

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')

Statement of Primary Evidence of Nicholas Colyn Grala on behalf of Cindy and Tony Young and Parkmere Farms

Dated 29 September 2020

Introduction

1. My full name is Nicholas Colyn Grala. I am employed at Harrison Grierson as the Planning and Urban Design Manager of the Company's Auckland office. I hold a Bachelor of Planning from the University of Auckland and I am a full member of the New Zealand Planning Institute and a member of the Resource Management Law Association.
2. I have 15 years' planning experience in district and regional planning. Details of my relevant and recent experience are contained in **Attachment 1**.
3. I prepare this statement on behalf of Cindy and Tony Young and Parkmere Farms (the 'Submitters') who made further submissions (submitter references FS1221.8 and FS1283.8) in opposition to the submission made by the New Zealand Transport Agency ('NZTA') 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).
4. The Submitters own property to the immediate east of Pokeno Village. Tony and Cindy Young own the property located at 80 Fraser Road while Parkmere Farms own the property located at 60 State Highway 2 (refer **Attachment 2** for locality plan that identify both properties). Both properties are within 100m of state highway.
5. I record that I have read and agree to abide by the Environment Court's Code of Conduct for Expert Witnesses as specified in the Environment Court's Practice Note 2014. This evidence is within my area of expertise, except where I state that I rely upon the evidence of other expert witness as presented to this hearing. I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed.

Scope of Evidence

6. My statement of evidence will address the reasons why it is not appropriate to apply the Noise Sensitive Overlay provisions sought by NZTA. It provides:
 - a. A summary of the further submission;
 - b. A summary of the changes sought by the primary submission;
 - c. A summary of the s42A recommendation;
 - d. Management of sensitive land uses in the notified Proposed Waikato District Plan;
 - e. Assessment of the number of properties affected;
 - f. An overview of instances where similar provisions have not been adopted in District Plans elsewhere in New Zealand;
 - g. Reasons why the S32AA for the Noise Sensitive Overlay has not been undertaken at a level of detail that corresponds to the scale and significance of the changes;
 - h. Consideration of efficient use of the land resource;
 - i. Consideration of the higher order statutory planning documents; and
 - j. Effective management of the infrastructure.

7. In preparing my evidence I have read the following:
 - a. The Section 42a Report for D0 Infrastructure and Energy Overall prepared on behalf of Waikato District Council by Trevor Mackie and dated 14 September 2020; and
 - b. The primary submission made by NZTA (742).
 - c. Evidence presented by Mr Matt Lindenberg and Dr Claire Kirman on behalf of Kainga Ora at Hearing 2.

Submissions

8. Both further submissions (submitter references FS1221.8 and FS1283.8) opposed submission 742.182 on the basis that acoustic insulation requirements for sensitive land uses are inappropriate. The further submissions noted that the setback requirements for sensitive activities in

relation to a state highway are already addressed in various rules within the different zones and there is no need to require acoustic insulation in addition to the required setback which is already larger than the standard setback for the zone.

9. Although the further submissions were focused mainly on the management of areas near state highways, the NZTA submission point related to both state highways and the rail corridor and thus I have considered them both, particularly given the cumulative impact of the acoustic overlay over both pieces of infrastructure. I also note that as part of this package, NZTA are seeking an accompanying rule framework for:
 - a. construction or alteration of a building for a sensitive land use within 100m of a state highway carriageway or legal boundary of a railway corridor, and
 - b. subdivision of land within or partly within 100m of a state highway carriageway or legal boundary of a railway corridor.

10. NZTA and KiwiRail are essentially seeking:
 - a. Construction 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 the internal design sound levels specified in section 7 of Appendix 1.
 - b. 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 the internal design sound levels specified in section 7 of Appendix 1
 - c. Subdivision applications must locate all building platforms further than 100m from a state highway carriageway or legal boundary of a railway corridor (irrespective of intended use).

11. Although these amendments sought by NZTA have been coded to a separate submission point (Reference 742.244), this is obviously part and parcel of the same issue.

