

## Open Meeting

<b>To</b>	Waikato District Council
<b>From</b>	Jim Ebenhoh Acting General Manager Community Growth
<b>Date</b>	4 February 2020
<b>Prepared by</b>	Will Gauntlett Resource Management Policy Team Leader
<b>Chief Executive Approved</b>	Y
<b>Reference #</b>	GOV1301 / 2484039
<b>Report Title</b>	Minor Variation to Proposed District Plan -Te Kowhai Airport Obstacle Limitation Surface

## I. EXECUTIVE SUMMARY

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When the Proposed District Plan (Stage 1) was notified, the Obstacle Limitation Surface identified on the planning maps for Te Kowhai Airport did not match the plan text in Appendix 9 where it was described in detail.

There is insufficient scope provided by submissions to amend this error. There is also a risk that if landowners were relying on the planning maps when considering whether to make a submission, they may not have realised that their property was affected and thus did not submit.

A variation to the Proposed District Plan (Stage 1) will allow the planning maps to be corrected to match the text, and allow the wording of Appendix 9 to be updated to improve clarity. Importantly, it will allow the property owners impacted to become involved in the plan process if they want to.

## 2. RECOMMENDATION

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**THAT** the report from the Acting General Manager Community Growth be received;

**AND THAT** the Council approves “Variation 1 to the Proposed Waikato District Plan (Stage 1) - Te Kowhai Airport Obstacle Limitation Surface” (attached as Attachment 2 to the staff report), for notification pursuant to Sections 73(1A), and Clauses 5 and 16A of Schedule 1, of the Resource Management Act 1991;

**AND FURTHER THAT the Council approves that the attached Section 32 Evaluation report (Attachment 3 to the staff report) also be made available to the public at the same time that Variation 1 is notified.**

### **3. BACKGROUND**

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The Proposed District Plan (Stage 1) includes an Obstacle Limitation Surface around Te Kowhai Airport. The purpose of the Obstacle Limitation Surface is to ensure the safe operation of aircraft using the Te Kowhai Airport by providing the runway with take-off climb and approach surfaces free of obstacles such as buildings and trees. The Obstacle Limitation Surface is a three-dimensional area encompassing distance from the runway as well as height.

The Te Kowhai Airport Obstacle Limitation Surface is delineated on the planning maps (two dimensional) and described more fully in Appendix 9 (which includes elevations and coordinates) of the Proposed District Plan.

When the Proposed District Plan (Stage 1) was notified, the Obstacle Limitation Surface identified on the planning maps for Te Kowhai Airport did not match the plan text where it was described in detail. There were errors in the planning maps.

### **4. DISCUSSION AND ANALYSIS OF OPTIONS**

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#### **4.1 DISCUSSION**

In the assessment of the submissions for the Te Kowhai Airport, it has become apparent that the spatial extent of the Te Kowhai Airport Obstacle Limitation Surface as notified in the planning maps does not match the detailed descriptions in Appendix 9. Appendix 9 describes the Obstacle Limitation Surface as extending 2500m from the runway, yet the planning maps only show it at 2000m. There is therefore an oval of 500m width that should have been included on the planning maps where the height of building and trees are proposed to have more stringent controls than the rest of the District.

The Proposed District Plan map (as notified) showed the transitional side surfaces extending straight out to the approach and take-off surfaces. However, the transitional side surfaces should have been shown tapered-in to the correct height contours to match the approach and take-off surfaces.

The attached maps show the incorrect notified Te Kowhai Airport Obstacle Limitation Surface and the corrected Te Kowhai Airport Obstacle Limitation Surface.

There are no submissions which afford Council scope to rectify this error. In addition, if landowners had relied on the planning maps to see whether they were affected by the Obstacle Limitation Surface, there is a risk they may not have submitted when they actually were affected (based on the Obstacle Limitation Surface as described in Appendix 9). There are natural justice issues, and potential for a judicial review, if this is not addressed. There are 114 properties that are within the expanded Obstacle Limitation Surface that were not captured by the notified planning maps.

Related to this issue, the owners of the Te Kowhai Airport are wanting to make improvements to the text in Appendix 9 – not to change the intent, but to make it more clear. Progressing a variation to the Proposed District Plan (Stage 1) to correct the mapping error provides an opportunity to make minor changes to the text in Appendix 9 sections 1 and 3 to more accurately describe the Te Kowhai Airport Obstacle Limitation Surface. The amendments to the text in Appendix 9 do not warrant a variation to the Proposed District Plan on their own.

The hearing for the Te Kowhai Airpark provisions is scheduled for October / November 2020 so there is sufficient time for a variation to be progressed that will not delay the overall hearing timetable. While letters will be sent to landowners within the larger Obstacle Limitation Surface Area, the variation will also be publicly notified due to the public interest in, and use of, the airfield. A variation process is likely to result in more submissions both supporting and opposing the development of the airfield.

