven effect.
- 2.4 Page 174 of the planners report states that the rule was decided by the Environment Court at the time of Variation 14 to the operative district plan “*and has already been the subject of a great deal of analysis and debate*”. On this basis in concert with an as yet unproven reverse sensitivity suggestion, the author recommends rejecting the submissions from Leo Koppens (820.1) and McCracklen Surveys Ltd (943). The rule was negotiated at mediation and rubber stamped by the Environment Court. The matter was not robustly analysed or debated by the full Environment Court process. Settlement was made simply to end a longstanding deadlock. The rule essentially was devised by Mr Hodgson at that time. Both Mr Hodgson and Mr Koppens can attest to this fact being participants to the mediation process. There was no rational or evidenced based planning method applied.

### 3. No Complaints covenant

- 3.1 Strategies for dealing with reverse sensitivity effects include:
- (a) Protecting the existing activity through rules in district plans; and
  - (b) Requiring the new activity enter into a “no complaints” covenant via a land encumbrance.

In the current absence of conclusive evidence that reverse sensitivity is a factual effect on WRAL, strategy (b) is a viable option. This recognises that potential adverse effects of the noise will vary depending on the location of dwellings as much as it does the nature and scale of the airport activity. The mechanisms used to manage the effects of noise should relate to the location, nature and scale of the activity. The fact that Tamahere and the WRAL have developed significantly and simultaneously over the last decade supports use of strategy (b) for new additional lots.

- 3.2 It is acknowledged the district plan rules manage development in terms of acoustic insulation and heights of buildings and vegetation within the OLS that can be supported by covenants.
- 3.3 Covenants will be registered on all new Records of Title via a condition of subdivision consent preventing the covenantor, for example, from complaining about the adverse effects of a nearby activity and may include a prohibition on the owner or occupier suing for nuisance or taking any type of enforcement action under the RMA (individual waives rights). The covenant details should be discussed and agreed with the appropriate landowners acknowledging that no complaints covenants are for a resource management purpose; fairly and reasonably relate to the development authorised by the consent; and must not be unreasonable.



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