The recommendations of the s42A report

12. Mr Mackie (in Section D0 of his suite of reports) has recommended accepting the submission point by NZTA (and the similar one from KiwiRail).¹ His reasons are that the new rules appropriately provide for permitted activity development and sensitive land uses, building alterations and subdivision where reverse sensitivity effects of noise and vibration can be managed, and for restricted discretionary activity management of those effects where noise-sensitive activities or sensitive land uses are to be located in closer proximity to the state highway and railway transport networks. He recommends that the rules apply to additions to existing dwellings, including in the Rural Zone, as well as to new noise-sensitive activities. He was uncertain whether these rules are best placed in each zone chapter, or in Chapter 14 Infrastructure and Energy Chapter with an accompanying buffer area shown on the planning maps.

Management of sensitive land uses in the Proposed Waikato District Plan

13. I note that throughout the Proposed Waikato District Plan, setbacks are the primary mechanism for managing sensitive land uses in close proximity to significant infrastructure. Chapter 13 defines sensitive land uses as:

“Means an education facility including a childcare facility, waananga and koohanga reo, a residential activity, papakaainga building, rest home, retirement village, travellers’ accommodation, home stay, health facility or hospital.”
14. The notified rules requiring a setback for sensitive land uses from the state highways and rail are as follows:

¹ Hearing 22 Infrastructure and Energy D0 Infrastructure and Energy Overall, Trevor Mackie, 14 September 2020, Paragraphs 287-290

15. Table 1: Comparison of the notified setback requirements

Zone	Rule	Setback for a sensitive land use		Standard zone setbacks for a habitable building
		State Highway	Rail	
Residential	16.3.9.2	15m from the boundary of a national route or regional arterial; 25m from the designated boundary of the Waikato Expressway;	5m	3m from the road boundary; 13m from the edge of an indicative road; 1.5m from every boundary other than a road boundary; and 1.5m from every vehicle access to another site
Rural	22.3.7.2	15m from a national route or regional arterial road; 35m from the designated boundary of the Waikato Expressway	5m	On a site less than 1.6ha: (i) 7.5m from the road boundary; (ii) 17.5m from the centre line of an indicative road; (iii) 25m from the boundary of an adjoining site that is 6ha or more; (iv) 12m from the boundary of an adjoining site that is less than 6ha. On a site 1.6ha or more: (i) 12m from the road boundary;

Zone	Rule	Setback for a sensitive land use		Standard zone setbacks for a habitable building
		State Highway	Rail	
				(ii) 22m from the centre line of an indicative road; (iii) 25m from every boundary other than a road boundary.
Country Living	23.3.7.2	15m from a national route or regional arterial boundary; 35m from the designated boundary of the Waikato Expressway	5m	A building located on a site greater than 1000m ² : (i) 7.5m from a road boundary; (ii) 17.5m from the centre line of an indicative road; (iii) 12m from every boundary other than a road boundary. (a) Any building located on a lot of 1000m ² or less: (i) 3m from a road boundary; (ii) 1.5m from every boundary other than a road boundary; (iii) 24m from an existing dwelling on any adjoining site
Village	24.2.6.2	15m from the boundary of a national route or regional arterial;	5m	3m from a road boundary; 13m from an indicative road;

Zone	Rule	Setback for a sensitive land use		Standard zone setbacks for a habitable building
		State Highway	Rail	
		25m from the designated boundary of the Waikato Expressway		1.5m from every boundary other than a road boundary; and 1.5m from every vehicle access to another site
Business		Nil Residential activities above ground floor are permitted activities Multi-unit developments are restricted discretionary with amenity values for occupants and neighbours a matter of discretion		
Business Town Centre		Nil Residential activities above ground floor are permitted activities Multi-unit developments are restricted discretionary with amenity values for occupants and neighbours a matter of discretion		

