

SUBMISSION TO THE PRODUCTIVITY COMMISSION ON THE DRAFT REPORT ON BETTER URBAN PLANNING

1. EXECUTIVE SUMMARY

- 1.1 The New Zealand Airports Association ("**NZ Airports**") welcomes the opportunity to comment on the Productivity Commission's Draft Report on Better Urban Planning ("**Draft Report**").
- 1.2 NZ Airports has submitted on the Resource Legislation Amendment Bill ("**RLAB**") and presented to the Select Committee on the RLAB, and has also submitted on the Proposed National Policy Statement on Urban Development Capacity ("**NPS-UDC**"). Our members have also been closely involved in extensive plan review processes in Auckland and Christchurch. Such participation is costly and time consuming - but necessary, given the important role the planning framework plays in our operations.
- 1.3 As discussed in our previous submissions, **it is fundamental to the development of productive urban centres that residential and business growth does not hinder the effective current or future operation of New Zealand's airports.**
- 1.4 In our view, the Draft Report does not adequately acknowledge the importance of significant infrastructure like airports in the context of urban planning and the need to effectively manage reverse sensitivity effects on such infrastructure. This is reflected in some of the Commission's recommendations which seek to limit notification and appeal rights and introduce the ability to amend zoning without using the Schedule 1 process in the Resource Management Act 1991 ("**RMA**"). NZ Airports has major concerns with such recommendations as they stand to significantly curtail the ability of infrastructure providers to be involved in planning processes and have their key concerns, such as reverse sensitivity effects, taken into account.
- 1.5 In order to operate effectively, airports need clear spatial planning, councils that understand how airports operate and the need to protect airports from reverse sensitivity effects, and targeted central government direction. Any future planning system should use the mechanisms already available under the RMA to meet these requirements and ensure the vital support to cities and towns that airports provide is maintained.
- 1.6 For further details on the issues NZ Airports faces in participating in the planning framework in New Zealand and in particular in relation to reverse sensitivity effects, see the **attached** NZ Airport's submissions on the RLAB and the NPS-UDC.

2. WHAT WE DO

- 2.1 NZ Airports is the industry association for New Zealand's airports and related businesses. Its members¹ operate 36 airports across the country including the

¹ Our member airports are Ardmore Airport, Auckland Airport, Christchurch Airport, Dunedin Airport, Gisborne Airport, Hamilton Airport, Hawke's Bay Airport, Hokitika Airport, Invercargill Airport, Kapiti Coast Airport, Kaikohe Airport, Katikati Airport, Kerikeri Airport, Marlborough Airport, Masterton Airport, Matamata Airport, Motueka Airport, Nelson Airport, New Plymouth Airport, Palmerston North Airport, Queenstown Airport, Rangiora Airport, Timaru Airport, Rotorua Airport, Takaka Airport, Taupo Airport, Tauranga Airport, Wanaka Airport, Whanganui Airport, Wellington Airport, Westport Airport, Whakatane Airport, and Whangarei Airport.

international gateways to New Zealand. This infrastructure network is essential to a well-functioning economy, and enables critical transport and freight links between each region of New Zealand and between New Zealand and the world.²

- 2.2 NZ Airports' members have extensive experience dealing with RMA processes and issues, and in particular with the conflicts that arise when sensitive activities (like houses and schools) are proposed or built near airports.
- 2.3 An airport operator's main function in the planning framework is not merely providing for the effective and efficient operation of an airport, but ensuring the health and safety of people both using the airport and in the areas surrounding the airport. To achieve this, airports establish appropriate:
- (a) noise contours to protect people in surrounding areas from the adverse noise effects of an airport's operations; and
 - (b) obstacle limitation surfaces to ensure that planes can safely take off and land.
- 2.4 Because airports generate effects that cannot be reasonably internalised, airports must be constantly vigilant about what activities are taking place or proposed to take place in the surrounding area in order to ensure that reverse sensitivity effects do not arise.³
- 2.5 In order to ensure that airports carry out the above functions effectively, airports develop airport master plans that provide a long-term planning framework over a 30 year timeframe for the future operation of the airport. These master plans are continually amended to address current and potential issues with the airport and surrounding area and give direction as to where future development will take place and how this will be protected.

3. THE DRAFT REPORT - COMMENTS

- 3.1 The most significant issue NZ Airports has identified with the Draft Report is that it does not consider or discuss the importance of protecting significant infrastructure from reverse sensitivity effects.
- 3.2 The Report considers "negative spillover effects" as a key problem that planning in an urban setting seeks to address,⁴ and states that land use regulation should "avoid prescriptive requirements, except where these are necessary to manage significant negative externalities"⁵. However, the Draft Report does not provide any findings or recommendations specifically addressing the critical issue of managing reverse sensitivity effects on significant infrastructure.
- 3.3 In addition, while "infrastructure" is a major focus of the Draft Report, this focus is primarily on transport (specifically roading and public transport) and water services. Airports are a vital part of the development and growth of urban areas and can have their operations curtailed if urban growth is allowed in areas affected by an airport's operations. Managing the effects of enabling sensitivity activities to locate near airports must be taken specifically into account in any report on better urban planning.

² For further detail on who NZ Airports are and the substantial contribution that airports make to the economy see NZ Airports' submissions on the RLAB (page 2) and NPS-UDC (page 2).

³ For further detail on the issues airports face with reverse sensitivity effects see NZ Airports' submissions the RLAB (page 2 to 4) and NPS-UDC (pages 2 to 4).

⁴ Draft Report, pages 38 to 40.

⁵ Draft Report, page 160.

