

**Before an Independent Hearings Panel of Wellington
City Council**

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

And

In the matter of hearing of submissions and further submissions on the
Wellington City Proposed District Plan (**PDP**)

**Statement of Rebuttal Evidence of
Kirsty O'Sullivan**

Dated: 25 July 2023

Amanda Dewar | Barrister
P: 021 2429175
Email:
amanda@amandadewar.com
PO Box 7
Christchurch 8140

**SIMPSON
GRIERSON**

Mike Wakefield/Madeline Ash
T: +64-4-499 4599
mike.wakefield@simpsongrierson.com
madeline.ash@simpsongrierson.com
PO Box 2402 Wellington

1. INTRODUCTION

1.1 My name is Kirsty O’Sullivan. I am an Associate with Mitchell Daysh and have over 15 years' experience in environmental resource planning and management consultancy.

1.2 I have prepared evidence in chief for Hearing Stream 5 (dated 18th July 2023).

1.3 I confirm my obligations in terms of the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. I confirm that the issues addressed in this brief of evidence are within my field of expertise. I confirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions I express in my evidence.

Scope of Evidence

1.4 This statement of rebuttal evidence relates to the evidence presented by:

- (a) Mr B Liggett (Corporate – Noise) on behalf of Kāinga Ora – Homes and Communities; and
- (b) Mr M Lindenberg (Planning) on behalf of Kāinga Ora – Homes and Communities.

1.5 In particular, in this statement of rebuttal evidence I address (as raised by Mr Liggett and to a lesser degree, Mr Lindenberg):

- (a) Whether there is any evidential basis establishing a reverse sensitivity effect on the transportation network (insofar as it relates to Wellington International Airport); and,
- (b) Whether the qualifying matters in the Proposed Plan are justified.

1.6 I do not address other elements of their evidence as I consider such matters have already been canvassed in my evidence in chief.

Reverse sensitivity

- 1.7** Kainga Ora filed a number of submissions with respect to the noise chapter. Notably, its primary submission has taken what it describes as a principled approach to the application of intensification and management of noise in areas adjacent to nationally significant infrastructure.
- 1.8** With respect to reverse sensitivity, Mr Liggett has suggested that there is no evidential basis for establishing a reverse sensitivity effect on the transportation network.¹
- 1.9** Separate, but related to this matter, Mr Lindenberg has recommended reframing various provisions in the Proposed Plan which remove reference to reverse sensitivity effects.²
- 1.10** I acknowledge and agree with Mr Lindenberg that the Greater Wellington Regional Policy Statement (“GWRPS”) does not use the term “reverse sensitivity” specifically with respect to the regionally significant infrastructure and instead uses language such as “incompatible subdivisions, land uses or activities”. That said, the subsequent explanation found within Policy 8 for example clearly goes on to describe the concept of reverse sensitivity. I quote an extract from the explanation:

*Incompatible subdivisions, land uses or activities are those which adversely affect the efficient operation of infrastructure, its ability to give full effect to any consent or other authorisation, restrict its ability to be maintained, or restrict the ability to upgrade where the effects of the upgrade are the same or similar in character, intensity, and scale. It may also include new land uses that are sensitive to activities associated with infrastructure.*³

- 1.11** The GWRPS definition of reverse sensitivity is defined as follows:
- Reverse sensitivity means the vulnerability of an existing lawfully established activity to other activities in the vicinity which are sensitive to adverse*

¹ Paragraph 4.7, Statement of Evidence of Mr Liggett, dated 18th July 2023.

² Paragraph 6.3(b) and (c) and 6.7, Statement of Evidence of Mr Lindenberg, dated 18th July 2023.

³ Extract from the explanation to Policy 8 of the GWRPS.

environmental effects that may be generated by such existing activity, thereby creating the potential for the operation of such existing activity to be constrained.

- 1.12** In my view, the concept of reverse sensitivity is therefore encapsulated by the GWRPS. Including reference to reverse sensitivity within the Proposed Plan is therefore not inconsistent with the GWRPS, it simply further articulates what the relevant provisions (in this case, Policy 8 and Policy 39(b)) are specifically trying to manage.
- 1.13** When preparing District Plans, it is important in my view that the provisions assist plan users by applying “regional” outcomes and policy directives to a local (district) level context. Repeating broad reaching terms or phrases such as “incompatible new subdivision, use and development” does not further assist plan users understanding about specifically it is that makes subdivision, land use or an activity incompatible. While such drafting may be appropriate for strategic level objectives and policies in the Proposed Plan, district wide matters such as noise are sufficiently well defined that a greater degree of specificity can and should be provided.
- 1.14** As identified by Mr Kyle in his statement of rebuttal evidence for Hearing Stream 1, and as is my experience with plan change processes throughout the country, it is common for district plans to recognise the concept of reverse sensitivity. Recognising this concept is important and the inclusion in district plans of methods that preclude sensitive development “coming to the effect” is equally as critical.
- 1.15** It is also important to acknowledge that reverse sensitivity, as a concept, is an inherently forward looking one and relates to effects that may arise in the future but at the same time based on events and effects that have happened in the past. That said, it does not diminish its significance or relevance and is based on sound evidence and examples of situations whereby an authorised activity has been constrained or curtailed as result of new or additional sensitive activities choosing to locate adjacent to, or within proximity to the authorised activity, and then complaining about its operation and associated effects.