16. Table 1 shows that the setbacks for sensitive land uses from state highways and rail lines in the Proposed District Plan is already considerably larger than those for normal sites.
17. Mr Mackie largely relies on the rules for the Lakeside plan change 20 (Te Kauwhata) as justification for his recommendation². I confirm that the plan change 20 request did propose a special yard setback of 5m for any building and 10m for habitable rooms from the rail line to provide an appropriate interface between the railway embankment and any building. The Plan Change also included special criteria to be applied to a comprehensive subdivision consent application relating to noise sensitivity associated with the rail³. This criteria requires consideration of:

“the extent to which issues of reverse sensitivity along the rail embankment are met. Methods to achieve this include no complaints covenants and appropriate noise attenuation controls on buildings by way of consent notice.”

18. This approach was proffered by the plan change applicant and arose from engagement with KiwiRail by Lakeside Developments.⁴ Through the course of submissions and prior to the hearing beginning, Lakeside Developments and KiwiRail reached an agreement on a 5m / 10m setback for buildings and internal design noise limits for noise sensitive activities within 100m of the rail line and vibration sensitive activities within 40m of the rail line. I note this rule is applicable only to construction or alteration of a building and does not relate to subdivision. Reverse sensitivity near the rail line in terms of subdivision is only managed by the above matter of discretion.
19. I do not believe that because this approach was agreed through a private plan change process, this makes it appropriate to apply throughout the District. This is because the Lakeside plan change only related to a discrete parcel of

² Hearing 22 Infrastructure and Energy D0 Infrastructure and Energy Overall, Trevor Mackie, 14 September 2020, Paragraph 286

³ Lakeside Private Plan Change Request, Tattico, 17 August 2017, Paragraph 3.6.6

⁴ Lakeside Private Plan Change Request, Tattico, 17 August 2017, Paragraph 16.6.1

land and was proposed by the applicant with respect to a specific development.

Similar approaches elsewhere in New Zealand

20. NZTA and KiwiRail have lodged similar submissions to recent district plan reviews throughout the country, and these planning frameworks for Noise Sensitive Overlays have been rejected by the Hearings Panels.
21. The Proposed Auckland Unitary Plan was notified in 2013 and proposed the application of a High Land Transport Noise Overlay across the region. This was to be applied to all land within 40m of the boundary of major roads and rail corridors. Noise sensitive activities within the overlay then had to comply with minimum noise insulation standards similar to those sought by NZTA in their submission to the Proposed Waikato District Plan. The provisions were not surprisingly supported by both KiwiRail and NZTA as part of that process.
22. The Independent Hearings Panel that heard the Auckland Unitary Plan had concerns with the Overlay and recommended its deletion from the Plan⁵. This was then accepted by Auckland Council and it remains excluded from the Auckland Unitary Plan (Operative in Part) 2016. Their key reasons for excluding the overlay were:
 - a. An absence of rigorous cost-benefit analysis –the Overlay 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 –the Overlay would shift all costs associated with noise mitigation to property owners. There would be no obligation on the transport corridor operators to mitigate noise effects or share costs incurred by property owners.
 - c. Alternative arrangements – The Panel drew parallels with the arrangements in place between Auckland International Airport

⁵ Auckland Unitary Independent Hearings Panel, Report to Auckland Council Hearing topics 043 and 044 Transport July 2016, page 8

Limited and noise-affected property owners, where AIAL shares in the costs of noise mitigation and which they considered was a more balanced approach.