- 3.4 The lack of consideration in the Report of reverse sensitivity effects and the need to protect significant infrastructure is reflected in some of the recommendations which, if adopted, could have substantial negative impacts on infrastructure.
- 3.5 NZ Airports is opposed to the recommendations in the Draft Report that would reduce public participation in the planning framework including:
- (a) reduction in notification requirements;⁶
 - (b) reduction in appeal rights;⁷ and
 - (c) responsive rezoning, in which land use controls can be set in anticipation of predetermined and objective triggers and activated once those triggers are reached (without going through the Schedule 1 process).⁸
- 3.6 If adopted, these recommendations could result in situations where parties who are genuinely affected lose out on the opportunity to participate. Airports rely heavily on notification requirements to protect their operations from reverse sensitivity effects. An airport's ability to be involved in plan and consenting processes could be significantly curtailed if changes are made to plans that reduce the notification of resource consent applications that could potentially affect an airport's operations.
- 3.7 Any changes to the planning system that do not take into account reverse sensitivity effects and limit notification and appeal rights will only exacerbate the growing issue that airports are already facing in trying to protect their operations from reverse sensitivity effects. These changes will undermine airports' vital air noise boundaries, and enable people to live in areas which are not suitable for residential uses.
- 3.8 The notification provisions of the RMA as amended in 2009 are operating effectively and the right balance has now been established between ensuring adequate public participation in planning processes, while maintaining efficient processing of applications for resource consent and plan changes. As such, the public participation mechanism of the RMA should not be further meddled with.

4. RECOMMENDATIONS

- 4.1 In terms of the planning framework, in order to effectively operate and develop, airports need:
- (a) clear, long-term spatial planning;
 - (b) robust notification and appeal rights to enable airports to get involved in planning processes near them, including in their effects areas (eg noise boundaries);
 - (c) express acknowledgement by councils in their planning documents of the vital infrastructure that airports provide and of the need for that infrastructure to be protected from reverse sensitivity effects; and
 - (d) express central government acknowledgement through national planning documents of the regional and national importance of airports, and the provision by central government of clear guidance to councils that airports

⁶ Draft Report, page 186, R7.4.

⁷ Draft Report, pages 186 and 187, R7.4 and R7.5.

⁸ Draft Report, page 184, R7.3.

need to be protected through the avoidance or management of reverse sensitivity effects on airports.

- 4.2 The current framework already has the mechanisms to meet the above requirements. The issue is that these mechanisms are underutilised due to lack of central government direction and some limitations in council capabilities.
- 4.3 Spatial planning, while not mandatory, is an option open to councils to consolidate future planning and give clear guidance on future development. As discussed above, airport operators already spatially plan airports through master plans. Spatial plans provide clear direction and encourage consideration and collaboration of key stakeholders on key issues early on in the planning process so that they can be factored in to the future planning framework developed.
- 4.4 NZ Airports agrees with Recommendation 9.1 of the Draft Report which states:⁹
- Spatial plans should be a standard and mandatory part of the planning hierarchy in a future system. Spatial plans should be tightly defined and focus on issues closely related to land use, in particular the provision of water and transport infrastructure and community facilities (eg, green space, reserves, conservation areas, and libraries), protection of high value ecological sites, and natural hazard management.
- 4.5 NZ Airports seeks that any mandatory spatial planning relating to the provision of transport infrastructure must include airports.
- 4.6 Some councils have gone some way in protecting airports through explicit recognition of reverse sensitivity effects in their district plans. However, this has been inconsistent across the country and airport operators need to continually educate some councils about the need to protect airports from reverse sensitivity effects.
- 4.7 NZ Airports sees the most effective and efficient solution to resolving any inconsistencies of approach is through an NPS that specifically directs councils to protect significant infrastructure like airports from reverse sensitivity effects.
- 4.8 NZ Airports also sees real benefit in focussing on improving council capabilities and giving local authorities greater guidance on how they carry out their functions under the current planning laws. NZ Airports considers that a significant cause of issues with the application of the planning framework in New Zealand rests with the capability of councils to carry out their functions effectively and efficiently. Greater central government guidance (using extant tools) to assist councils will bring about greater consistency and certainty for all participants.
- 4.9 The establishment of a centre of excellence or resource that councils could draw on to conduct real-options analysis in the development of land use plans¹⁰ is an example of one of the actions that central government could take in order to improve council capabilities.
- 4.10 As mechanisms already exist to protect airports within the current planning framework, NZ Airports sees little benefit in a re-write of the RMA or the separation of the RMA¹¹ into two separate pieces of legislation (one to address planning law and one to address the natural environment). Such amendments will only increase uncertainty and complexity in this area of law, and simply create new issues that will need to be refined through case law.

⁹ Draft Report, page 236, R9.1.

¹⁰ Draft Report, page 238, R9.2.

¹¹ As discussed in the Draft Report, page 339.

5. NEXT STEPS

- 5.1 We would welcome any opportunity to speak with the Commission about this submission in more detail.

NZ AIRPORTS ASSOCIATION:**Signature:**

Kevin Ward
Chief Executive, New Zealand Airports Association

Date: 3 October 2016

Address for Service: Kevin Ward
P O Box 11 369
Manners Street
WELLINGTON 6142

Telephone: (04) 384 3217
Email: kevin.ward@nzairports.co.nz

SUBMISSION TO THE LOCAL GOVERNMENT AND ENVIRONMENT SELECT COMMITTEE ON THE RESOURCE LEGISLATION AMENDMENT BILL

1. SUMMARY

- 1.1 The New Zealand Airports Association ("**NZ Airports**") welcomes the opportunity to make a submission on the Resource Legislation Amendment Bill ("**Bill**").
- 1.2 We support the stated intention of the Bill, which (as set out in the explanatory note) is to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and sustainable way. However, many of the proposed changes will not achieve the objectives of the reforms, or will have unintended consequences.
- 1.3 In particular, NZ Airports is deeply concerned that many of the proposed amendments will put at serious risk the operation and development of New Zealand's airports, by significantly liberalising the ability for residential development to locate near them. Airports are located in areas of New Zealand which are experiencing high levels of population growth, and reverse sensitivity effects on airports represents a major challenge in planning for this growth.
- 1.4 The Bill does not take into account reverse sensitivity effects on airports from urban development. This is contrary to the majority of district plans around the country which explicitly recognise the need for reverse sensitivity effects to be effectively managed. The Bill will result in the imposition of operational constraints on airports.
- 1.5 While NZ Airports appreciates the main stimulus for the reforms is the current housing shortage, and does not oppose endeavours to address that issue, **it is fundamental to the development of productive urban centres that residential growth does not hinder the effective current or future operation of New Zealand's airports.**
- 1.6 If the Bill is going to increase "flexibility and adaptability" of processes to better enable growth (in particular of residential development), it is critical that it addresses reverse sensitivity effects on airports given the significant threat such development has on the growth and development of this crucial infrastructure. While urban intensification is supported, this must not be to the detriment of New Zealand's airports.
- 1.7 In addition, any amendments that are made to the Resource Management Act 1991 ("**RMA**") need to take into account the plan-making processes currently taking place, such as the Proposed Auckland Unitary Plan and the Proposed Christchurch Replacement District Plan, and the significant investment made in engaging with these extensive processes.
- 1.8 In particular, NZ Airports seeks amendments to:
- (a) ensure reverse sensitivity effects are effectively managed;
 - (b) ensure there is effective public participation in the development of national policy statements and the national planning template;
 - (c) avoid unintended consequences of some of the amendments seeking to streamline consenting and plan-making processes; and

- (d) ensure there is appropriate Environment Court oversight for decision-making under the RMA.