1.16 There are numerous examples around the country where the operations of critical infrastructure have been constrained or curtailed due to pressure brought by newcomers, as development intensifies on land around that infrastructure and as the use of infrastructure increases over time. With specific reference to the airport sector:

- (a) Ms O'Brian (Board of Airline Representatives New Zealand) has identified numerous examples of reverse sensitivity arising at airports around New Zealand. She has also described the provenance of the current operational constraints imposed on WIAL as a direct result of increasing community pressure resulting in restrictions on aircraft operations at Wellington Airport. I note that these constraints remain in place today.

- (b) Mr Kyle and I have first-hand experience assisting the Queenstown Airport Corporation ("QAC") with their proposed expansion to the Queenstown Airport aircraft noise boundaries in 2018. In this scenario, increasing community and political pressure ultimately saw QAC's expansion plans placed on hold. As was evident during the various community open days and meetings attended, the community were not just concerned about the proposed expansion being put forward at that time, but also the existing level of aircraft operations, as well as broader discussions around the appropriateness or otherwise of the Airport remaining in its current location. I note that at the time of this proposal, Queenstown Airport was also already subject to a curfew.

- (c) Mr Kyle was also involved in the promulgation of "Plan Change 35" and an associated alteration to their existing aerodrome purposes designation at Queenstown Airport from around 2008 to 2013. While Mr Kyle can speak to this process specifically, I understand that reverse sensitivity was a key issue that was addressed during that process.

- (d) Mr Humpheson has direct experience with the reverse sensitivity matters at Whenuapai Airbase, which he has set out in his statement of rebuttal evidence.

(e) Ms Lester has described her recent experience with noise complaints outside of the Air Noise Overlays, but within proximity to existing flight paths, as well as her recent experience as part of the Main Site and East Side Area designations. With respect to the designations, it is important to note that the community concern about the effects of aircraft noise and aircraft operations was one of the prominent issues, despite the Main Site designation largely seeking to roll over the operative planning framework set out in the Operative Airport Zone.

1.17 The above are just a handful of examples that demonstrate reverse sensitivity has and continues to be a legitimate concern for airport operators around New Zealand. While an inherently forward looking concept that is based on a future and cumulative effect (i.e. the future and cumulative effect of people complaining resulting in the curtailment of airport activities), the effects are based on previous experience that has historically been observed at airports nationally and internationally, including at Wellington Airport itself.

1.18 Given the critical importance of Wellington Airport to the City (as noted in the evidence of Ms Raeburn in Hearing Stream 1), it is therefore my opinion that the concept of reverse sensitivity should be addressed in the Proposed Plan, as should methods that appropriately recognise and address the concept. Such an approach also has the benefit of addressing some of the matters identified by Mr Liggett and Mr Lindenberg in their respective statements of evidence around managing health and amenity effects, which in my experience are two of the key issues often raised by sensitive receivers who complain about existing authorised activities.

1.19 In light of my comments above, I therefore do not agree with Mr Lindenberg's suggestion that provisions be recast to focus on incompatible subdivisions, land uses or activities.⁴ I also consider that the provisions that I have recommended in my evidence in chief also better align with the comments made by Mr Liggett that reverse sensitivity should be assessed on a case by case basis, with a focus on health and wellbeing of people and communities and considered in relation to the specific land use and development proposed.

⁴ Paragraph 6.3(b) and 6.7, Statement of Evidence of Mr Lindenberg, dated 18th July 2023.

Qualifying Matters

1.20 Mr Liggett has identified specific concerns with respect to the identification of qualifying matters and the failure of the section 32 and 42A report and transport authorities to address the requirements of the NPS-UD and Amendment Act in relation to urban development of land adjacent to noise generated from infrastructure⁵, with the exception of the Inner Noise Overlay.⁶

1.21 Under section 77I and 77O of the RMA, a specified territorial authority has the ability to make medium density residential areas and non-residential zones less enabling of development only the extent necessary to accommodate one or more of the listed qualifying matters, including (as relevant to WIAL):

(e) a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure;

.....