## **4.2 OPTIONS**

There are three main options available to Council:

1. Carry on with the analysis of the submissions and decision through the hearing

The error will be raised by the owners of the Te Kowhai Airport in its evidence and at the hearing. However, as there is no scope within any submissions to make the change, the panel will have no scope to correct the map or text. It will have to be corrected by a notified variation after the hearing resulting in Council having to progress a variation later in 2020/21. This would compromise the overall hearing schedule, as well as being disruptive to the Te Kowhai Airpark hearing as it would likely result in two hearings on the same matter.

2. Withdraw the planning map for Te Kowhai and re-notify a replacement map

Although the Resource Management Act allows for withdrawal of part of a proposed plan up until the point where a decision is made (Clause 8D of Schedule 1), it is a complicated process. Through this option, the natural justice issues would be resolved but the submissions that were received on the Obstacle Limitation Surface would fall away, and those submitters would have to re-submit.

3. Progress a variation to the Proposed District Plan (Stage 1)

The effect of a variation is that upon notification, the map and Appendix as notified in 2018 are varied by the new map and Appendix. Submissions made on the 2018 map and Appendix are deemed to be submissions on the variation. The variation will merge in and become part of the proposed plan (Stage 1) as soon as the variation and proposed plan reach the same procedural stage. This will occur before the hearing of the Te Kowhai Airpark topic.

This option would enable the submissions that have already been received on the Te Kowhai Airpark provisions to remain “alive” and the changes proposed to be tightly focused on just the Obstacle Limitation Surface. It will necessitate notification

processes and notices in the newspapers, and letters will be sent to landowners within the Obstacle Limitation Surface area.

## 5. CONSIDERATION

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### 5.1 FINANCIAL

The costs associated with a variation of such a minor scale are not significant. Costs will be incurred for public notices in the local newspapers and postage of letters to affected landowners within the Te Kowhai Obstacle Limitations Surface area. Staff have asked the owners of the Te Kowhai Airpark to contribute towards these costs because of the additional changes to the text they seek that would have not warranted a variation on their own.

### 5.2 LEGAL

Council’s external legal advisor, Tompkins Wake, has been advising on the PDP to ensure that legal matters are appropriately considered. The recommendation outlined in this report is supported by the legal advice that has been sought on this matter.

There are no significant legal implications of progressing this minor variation. Council would be open to legal challenge if we were not to correct the mapping errors.

### 5.3 STRATEGY, PLANS, POLICY AND PARTNERSHIP ALIGNMENT

An assessment of the alignment with other strategies, plans, policies and partnerships is not considered necessary for this minor variation to essentially correct a mapping error.

### 5.4 ASSESSMENT OF SIGNIFICANCE AND ENGAGEMENT POLICY AND OF EXTERNAL STAKEHOLDERS

Clauses 3 and 4A of Schedule 1 of the Resource Management Act set out consultation requirements prior to notification. Council has Resource Management Act and Joint Management Agreement (JMA) obligations to engage with tangata whenua regarding plan changes and variations, including providing a copy to relevant iwi authorities and having particular regard to their advice. Although this is a minor variation, these engagement and consultation requirements will be carried out prior to notification.

Staff consider the standard 20 working day period for submissions on a variation is the most appropriate. Stage 1 of the Proposed District Plan was open for submissions for 60 working days. The scope of the proposed variation is very narrow and as such it is considered the standard variation submission period is sufficient.

	Inform	Consult	Involve	Collaborate	Empower
Highest levels of engagement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The table below identifies which external stakeholders have been or will be engaged with:

Planned	In Progress	Complete	
		X	Internal
			Community Boards/Community Committees
	X		Waikato-Tainui/Local iwi)
X			Households
			Business
			Other Please Specify

## 6. CONCLUSION

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Having considered the options and the risks, the recommendation is to progress a variation to the Proposed District Plan (Stage 1) to revise the maps for the Te Kowhai Airport Obstacle Limitation Surface and make minor amendments to Appendix 9 to improve clarity.

Consultation as required by Clauses 3 and 4 of Schedule 1 of the Resource Management Act 1991 will be undertaken, and landowners within the revised Obstacle Limitation Surface will be contacted by letter to explain why a variation is required and the process for making a submission.

## 7. ATTACHMENTS

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1. Comparison of the notified Te Kowhai Airport Obstacle Limitation Surface and the correct version
2. Variation document "Variation 1 to the Proposed Waikato District Plan (Stage 1) - Te Kowhai Airport Obstacle Limitation Surface"
3. Section 32 Evaluation Report for Variation 1