23. More recently Whangarei District Council notified their package of Proposed Plan Changes for Urban Services (the 'PC:US') (comprising Plan Change 82, 88, 109, 115, 136, 143-148). Both NZTA and Kiwirail submitted on the PC:US seeking a similar planning framework to manage noise sensitive activities in proximity to state highways and the rail corridor. The submissions sought the inclusion of a new objective that would then be implemented by policies and rules that would apply over land within 100m of either a state highway or rail corridor.
24. In their Section 42a Report, the reporting planner recommended that the Hearings Panel did not accept the NZTA or KiwiRail submissions relating to noise sensitive activities. Their reasoning for this can be summarised as:
 - a. The economic implications of the requested provisions had not been fully substantiated by the submitter.
 - b. The requested provisions would affect some 7,500 properties across the Whangarei District and that the obligation should be placed, at least in part, on infrastructure providers to manage their impacts in terms of noise.
 - c. There was a concern that the provisions may result in property owners bearing the full costs of managing noise.
 - d. The implications of the requested provisions could impact the ability of Whangarei District Council to give effect to the National Policy Statement for Urban Development Capacity (which applied at the time) through impacting the feasible residential capacity planned in the district.
 - e. It would be more appropriate and efficient to rely on the Building Code to manage the insulation levels of buildings, which would avoid increasing compliance costs (attributed to consent applications and noise assessments) for little (perceived) additional

benefit.

- f. The requested provisions for mechanical ventilation would give rise to monitoring and compliance complications because people may simply choose / prefer to open windows during summer months due to the higher costs associated with operating air conditioning systems.

- 25. The Hearings Panel agreed with the recommendations set out in the Section 42A Report (along with the right of reply provided by the reporting planner after the hearing)⁶. The Panel agreed that there was too great a risk to include the requested provisions due to the lack of any robust section 32 assessment to support or justify the provisions. The Panel expressed a concern in relation to the 7,500 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). The Panel concluded by noting legal submissions made against the requested provisions which highlighted that any land use control needed to strike an appropriate balance between internalisation of effects by the primary effects-generator and the recognition of the economic and social importance of the infrastructure.
- 26. I note that both NZTA and KiwiRail subsequently lodged appeals to the PC:US in July of this year that included the sensitive noise provisions. I am not aware of whether these appeals have been resolved.

Application in a Waikato context

- 27. Turning back to the application of the Noise Sensitive Overlay within the Waikato District, there are many similarities between the Noise Sensitive Overlay that NZTA have sought in the Stage 1 Proposed Waikato District Plan and the provisions that were either supported or sought within Auckland and Whangarei in recent times.

⁶ Whangarei District Council decision, Urban and Services Plan Change Package, Attachment 1 – All Reports dated 28 May 2020, Topic X: Noise, page 598

28. In the Section 42A Report, Mr Mackie has recommended that the Hearings Panel accept the NZTA submissions seeking the Noise Sensitive Overlay provisions and has provided a S32AA evaluation to support his recommendation. In my view the evaluation only provides a high level summary of whether there are any other reasonably practical options, the effectiveness and efficiency of the provisions as well as the costs and benefits that will likely arise from the adoption of the Noise Sensitive Overlay. As correctly identified by both the Auckland and Whangarei Hearing Panels, the costs of this framework are likely to be significant and will be borne by the landowners.
29. I have considered how many properties there are in the district that lie either fully or partially within 100m of a state highway or railway as summarised within Table 2(which would therefore be affected). Regardless of whether some zones are enabling of a sensitive land use, all zones would potentially be affected by the rule requiring all subdivision to have a building platform located more than 100m from the state highway or rail line. The assessment shows that number of properties affected will be substantial and will likely have implications for the landowners regardless of whether the site is fully developed or yet to be developed.⁷
30. Table 2: Number of properties which are located (partially or fully) within 100m of a NZTA or KiwiRail designation⁸

Zone	Number of properties within 100m of a state highway	Number of properties within 100m of a railway
Residential	292	1,515
Rural	957	583
Country Living	186	29
Village	96	47
Business	65	183

⁷ Due to the application of the rules to construction or alterations of a building for a sensitive land use, or a subdivision.

⁸ Sourced from the Waikato DC GIS team by the submitters.