(g) the need to give effect to a designation, but only in relation to land that is subject to the designation.

1.22 Under Section 8 of the Noise Section 32 Evaluation identifies the Air Noise Overlay (both the Inner Noise Overlay and Outer Noise Overlay) as a “qualifying matter” under Section 77I(e) of the RMA and provides a brief evaluation how these areas meet the relevant requirements.

1.23 I support the identification of the Air Noise Overlay as a qualifying matter and consider that the management of residential land use density is necessary to ensure the airport (as nationally significant infrastructure) can continue to operate efficiently without undue constraint. As noted earlier in my rebuttal evidence (and with reference to Ms O’Brien’s evidence), Wellington Airport has historically experienced reverse sensitivity effects that have resulted in operational constraints at the Airport. Including the Air Noise Overlays as a qualifying matter is

⁵ Paragraphs 4.4 to 4.6, Statement of Evidence of Mr Liggett, dated 18th July 2023.

⁶ Paragraph 4.15, Statement of Evidence of Mr Liggett, dated 18th July 2023.

therefore necessary to ensure ongoing efficient operation of Wellington International Airport as nationally significant infrastructure.

1.24 Section 8 of the section 32 evaluation goes on to assess the qualifying matter in terms of section 77J(3)(b). While section 77J(3)(a) and 77L is not expressly noted in that section, the environmental effects arising as a result of airport noise are inherent throughout the section 32 evaluation.

1.25 Section 8 of the section 32 evaluation also goes on to evaluate the Air Noise Overlay (though most attention is afforded to the Inner Noise Overlay) in terms of Section 77J(4).

1.26 In light of the above, the Council has therefore sufficiently turned its mind the appropriateness or otherwise of the Air Noise Overlays, however I acknowledge that this could have been more expressly stated within their section 32 evaluation.

1.27 In light of the above, and I consider that:

(a) allowing the intensification of noise sensitive activities within the Air Noise Overlay will ultimately result in more people being exposed to the effects of aircraft noise. As noted in my evidence in chief, the current level of aircraft noise experienced within the Air Noise Overlay is not the level of aircraft noise that will be experienced in the future. This coupled with the intensification of noise sensitive receivers presents a genuine reverse sensitivity risk for the Airport which is defined as Nationally Significant Infrastructure in the National Policy Statement for Urban Development.⁷

(b) I accept that the planning approach recommended in my evidence in chief will limit and control opportunities for development on land around the Airport where this land is located inside the Air Noise Overlay (and more particularly, the Outer Noise Overlay where for the most part there are no current planning controls) when compared to the Operative District Plan and the densities anticipate in the NPS-UD. However as set out in my evidence in chief, the extent and nature of the limitations proposed, are in my opinion appropriate for addressing aircraft noise

⁷ Section 77J(3)(a)(ii) and 77P(3)(ii), RMA.

effects within the Air Noise Overlays and is required for the purpose of ensuring the efficient operation of the Airport as Nationally Significant Infrastructure. The approach recommended has been deliberate to ensure that future urban growth surrounding the Airport is appropriately managed in light of the ongoing operational needs of the Airport.

(c) Whilst this may not be considered desirable by some, (particularly by those with an interest in developing land around the Airport, or those residents in existing dwellings) it is in my view necessary to recognise that nationally significant infrastructural assets such as airports need to be appropriately recognised in the Proposed Plan. I consider that the wider economic benefits that accrue from the airport (as identified by Ms Raeburn in her Statement of Evidence for Hearing Stream 1) and the potentially for benefits not to be realised as a result reverse sensitivity concerns that give rise to operational constraints and a reduction in the operational efficiency of the Airport should attract significant weight when considering the merits of the Air Noise Overlay as a qualifying matter.⁸

(d) I understand that as part of the technical reports that have underpinned the Proposed Plan, Wellington City Council engaged Property Economics to assess the effect of limiting development capacity on the provision of development capacity. On review of that report and subsequent evidence presented by Mr Osbourne during Hearing Stream 1, it appears that there is more than adequate capacity provided for by the Proposed Plan provisions to meet the residential housing demand in the long term . This is before further upzoning or rezoning requests made by submitters have been considered. Furthermore, as noted by Property Economics, the impact of the Air Noise Overlay is likely to be superseded by the hazard overlays that apply to the same sites.⁹

⁸ Section 77J(3)(c), Section 77J(4)(a) and Section 77P(3)(c), RMA.

⁹ Section 77J(3)(b) and 77P(3)(b), RMA.