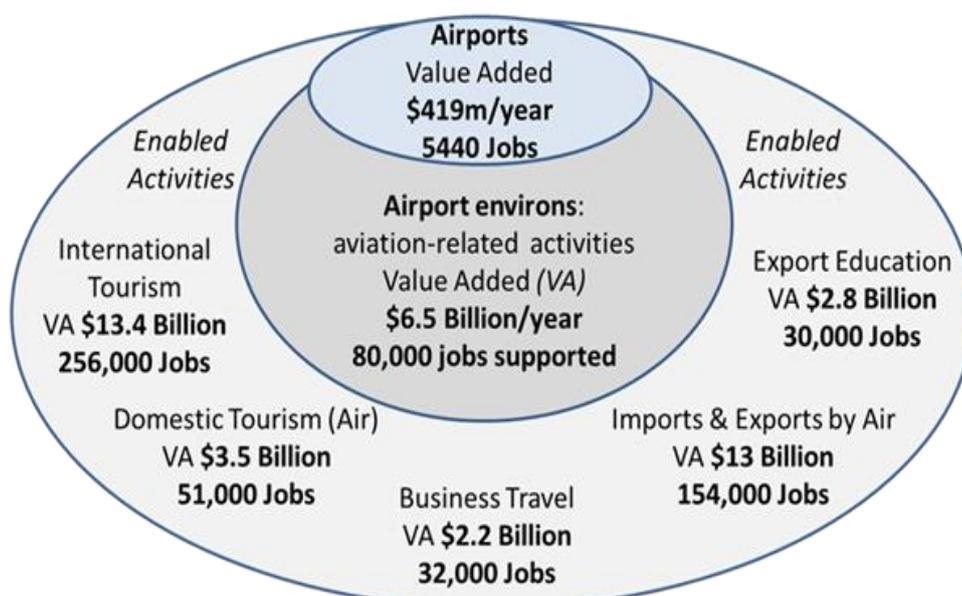
1.9 NZ Airports also proposes further matters that could be addressed in the Bill to protect and enable infrastructure and provide greater recognition of reverse sensitivity effects.

1.10 These matters and proposed amendments to the Bill are detailed below.

2. NZ AIRPORTS: WHO WE ARE

2.1 NZ Airports is the industry association for New Zealand's airports and related businesses. Its members operate 31 airports across the country including the international gateways to New Zealand. This infrastructure network is essential to a well-functioning economy, and enables critical transport and freight links between each region of New Zealand and between New Zealand and the world.

2.2 The below diagram details the value of airports to the New Zealand economy.



Economic and Social Contribution of New Zealand's Airports, Market Economics, 2013 and Economic Impact of International Education 2014, Infometrics, 2015

2.3 NZ Airports' members have extensive experience in dealing with RMA processes and issues, and in particular with the conflicts that arise when sensitive activities (like dwellings) are proposed or undertaken near airports.

3. REVERSE SENSITIVITY EFFECTS

3.1 One of the most frequent RMA issues for airport operators is the concept of "reverse sensitivity" effects caused by activities sensitive to aircraft noise being planned for or located in close proximity to established airports.

3.2 Reverse sensitivity arises when an established use causes adverse environmental impact to nearby land, and a new, sensitive activity is proposed for the land. As a result, the (lawfully) established use may be required to restrict its operations or mitigate its effects so as to not adversely affect the new activity.

- 3.3 Reverse sensitivity effects pose a substantial threat to the ongoing operation of New Zealand's airport infrastructure. Airports already operate in urban environments. Development of sensitive activities in proximity to airports has materially constrained airport infrastructure in the past because it is impossible to internalise some of the effects of airport operations. For example, resource management planning processes have resulted in operational restrictions and curfews at Wellington, Queenstown and Auckland Airports.
- 3.4 Costs incurred by New Zealand airport operators in relation to monitoring, recording and responding to reverse sensitivity complaints are significant. Airport operators throughout New Zealand need to be involved in plan-making, designation, and resource consenting processes to ensure that airports are protected from reverse sensitivity effects and their growth and development is managed appropriately, and that local authorities are educated on the tension between residential intensification and the need to protect airports' lawful operation and planned development. Such involvement often requires airport operators to participate in various hearing processes in front of district and regional councils, independent hearing panels, boards of inquiry, and the courts.
- 3.5 Our members have spent significant time and effort ensuring that "effects areas" (such as noise control boundaries around an airport which identify land subject to noise effects) are properly defined around their airports. Sensitive land uses in those "effects areas" need to be avoided where possible, to ensure that the airport itself is not constrained as a result of complaints by people living in those areas, but also to ensure that people are not exposed to high levels of noise.
- 3.6 Reverse sensitivity effects must be carefully managed to ensure that the operation, development and growth of New Zealand's airports is not hindered by residential growth enabled in "the wrong place".
- 3.7 Below, we address the key areas of the Bill where changes are required to better enable participation by airports in planning processes and to ensure that reverse sensitivity effects are properly considered.
- 3.8 In addition, NZ Airports considers that "reverse sensitivity" should be defined in the RMA. That would ensure the term is understood and incorporated into plans accordingly.
- 3.9 NZ Airports seeks that specific reference be made to "reverse sensitivity" as a category of effect in the section 3 definition of "effects". While it has been accepted as an effect in case law, having it explicitly referred to will be a significant practical advantage (just as, for example, having effects of "low probability but high potential impact" specifically identified is often relied on).

Relief sought

- 3.10 NZ Airports seeks the following definition of reverse sensitivity be included in section 2:

Reverse sensitivity means the vulnerability of an established activity to objection from new sensitive land uses located nearby.

