

**BEFORE THE INDEPENDENT HEARINGS PANEL
OF NELSON CITY COUNCIL**

I MUA NGĀ KAIKŌMIHANA MOTUHAKA O WHAKATŪ

UNDER the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER of Proposed Plan Change 29 ("**PC29**") to the Nelson
Resource Management Plan ("**NRMP**")

**LEGAL SUBMISSIONS ON BEHALF OF NELSON AIRPORT LIMITED
RELATED TO RESIDENTIAL MATTERS ONLY**

21 AUGUST 2024

1. BACKGROUND AND SUMMARY

- 1.1 Nelson Airport Limited ("NAL") is a Council Controlled Trading Organisation responsible for the operation of Nelson Airport. Nelson Airport is a key strategic gateway that enables air travel, connectivity and freight transport in the Nelson-Tasman region. It is a critical infrastructure asset of national and regional importance that plays an integral role in the regional economy. It brings economic, social and recreational opportunities for the whole community.
- 1.2 NAL is a requiring authority under the RMA and its operations at the Airport are authorised by three operative designations in the NRMP. The Airport's underlying operative zoning is partially industrial, which also enables a broad range of activities to be undertaken on Airport land in conjunction with those enabled by its designations.
- 1.3 NAL submitted on PC29 to ensure any proposed changes support the efficient functioning of the Airport, and to ensure that development near the Airport is appropriately managed to minimise adverse effects on the health and safety of adjoining landowners and effects on NAL's operations.
- 1.4 NAL's submission points on PC29 relate to the proposed natural hazard provisions. In accordance with the Panel's Directions #8 and #9,¹ NAL will present evidence and legal submissions relating to natural hazard matters at the hearing on 17 September 2024. These legal submissions therefore only address relief related to the proposed residential provisions in PC29.
- 1.5 In summary, NAL seeks amendments to ensure PC29 appropriately manages reverse sensitivity effects on the Airport. The relief sought by NAL in relation to these matters has been further refined at expert conferencing for infrastructure on 24 July 2024 and 7 August 2024.² NAL supports all of the provisions relating to this topic as agreed at expert conferencing³ and which

¹ Direction #8 from the Hearing Panel dated 16 August 2024; Direction #9 from the Hearing Panel dated 20 August 2024.

² Nelson City Council PC29 – Joint Witness Statement in relation to Expert Conferencing Infrastructure and Planning dated 24 July 2024; Nelson City Council PC29 – Joint Witness Statement in relation to Expert Conferencing Infrastructure and Planning Part 3 dated 7 August 2024.

³ Amendments were agreed at expert conferencing on 24 July 2024 to the definition of "regionally significant infrastructure" and Objective DO14.4; amendments were agreed at expert conferencing on 7 August 2024 to Objective DO16.vi, Policy RE1.4.i, Policy RE1.6.ii, Policy RE2.1 and the contents of the Residential Zone rule table.

are recommended to be adopted by Mr Gopinath reporting on the City Centre, Commercial and Infrastructure topics.⁴

- 1.6 In our submission, the amendments recommended to Objective DO16.vi, Policies RE1.4.i, RE1.6.ii and RE2.1.viii and to the contents of the Residential Zone rule table, appropriately achieve the sustainable management purpose of the RMA and will ensure the ongoing safe and efficient use of the Airport as nationally and regionally significant infrastructure in the Nelson-Tasman region.

2. REVERSE SENSIVITY EFFECTS

- 2.1 NAL seeks amendments to the notified residential provisions in PC29 to ensure intensification occurs in a way that appropriately manages reverse sensitivity effects on large-scale, effects generating infrastructure.
- 2.2 A reverse sensitivity effect is an adverse effect on an existing, lawful land use that arises from conflict with a new land use that is sensitive to the existing activities. Specifically, reverse sensitivity effects occur when complaints or pressure arising from the establishment of the more sensitive land use creates limits on the lawful operations of the established land use.⁵
- 2.3 In the context of airports, reverse sensitivity effects occur when new activities sensitive to airport noise establish close to an airport's lawfully established infrastructure. An increase in the number of people exposed to aircraft noise leads to a greater likelihood of complaints against an airport's operations, which in turn may lead to the introduction of planning restrictions on existing and future aircraft operations. This is particularly so when provisions are badly managed or administered, or are lacking.