Business Town Centre	17	155
Hampton Downs Motorsport and Recreation Zone	34	Nil
Reserve	20	37
Industrial	22	182
Heavy Industrial	9	10
TOTAL	1,698	2,741

31. I have also considered a case study of Pokeno showing the spatial extent of a 100m buffer applied to both the state highway and rail (**Attachment 3**). This scenario is not unique and there are a number of towns and villages in the District where the state highway and railway line lie close to each other e.g. Tuakau, Meremere, Mercer, Ohinewai, Rangiriri, Taupiri. The Waikato expressway and the revocation of the former state highway has somewhat reduced this situation for Huntly, Ngaruawahia and Horotiu, however the rail corridor is still present in these towns. There is certainly an equity and natural justice issue with the setback and noise controls proposed given the number of properties affected. From the absence of further submissions on these points, there seems to be a lack of awareness by the community of the consequences of Noise Sensitive Overlay provisions.
32. I consider that a more detailed and robust Section 32AA evaluation is required in order 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). This additional detail is necessary due to the number of properties that are likely to be affected by the Noise Sensitive Overlay and the economic impact associated with increased compliance cost or additional construction costs.
33. I would expect that this additional evaluation would also include a more detailed analysis of the effectiveness of the existing setback provisions within the Stage 1 Proposed Waikato District Plan (as an alternative option) as well as the do-nothing option. The latter should also quantify the extent of noise

attenuation that will regardless be achieved under the Building Act.

34. The s32AA evaluation also requires an assessment of the provisions against the most appropriate way to achieve the objectives. It is likely Mr Mackie (and NZTA and KiwiRail) will assess the provisions sought against the objectives in Chapter 6 such as Objective 6.1.6 Reverse Sensitivity and 6.5.1 Land Transport Network. However, I also draw the Panel's attention to Strategic Objective 1.12.8(b)(i) which directs urban development to take place within areas identified for the purpose **in a manner which utilises land and infrastructure most efficiently.** (emphasis added)
35. In my view, it would only be once a full and detailed s32AA evaluation was undertaken that the Panel would be provided with the necessary evidential basis that will be required to decide on the respective merits of the Noise Sensitive Overlay. If, and when, that occurs, the Panel should also consider the other aspects that were front of mind of the Hearing Panels that rejected similar provisions in Auckland and Whangarei. Those matters cover issues of natural justice for the large number of properties that would be affected by the Noise Sensitive Overlay and whether it is fair that the cost of managing noise effects should fall 100% on the adjoining properties rather than, at least in part, the primary source of the noise.

Efficient use of the resource

36. While the NZTA and KiwiRail focus on the building, I am aware of the evidence that Mr Matt Lindenberg and Dr Claire Kirman presented on behalf of Kainga Ora in Hearing 2. This noted that New Zealanders do not primarily live indoors and that a noise buffer such as that sought by the submissions (and indeed even the larger setbacks required next to a state highway or railway line) are likely to result in an urban form whereby the dwelling is located away from the state highway or railway line. This is likely to result in the outdoor living areas being located closest to the state highway or railway line as well as larger lot sizes (and lower densities which impacts the efficient use of land).

37. I agree with Mr Lindenberg that across the District residential activities have existed side-by-side with land transport infrastructure such as roads and rails lines for many years. In some instances the transport infrastructure may have pre-dated the establishment of residential activities, while in other instances new transport infrastructure has been established in order to better serve already existing areas of development. It is not always appropriate for the sensitive use to bear the cost of managing the effect; that being the adverse effects associated with land use incompatibility / reverse sensitivity. It is the transport corridor itself (be it a road or rail line) which is generating the potential effect, and therefore the management of the effects generated from such activities needs to be fairly addressed by the infrastructure generating the effect.
38. I note too that the suite of provisions would have any subdivision needing to locate the building platform more than 100m from the state highway or railway irrespective of the purpose of the building. This would not constitute an efficient use of the land resource as required by Objective 3.10 of the Waikato Regional Policy Statement, nor will achieve Objectives 1 or 3 of the National Policy Statement for Urban Development. It would instead effectively sterilise 100m on either side of the state highway and rail lines.