- 3.11 NZ Airports seeks the following amendment to section 3:

3 Meaning of effect

In this Act, unless the context otherwise requires, the term effect includes—

- (a) any positive or adverse effect; and
- (b) any temporary or permanent effect; and
- (c) any past, present, or future effect; and
- (d) any reverse sensitivity effect; and

- (de) any cumulative effect which arises over time or in combination with other effects— regardless of the scale, intensity, duration, or frequency of the effect, and also includes—
- (ef) any potential effect of high probability; and
- (fg) any potential effect of low probability which has a high potential impact.

4. COMMENTS ON PROPOSED AMENDMENTS IN BILL

New "development capacity" function (clauses 11 and 12, new sections 30(1)(ba) and 31(1)(aa))

- 4.1 NZ Airports does not oppose the inclusion of new regional and territorial council functions, provided amendments are made to recognise the role of infrastructure, and, for the reasons discussed in section 3 of this submission, the need to protect that infrastructure from reverse sensitivity effects.
- 4.2 We have proposed an express acknowledgement of "effects areas" (and a corresponding definition), to recognise that the effects from such activities cannot be internalised and need to be managed.

Relief sought

- 4.3 NZ Airports seeks the following amendments:

30 Functions of regional councils under this Act

- (1)...
 (ba): the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in relation to the supply of residential and business land and associated infrastructure, to meet the expected long-term demands of the region:

[...]

- (5) In this section and section 31, development capacity, ~~in relation to residential and business land~~, means the capacity of the land for development, taking into account the following factors:
- (a) the zoning of the land; and
 - (b) the provision of adequate infrastructure, existing or likely to exist, to support the development of the land, having regard to—
 - (i) the relevant proposed and operative policy statements and plans for the region; and
 - (ii) the relevant proposed and operative plans for the district; and
 - (iii) any relevant management plans and strategies prepared under other Acts; and
 - (c) the rules and methods in the operative plans that govern the capacity of the land for development including any effects area; and
 - (d) other constraints on the development of the land, including natural and physical constraints; and
 - (e) the need to manage reverse sensitivity effects.

31 Functions of territorial authorities under this Act

- (1) [...]
- (aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in ~~respect relation to the supply~~ of residential and business land and associated infrastructure to meet the expected long-term demands of the district:
- (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—
- (i) the avoidance or mitigation of natural hazards; and
 - (ii) *(Repealed)*.

- (ii) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:
- (iii) the maintenance of indigenous biological diversity:
- (iv) managing reverse sensitivity effects.

4.4 NZ Airports also seeks to include a corresponding definition of "effects area" in section 2 as follows:

effects area means an odour or noise buffer, air noise area, noise control boundary or other effects overlay identified in an operative or proposed district plan.

Striking out submissions (clause 120, new section 41D)

4.5 NZ Airports supports these changes, subject to amendments to clarify that the power to strike out in relation to effects raised is not tied to effects which were the reason for notification. Often, effects considered for the purposes of notification could be limited, or different to the effects to be considered in the substantive decision. This is especially true in relation to reverse sensitivity effects, which may be relevant for the substantive decision but not for the notification test.

4.6 NZ Airports considers that an authority must (rather than "may") strike out submissions for being frivolous, vexatious, disclosing no reasonable or relevant case, or being an abuse of process. This will reduce time and cost for applicants, councils and other parties.

Relief sought

4.7 NZ Airports seeks the following amendments:

41D Striking out submissions

- (1) An authority conducting a hearing on a matter described in section 39(1) ~~may~~ must direct that a submission or part of a submission be struck out if the authority is satisfied that at least 1 of the following applies to the submission or the part:
 - (a) it is frivolous or vexatious:
 - (b) it discloses no reasonable or relevant case:
 - (c) it would be an abuse of the hearing process to allow the submission or the part to be taken further.
- (2) ~~However, t~~The authority must direct that a submission or part of a submission be struck out if—
 - (a) the submission is on an application for a resource consent, a review of a resource consent, or an application to change or cancel a condition of a resource consent; and
 - (b) the authority is satisfied that at least 1 of the following applies to the submission or the part:
 - (i) it does not have a sufficient factual basis:
 - (ii) it is not supported by any evidence:
 - (iii) it is supported only by evidence that purports to be independent expert evidence on a matter but that is prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter:
 - (iv) it is unrelated to an activity's actual or likely adverse effects, ~~if those effects were the reason for notifying the application or review;~~ and
 - (c) the authority considers that the direction would not materially compromise the authority's ability to fulfil its obligations under Part 2.
- (3) An authority—
 - (a) may make a direction under this section before, at, or after the hearing; and
 - (b) must record its reasons for any direction made.
- (4) A person whose submission is struck out, in whole or in part, has a right of objection under section 357.

National planning template (clause 37, new sections 58C, 58D and 58H)

- 4.8 There may be benefits in a consistent/standardised structure or "template" for plans around New Zealand. However the prospect of fulsome plan provisions being developed (and/or subsequently amended) by the Minister (of the day), with little scope for effective participation is concerning.
- 4.9 If the proposed NPT mechanism is to be included, NZ Airports seeks improvements to this process such as a right for submitters to be heard. NZ Airports also seeks a requirement to consult with appropriate stakeholders on technical provisions in preparing the NPT (for example, if it were to include rules in relation to airport protection or noise contours).
- 4.10 NZ Airports also opposes the NPT including mandatory content for policy statements and plans. Rather, the NPT should include objectives, policies and rules that councils may include in their plans.
- 4.11 The proposed new section 58H requires local authorities to make amendments to the relevant planning instrument within the time specified in the NPT or (in the absence of a specified time) within 1 year or 5 years (depending on the type of provision in the NPT) of the NPT being approved.
- 4.12 NZ Airports supports the ability to specify timeframes under section 58H in the NPT. This will allow the NPT to take into account the lengthy and costly plan-making processes that have just been undertaken in Auckland and Christchurch and the uncertainty that might come from the possibility that they could be amended again relatively soon.