Residential zone provisions

- 2.4 Mr Bonis has set out in his evidence the amendments NAL seeks in relation to the residential provisions in PC29 to ensure reverse sensitivity effects on the Airport are appropriately managed.⁶ These amendments have been subsequently refined and agreed between the planners at the expert

⁴ Nelson City Council PC29 – Addendum 1 to the Section 42A Report – City Centre, Commercial & Infrastructure prepared by Mithran Gopinath dated 19 August 2024 at [18] and [38].

⁵ *Affco New Zealand v Napier City Council* EnvC WO62/04, 4 November 2004 at [29].

⁶ Evidence of Mr Bonis dated 10 July 2024 at [8.1] – [8.9].

conferencing for infrastructure.⁷ The agreed amendments ensure the PC29 provisions link to the district-wide objectives and policies which address the effects arising from the Airport (and the need to manage reverse sensitivity effects).

- 2.5 The Council's section 42A report author recommends adopting the provisions as agreed at the expert conferencing.⁸ NAL therefore respectfully seeks the amendments to Objective DO16.vi, Policies RE1.4.i, RE1.6.ii and RE2.1.viii and to the contents of the Residential Zone rule table as recommended by Mr Gopinath in his section 42A report addendum at [3.4], be accepted by the Panel.

Intensification within NAL's aircraft noise contours

- 2.6 NAL supports the Council's approach in PC29 as notified to avoid the rezoning and/or intensification of residential areas that are subject to the Airport's aircraft noise contours. In her evidence for NAL, Ms Smith explains that such an approach is consistent with New Zealand Standard 6805:1992 and is appropriate for reducing the number of people exposed to adverse amenity and health effects from aircraft noise.⁹
- 2.7 NAL's original submission noted a small area proposed for residential intensification is located within the area subject to the Airport's proposed amendments to the Airport Effects Control Overlay ("**AECO**"). NAL's submission point S478.001 opposed intensification in this location, and sought the small area retain its existing Residential zoning (and density) where it is located within the AECO.
- 2.8 NAL has decided to withdraw this submission point on the basis that, as identified in the section 42A report addendum by Mr Gopinath,¹⁰ there are appropriate density controls in overlays to manage reverse sensitivity effects

⁷ Nelson City Council PC29 – Joint Witness Statement in relation to Expert Conferencing Infrastructure and Planning dated 24 July 2024; Nelson City Council PC29 – Joint Witness Statement in relation to Expert Conferencing Infrastructure and Planning Part 3 dated 7 August 2024.

⁸ The agreed provisions set out in the Joint Witness Statements dated 24 July 2024 and 7 August 2024 which are recommended to be adopted by Mr Gopinath include the definition of "regionally significant infrastructure", Objective DO14.4, Objective DO16.vi, Policy RE1.4.i, Policy RE1.6.ii, Policy RE2.1 and the contents of the Residential Zone rule table.

⁹ Evidence of Ms Smith dated 10 July 2024 at section 5.

¹⁰ Nelson City Council PC29 – Addendum 1 to the Section 42A Report – City Centre, Commercial & Infrastructure prepared by Mithran Gopinath dated 19 August 2024 at [8, 9 and 10]

on the Airport. NAL's proposed approach in PPC30 seeks to achieve the same outcome as sought in NAL's submission point S478.001, that is, limiting intensification of activities sensitive to aircraft noise within the Airport's aircraft noise contours.

- 2.9 NAL accepts Mr Gopinath's position that the operative overlay framework in the NRMP includes density restrictions (Rules REr.64 and REr.107 and associated Policy DO11.1.3) that apply to sites located within the AECO regardless of the underlying zoning.¹¹ NAL will rely on these provisions and other controls in the AECO as they emerge through PC29 and PPC30.

DATED: 21 August 2024

A A Arthur-Young / K M Dibley

Counsel for Nelson Airport Limited

¹¹ Nelson City Council PC29 – Addendum 1 to the Section 42A Report – City Centre, Commercial & Infrastructure prepared by Mithran Gopinath dated 19 August 2024 at [9] – [11].