Alterations to existing sensitive land uses

39. The proposed setback rules would also apply to extensions / alterations to existing sensitive land uses within the 100m, and not just the establishment of new sensitive land uses. In my view this is problematic. For example, a 1940's dwelling that is situated close to a state highway would be required to be designed and constructed with acoustic insulation for any alterations, regardless of the scale or nature of those alterations. If those alterations do not include the requisite acoustic insulation then a resource consent would be required as a restricted discretionary activity (adding additional cost to the alteration).

40. If the sensitive activities (in this case a dwelling) already exists in an area adjoining transport infrastructure, then the potential for reverse sensitivity already exists. As Mr Lindenberg stated in his evidence, the extension or alteration of the existing 'sensitivity activity' would not create a 'new' sensitive activity, nor a 'new' reverse sensitivity effect – it is merely an alteration of what already exists. It would also be inappropriate for adjoining landowners to bear 100% of the cost of remedying any potential reverse sensitivity effects.
41. I note that the definition of "reverse sensitivity" in the Waikato Regional Policy Statement is
- "is the vulnerability of a lawfully established activity to a new activity or land use. It arises when a lawfully established activity causes potential, actual or perceived adverse environmental effects on the new activity, to a point where the new activity may seek to restrict the operation or require mitigation of the effects of the established activity."
42. In terms of an existing dwelling, the sensitive land uses may have been 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 (trying to manage reverse sensitivity) to apply to them.

Management of the Infrastructure

43. Both state highways and the rail line are regionally significant infrastructure and both NZTA and KiwRail have designations over their infrastructure for this reason. Both are now attempting to control the land uses on either side of their designations through District Plan provisions. In my view a more appropriate approach to managing land use outside their current designations would be to increase the width of their designations to encompass this land.

44. I consider application of restrictions on the use of land adjoining the corridor, without an equivalent setback or buffer being provided within the transport corridor, is not a balanced or equitable approach.

Conclusion

45. I do not support including the Noise Sensitive Overlay provisions because they have not been subject to the detailed evaluation that is necessary under Section 32AA of the Act. It is my view that, until such time as a detailed evaluation is undertaken, the Panel do not have the necessary evidence base to enable them to make a determination on whether the Noise Sensitive Overlay provisions are the most appropriate way to achieve the purpose of the Act.
46. The Proposed Waikato District Plan was also notified with larger setbacks specifically for state highways and rail lines. Further evaluation needs to be undertaken to determine whether this method alone is sufficient in order to avoid or mitigate any potential reverse sensitivity effects without additional impositions for construction or alterations of buildings for sensitive land uses or requiring a 100m setback for all buildings through the subdivision process.
47. Without this additional evaluation, I do not agree that the Noise Sensitive Overlay approach can be determined to be the most effective or efficient way to (on balance) achieve the objectives in the Proposed Waikato District Plan, nor the Waikato Regional Policy Statement or National Policy Statement for Urban Development.



Nicholas Colyn Grala

Date: 29 September 2020

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Attachment 1

Relevant Recent Experience

Recent projects of relevance include

- Project lead role for the Masterplanning of a new business and innovation park at the Hamilton Airport. Lead planner role for the private plan change process that is necessary to rezone the land for the new business park.
- Lead planner in the rezoning of land for a new hotel in Queenstown. This involved the rezoning of the site to an appropriate zone with hotel provisions – covering submissions and presenting evidence on both Stages 1 and 2 of the Proposed Plan.
- Expert planning witness for Mercury through the Board of Inquiry process for NZTA's East-West Link proposal. This included assisting in the preparation of the submission, representing Mercury through mediation and expert conferencing and preparing and presenting evidence at the hearing.
- Lead planner for the McWhirter / Westgate development. The project comprises the comprehensive development of a 16ha site that is expected to deliver approximately 230 homes.
- Lead planner for the development of the Karaka North Village. The project is expected to deliver approximately 460 homes within a rural village setting.
- Lead planner in the regeneration of the Housing for Older Persons (HfOP) portfolio within Auckland. The project has involved providing strategic planning advice and consenting strategy on 25 of the HfOP sites and most recently the redevelopment of the HfOP apartment building in Henderson.

Attachment 2



Attachment 3