Relief sought

- 4.13 NZ Airports seeks that the ability to specify timeframes under section 58H is retained and that sections 58C and 58D are amended as follows:

58C Contents of national planning template

- (1) The national planning template may specify—
- (a) the structure and form of regional policy statements and plans:
 - (b) any of the matters specified in section 45A(2) and (4) (which applies as if the national planning template were a national policy statement):
 - (c) objectives, policies, methods (including rules), and other provisions that ~~must~~ ~~or~~ may be included in plans:
 - (d) objectives, policies, methods (but not rules), and other provisions that ~~must~~ ~~or~~ may be included in regional policy statements:
 - (e) a time frame or time frames for councils to give effect to the whole or part of the national planning template, including different time frames for—
 - (i) different local authorities:
 - (ii) different parts of the national planning template:
 - (f) if the national planning template specifies that a rule ~~must~~ ~~or~~ may be included in plans, whether the local authority must review a discharge, coastal, or water permit under section 130 to ensure compliance with the rule, if the local authority includes such a rule.

58D Preparation of national planning template

- (1) If the Minister determines to prepare a national planning template, the Minister must prepare it in accordance with this section and sections 58E to 58J.
- (2) In preparing or amending the national planning template, the Minister may have regard to—
- (a) the matters set out in section 45(2)(a) to (h):
 - (b) whether it is desirable to have national consistency in relation to a resource management issue:
 - (c) any other matter that is relevant to the purpose of the national planning template.

- (3) Before approving the national planning template, the Minister must—
- (a) consult with stakeholders and qualified experts on any technical provisions being proposed in the NPT; and
 - (ab) prepare a draft national planning template; and
 - (bc) prepare an evaluation report in accordance with section 32 and have particular regard to that report before deciding whether to publicly notify the draft; and
 - (cd) publicly notify the draft; and
 - (de) establish a process that—
 - (i) the Minister considers gives the public, local authorities, and iwi authorities adequate time and opportunity to ~~comment~~ make a submission and be heard on the draft; and
 - (ii) requires a report and recommendations to be made to the Minister on those comments. [...]

Deemed permitted activities (clause 122, new section 87BB)

- 4.14 NZ Airports opposes this provision. The drafting is uncertain and introduces a new untested threshold. In particular, the concept of "marginal or temporary non-compliance" is uncertain.
- 4.15 The community should be able to rely on plans for certainty and clarity. NZ Airports is particularly concerned that reverse sensitivity issues around airports may be exacerbated by additional development being enabled in an unregulated manner through this provision.

Relief sought

- 4.16 NZ Airports seeks that section 87BB be deleted.

Notification of resource consents (clause 125 - 128, sections 95 - 95E)

- 4.17 The Bill proposes substantial changes to the notification requirements under the RMA that essentially reduce the chances of a resource consent application being either publicly or limited notified.
- 4.18 NZ Airports considers the current notification regime (as established by the 2009 amendments to the RMA) is operating effectively. NZ Airports seeks to ensure that significant infrastructure providers like airports are notified of consents for sensitive activities within their effects areas or noise control boundaries, which can otherwise result in operational constraints on their operations. As discussed earlier in this submission, reverse sensitivity issues cause operational issues for airports, including the imposition of noise curfews.
- 4.19 The restrictions on limited notification set out in the new sections 95D to 95E are also opposed. Limited notification to adjacent landowners is of little utility to airports, whose air noise boundaries often extend well beyond their own land. Because effects (including reverse sensitivity) can occur beyond an airport's property boundary, limiting notification to adjacent landowners will often exclude airports, despite reverse sensitivity effects potentially arising. In order to efficiently and effectively operate, airports must be able to submit on resource consent applications that have the potential to create reverse sensitivity effects on airport operations.
- 4.20 New subsections 95D(ca) and 95E(2)(c) give a consent authority discretion to disregard adverse effects which are "already taken into account by the objective and policies of the plan". It is not appropriate to provide for an objectives and policies assessment at the notification stage, given that the focus of the notification enquiry should be principally on effects of the activity, and given the subjective nature of an objectives and policies assessment. Instead, if a council considers that certain activities should not be notified,

the appropriate forum to address those issues is when drafting the plan, and in particular when considering whether a rule should be inserted requiring non-notification.

- 4.21 New section 95DA specifies eligibility criteria to be considered an affected person for the purposes of limited notification. There is a serious risk that the restrictions proposed in section 95DA will result in situations where parties who are affected and "should" be notified, lose out on the opportunity to participate.
- 4.22 If this provision is retained, the list of persons who are considered affected should include the owners of infrastructure which has or is associated with an "effects area" near the proposed activity.

Relief sought

- 4.23 NZ Airports seeks that sections 95-95E be deleted, and the former sections 95-95E be reinstated.
- 4.24 As a less preferred option, if the provisions are retained NZ Airports seek that the table in section 95DA(4)(b) be amended to include the following new row:

Activity for which consent is sought	Persons eligible to be considered affected
<u>Any activity, other than a non-complying activity, that is to occur on land that is subject to an effects area</u>	<u>The owner of an operation which has or is associated with an effects area</u>

Restriction on appeal rights (clause 135, new section 120(1A))

- 4.25 Amendments proposed to section 120 restrict appeal rights for certain activities including boundary activities and subdivision (unless non-complying).
- 4.26 In considering applications for subdivision consent it is critical that effects on infrastructure providers such as airports are considered and that reverse sensitivity effects are also considered. In practice these effects can often be overlooked by councils in deciding whether to grant consent to subdivision proposals. It is critical that rights be retained for appeals to be brought on reverse sensitivity or infrastructure related grounds for inappropriate subdivision proposals in order to adequately protect significant infrastructure.
- 4.27 In addition, the use of the phrase "provision or matter" is ambiguous in the context of resource consent applications and should be replaced.

Relief sought

- 4.28 NZ Airports seeks the following amendments to section 120:

120 Right to appeal

(1A) However,—

- (a) there is no right of appeal under this section against the whole or any part of a decision of a consent authority referred to in subsection (1) to the extent that the decision relates to resource consent for—
- (i) a boundary activity unless the boundary activity is in an effects area; or
 - (ii) a subdivision, unless the subdivision is a non-complying activity or unless the subdivision is in an effects area; and
- (b) there is no right of appeal under this subsection against the whole or any part of a decision of a consent authority referred to in subsection (1) to the extent that the decision relates to resource consent for an activity that—
- (i) is a residential activity (being an activity associated with the construction, alteration, or use of a dwellinghouse on land that, under a district plan, is intended to be used solely or principally for residential purposes); and
 - (ii) is to occur on a single allotment; and

- (iii) is a controlled, restricted-discretionary, or discretionary activity; and
- (iv) is outside an effects area; and
- (c) a person described in subsection (1)(b) may appeal under this section only in respect of a ~~provision~~ environmental effect, or other matter raised in the person's submission (excluding any part of the submission that is struck out under **section 41D**).

(1B) To avoid doubt, section (1A)(c) does not prevent a person described in subsection (1)(b) from appealing against part of a decision of a consent authority on an application for resource consent if the environmental effect or other matter to which the appeal relates could not reasonably have been raised in the person's submission.

Limited notification of plan changes (clause 108, new clause 5A of Schedule 1)

- 4.29 New clause 5A of Schedule 1 enables limited notification for plan changes if the local authority can identify all the persons directly affected by the proposed change.
- 4.30 NZ Airports supports this clause to the extent that there may be some discrete plan changes where limited notification is appropriate. However, notification to only "directly affected" persons will have unintended consequences (eg excluding infrastructure providers who require reverse sensitivity effects to be taken into account) that have not been fully considered, unless the clause is amended.

Relief sought:

- 4.31 NZ Airports seeks the following amendments to clause 5A:

5A Option to give limited notification of proposed change

- [...]
- (11) For the purposes of this section, a local authority must identify a person as being directly affected by a proposed change if:
- (a) the person is the owner or occupier of land to which the proposed change directly relates; or
 - (b) the person is the owner of an operation that has or is associated with an effects area over land to which the proposed change directly relates; or
 - (c) the person is affected by an effect of the proposed change that is minor or more than minor (but not less than minor).

Streamlined planning process (Clause 52, new section 80C; clause 108, new Part 5 of Schedule 1)

- 4.32 The streamlined planning process, if a council decides to use it, hands control of both the process and the substantive outcome to the Minister.
- 4.33 While this mechanism could be useful for confined and urgent issues (eg natural disasters), overall we have concerns regarding access to justice.
- 4.34 There may be some plan processes that require bespoke submission and hearing processes, however, these are rare (for example the Proposed Auckland Unitary Plan and Christchurch Replacement District Plan processes). In those situations there has been specific legislation developed to cater to those specific circumstances. There is no clear justification for a general power to be provided to the Minister to depart from the normal plan development processes. This is reinforced by the removal of the safeguards that there will be effective participation provided through the submission process and access to merit appeals.
- 4.35 Plans are fundamental elements of the regulatory framework and it is critical that careful consideration be given to these documents, with appropriate involvement of stakeholders and Environment Court oversight.

Relief sought

- 4.36 NZ Airports seeks that the new part 5 to Schedule 1 and new section 80C are deleted in their entirety.

5. OTHER AMENDMENTS SOUGHT**Better enabling and protecting infrastructure**

- 5.1 There is a clear focus on the enablement of residential development through the Bill. However, as discussed above, in order to effectively provide for residential growth, it is imperative that the supporting infrastructure, such as airports, is protected from incompatible land use and development.
- 5.2 The Government's desire to increase land supply to promote affordable housing creates a tension with the need to protect established significant infrastructure. In our view, it is critical that reverse sensitivity issues are recognised and provided for in developing any reform designed to increase housing supply. This will ensure the increase in housing supply does not restrict infrastructure and the associated economic growth, jobs and exports.
- 5.3 Collectively, NZ Airports' members have extensive experience in engaging in plan change, designation and consenting processes. The plan changes and designation processes in particular often aim to include aspects designed to protect airport infrastructure from incompatible activities, or to provide for sensible expansion.
- 5.4 It would considerably assist those processes and reduce unnecessary levels of time and cost if there was greater, and more direct, recognition of infrastructure such as airports in Part 2. Well-functioning airports are critical to the New Zealand economy and social well-being, and it is appropriate to recognise and protect such infrastructure in part 2.

Relief sought

- 5.5 NZ Airports seeks the following subsection is inserted into section 6:

(i) the efficient provision of new infrastructure and the protection of existing infrastructure.

6. CONCLUSION

- 6.1 NZ Airports seeks the opportunity to appear at Select Committee hearings in support of this submission.

NZ AIRPORTS ASSOCIATION:

Date: 14 March 2016

Signature:



Kevin Ward
Chief Executive, New Zealand Airports Association

Address for Service: Kevin Ward

P O Box 11 369
Manners Street
WELLINGTON 6142

Telephone:

(04) 384 3217

Email:

kevin.ward@nzairports.co.nz

SUBMISSION TO THE MINISTRY FOR THE ENVIRONMENT ON THE PROPOSED NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT CAPACITY

1. EXECUTIVE SUMMARY

1.1 The New Zealand Airports Association ("**NZ Airports**") welcomes the opportunity to comment on the Proposed National Policy Statement on Urban Development Capacity ("**NPS**").

1.2 While NZ Airports appreciates the main stimulus for the NPS is the current housing shortage, and does not oppose endeavours to address that issue, **it is fundamental to the development of productive urban centres that residential growth does not hinder the effective current or future operation of New Zealand's airports.**

1.3 The Consultation Document on the NPS states that:¹

The topic of reverse sensitivity is very complex. The focus of the proposed NPS is to further enable development capacity, and addressing reverse sensitivity would require significantly more analysis than has been possible.

1.4 We disagree. The topic of reverse sensitivity is straightforward, and is well understood in law. Management of reverse sensitivity effects is also explicitly provided for in the National Policy Statement on Electricity Transmission.² An NPS which seeks to enable development capacity must address reverse sensitivity effects.

1.5 NZ Airports does not oppose the key objectives of the NPS to encourage and enable urban development. However, unless addressed and managed well, the Government's desire to increase land supply to promote housing through instruments such as the NPS will create significant conflict with established significant infrastructure.

1.6 It is critical that reverse sensitivity issues are recognised and provided for in the NPS, so that urban growth is discouraged from locating near airports, and so that residential growth does not restrict the substantial economic growth, jobs and exports that airports provide our cities and regions.

1.7 Established airports cannot readily move, and new airport sites close to their population bases are very hard to create. It is therefore important that existing airport infrastructure is used efficiently (free from additional constraints) and future development options are maintained.

1.8 Individual airports who are members of NZ Airports may also be submitting on the NPS separately. This submission should be read in conjunction with any submission made by an individual member airport.

¹ National Policy Statement on Urban Development Capacity Consultation Document, page 24.

² National Policy Statement on Electricity Transmission, Policy 10.

2. WHO WE ARE

- 2.1 NZ Airports is the industry association for New Zealand's airports and related businesses. Its members³ operate 36 airports across the country including the international gateways to New Zealand. This infrastructure network is essential to a well-functioning economy, and enables critical transport and freight links between each region of New Zealand and between New Zealand and the world.
- 2.2 Airports add a value of \$419 million a year to the NZ economy plus 5,440 jobs, with aviation related activities (such as air freight and pilot training schools) contributing \$6.5 billion a year and 80,000 jobs.
- 2.3 Significantly, airports directly enable international and domestic tourism, imports and exports by air, and export education. These contribute even greater value and employment throughout NZ, totalling \$30 billion each year and well over 400,000 jobs. These activities simply cannot occur without efficient air links.
- 2.4 NZ Airports' members have extensive experience dealing with RMA processes and issues, and in particular with the conflicts that arise when sensitive activities (like houses and schools) are proposed or built near airports. Airports are located in all of the areas of New Zealand identified in the NPS as experiencing high levels of population growth, and will therefore be directly impacted by the NPS.

3. THE ISSUE: REVERSE SENSITIVITY

What is it?

- 3.1 Reverse sensitivity arises when an established use causes adverse environmental impact to nearby land, and a new, sensitive activity is proposed for the land. As a result, the lawfully established use may be required to restrict its operations or mitigate its effects so as to not adversely affect the new activity. This is what can happen when residential development is allowed to locate near airports.
- 3.2 Certain effects caused by the use of airports, such as aircraft noise, cannot be reasonably internalised. Acoustic insulation and other mitigation measures are not sufficient in themselves to address potential noise effects on residents or reverse sensitivity effects on airports. For example, such measures are only effective provided that windows and external doors are not opened.
- 3.3 It is also not possible to adequately mitigate the adverse effects of high aircraft noise on outdoor areas. Exposure to noise outside is also likely to result in increased complaints to airports regarding lawfully permitted noise, therefore likely having a reverse sensitivity effect by limiting airport operations.

The cost of reverse sensitivity

- 3.4 Reverse sensitivity effects pose a substantial threat to the ongoing operation of New Zealand's airport infrastructure. Airports already operate in urban environments. Development of sensitive activities in proximity to airports has materially constrained airport infrastructure in the past because it is impossible to internalise some of the

³ Our member airports are Ardmore Airport, Auckland Airport, Christchurch Airport, Dunedin Airport, Gisborne Airport, Hamilton Airport, Hawke's Bay Airport, Hokitika Airport, Invercargill Airport, Kapiti Coast Airport, Kaikohe Airport, Katikati Airport, Kerikeri Airport, Marlborough Airport, Masterton Airport, Matamata Airport, Motueka Airport, , Nelson Airport, New Plymouth Airport, Palmerston North Airport, Queenstown Airport, Rangiora Airport, Timaru Airport, Rotorua Airport, Takaka Airport, Taupo Airport, Tauranga Airport, Wanaka Airport, Whanganui Airport, Wellington Airport, Westport Airport, Whakatane Airport, and Whangarei Airport.

effects of airport operations. For example, resource management planning processes have resulted in operational restrictions and curfews at Wellington, Queenstown and Auckland Airports.

- 3.5 Flights in and out of busy airports cannot simply be re-scheduled or squeezed into shorter periods. Safe separation distances between aircraft limit an airport's hourly capacity, and peak hours are already congested at several airports. In addition, the arrival and departure times of international flights are often determined by the limited availability of landing/take-off slots at the overseas airport and the network requirements of the airlines. Reducing airport operating hours is therefore seldom a viable option.
- 3.6 Costs incurred by New Zealand airport operators in relation to monitoring, recording and responding to reverse sensitivity complaints are significant. Airport operators throughout New Zealand must be involved in plan-making, designation, and resource consenting processes to ensure that airports are protected from reverse sensitivity effects and their growth and development is managed appropriately, and that local authorities are educated on the tension between residential intensification and the need to protect airports' lawful operation and planned development.

Managing reverse sensitivity effects around airports

- 3.7 Most airports operate within the context of district planning provisions which provide land use controls on land in the *vicinity* of airports (and not just on land adjoining or adjacent to airports), as well as controls on the amount of aircraft noise that can be generated by aircraft operations at the airport through air noise boundary controls. This approach to airport planning is endorsed by New Zealand Standard 6805:1992 "Airport Noise Management and Land Use Planning", which has been used by local authorities and airports around New Zealand to address the resource management issue of aircraft noise.
- 3.8 The Government's National Airspace Policy 2012 requires that:

The Government **expects the aviation sector and local authorities to proactively address their respective interests in any future planning.**

[...]

Airport authorities and local authorities should work together in a strategic, cooperative and integrated way to ensure that planning documents (including those under the Resource Management Act) **appropriately reflect the required noise contours and/or controls** and approach and departure paths that take account of current and projected traffic flows.

Resource Management Act planning tools (including plan rules and designations) should as far as practicable seek to avoid the establishment of land uses or activities and potential obstacles or hazards that are incompatible with aerodrome operations or create adverse effects.
[emphasis added]

- 3.9 It is implicit in both NZS 6805 and the National Airspace Policy that these planning tools be used to reduce adverse effects on people and communities and to reduce reverse sensitivity effects on airports through avoiding the establishment of incompatible activities nearby.
- 3.10 Our members have spent significant time and effort ensuring that "effects areas" (such as noise control boundaries around an airport which identify land subject to noise effects) are properly defined around their airports. Sensitive land uses in those "effects areas" must be avoided where possible, to ensure that the airport itself is not

constrained as a result of complaints by people living in those areas, but also to ensure that people are not exposed to high levels of noise.

- 3.11 While residential land use is generally discouraged near airports, there are a range of other uses that land can be put to. For example, commercial and business land uses are compatible neighbours with airports.

4. PROPOSED AMENDMENTS

Outcomes for decision-making

- 4.1 Objective OA1 states:

To support effective and efficient urban areas that enable people and communities to provide for their social, economic and cultural wellbeing.

- 4.2 Airports are a critical part of providing effective and efficient urban areas. If residential development is provided without protecting the airport activities that support a vibrant, effective and efficient urban area, then Objective OA1 will not be met. That residential development will jeopardise the substantial economic and social benefits that airports bring, not only to cities and towns, but to the surrounding region and country as a whole.

- 4.3 The amendments proposed below will ensure that reverse sensitivity effects are managed, while providing sufficient development capacity for residential and business demand.

Relief sought

Amend the definition of "development capacity" as follows:

Development capacity means in relation to residential and business land, the capacity of land for urban development to meet demand, taking into account the following factors:

- the zoning, objectives, policies, rules and overlays that apply to the land; and
- the provision of adequate infrastructure, existing or likely to exist, to support the development of the land, having regard to—
 - the relevant proposed and operative regional policy statements, regional plans and district plans; ~~and~~
 - any relevant management plans and strategies prepared under other Acts; and
 - the need to manage reverse sensitivity effects on significant infrastructure.

Amend policy PA3 as follows:

When considering the effects of urban development, decision-makers must:

- Recognise and provide for the contribution that urban development will make to the ability for people and communities and future generations to provide for their social, economic and cultural wellbeing.
- Provide sufficient development capacity, whilst maximising the positive

effects of development, and minimising the adverse effects of development, including potential reverse sensitivity effects on significant infrastructure.

- Have particular regard to the positive effects of urban development at a national, regional and district scale, as well as its local effects.

Responsive planning

- 4.4 Policy PD2 and PD3 promote a number of "responsive planning" options in order for local authorities to provide for sufficient development capacity. Policy PD2 requires local authorities to consider all options available to it under the RMA to enable sufficient development capacity to meet residential and business demand, including changes to notification provisions and existing overlays.
- 4.5 There is a serious risk that the changes local authorities make to the notification provisions of their district plans and regional policy statements in order to enable sufficient development capacity, pursuant to policy PD2, will result in situations where parties who are affected lose out on the opportunity to participate. This is of significant concern to airports, which rely heavily on the notification requirements in plans to protect their operations from reverse sensitivity effects.
- 4.6 Airport operators need to stay vigilant to applications for consent to establish and/or intensify sensitive activities like residential dwellings in their effects areas. An airport's ability to be involved in these resource consent processes could be significantly curtailed if changes are made to plans that reduce the notification of resource consent applications that could potentially affect an airport's operations.
- 4.7 In addition, the NPS's promotion of amendments to existing overlays and introduction of new overlays in order to enable sufficient development capacity is of concern to NZ Airports. Airport operators have had extensive involvement in the development of various planning instruments in order to protect their current operations and provide capacity for development of future operations. Effects areas around airports, which include controls to manage land uses within areas subject to high to moderate aircraft noise, often take the form of overlays (as is the case in Auckland, for example).
- 4.8 An NPS which does not take into account reverse sensitivity effects and promotes limiting notification, or changes to effects area overlays, will only exacerbate the growing issue that airports are already facing in trying to protect their operations from reverse sensitivity effects. It will undermine airports' vital air noise boundaries, and encourage people to live in areas which are not suitable for residential uses.
- 4.9 NZ Airports also has concerns regarding references to "customer focused" consenting processes in policies PD2 and PD3. This is an ambiguous term which could be misinterpreted by local authorities. A more appropriate term is "efficient".

Relief sought

Amend policy PD2 as follows:

A local authority must consider all options available to it under the Act to enable sufficient development capacity to meet residential and business demand, including but not limited to:

- Changes to plans and regional policy statements, including changes to:
 - Objectives, policies and rules, zoning and the application of those in

both existing urban and undeveloped areas;

- Activity status; and
- ~~Provisions about the notification of applications for resource consent;~~
- ~~Existing overlays, or the introduction of overlays which enable development; and~~
- Make them simpler to interpret.
- Consenting processes that are efficient~~customer-focused~~ and coordinated within the local authority; and
- In granting consent, the conditions of consent imposed.

Amend policy PD3 as follows:

Local authorities must consider the following responses:

- In the short term, further enable development through efficient~~customer-focused~~ consenting processes and, where appropriate, amending the relevant plans.

[...]

Consultation with infrastructure providers

- 4.10 Airports fall under the definition of "infrastructure" in the NPS which includes "transport" and "passenger transport services".
- 4.11 NZ Airports supports policies PB4 and PD9 which require local authorities to consult with infrastructure providers when carrying out the Housing and Business Land Assessments and developing the future land release and intensification strategy, subject to amendments. However, the inclusion of the phrase "as they see fit" could be misinterpreted to mean that councils need only consult as they see fit, and as such should be deleted. Councils must talk to airports about land assessments which take into account land in or around airports, and particularly in an airport's effects area. Airport operators must be consulted with by local authorities at the outset to ensure effects on their operations are adequately taken into account by local authorities in the implementation of the NPS.
- 4.12 NZ Airports also considers that local authorities will need clear guidance from the Ministry as to how local authorities will identify infrastructure providers to consult.

Relief sought

Amend policy PB4 as follows:

PB4: In carrying out the assessments required under policy PB1, local authorities must consult with infrastructure providers, community and social housing providers, the property development sector and any other stakeholders ~~as they see fit.~~

Amend the second bullet point of policy PD9 as follows:

- Consult with and ~~Take~~ into account the views of infrastructure providers, land owners, the property development sector and any other stakeholders

as they see fit;

Provide detailed direction in a Ministry for the Environment guidance document on how local authorities should carry out consultation under policies PB4 and PD9.

Implementation of the NPS

- 4.13 Given implementing the NPS will be a complex process, NZ Airports strongly supports the creation of a technical working group that includes airport representation to draft guidance material on how the NPS should be given effect to.
- 4.14 We would welcome any opportunity to speak to the Ministry about this submission in more detail.

NZ AIRPORTS ASSOCIATION:

Signature:



Kevin Ward
Chief Executive, New Zealand Airports Association

Date: 15 July 2016

Address for Service: Kevin Ward
P O Box 11 369
Manners Street
WELLINGTON 6142

Telephone: (04) 384 3217
Email: kevin.ward@nzairports.co.nz