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APPROVAL OF DISTRICT PLAN CHANGE 15: AIRPORT CURFEW EXEMPTION RULES

1. Purpose of Report

To report to Council the recommendations of the District Plan Hearing Committee concerning District Plan Change 15 – Airport Curfew Exemption Rules.

2. Recommendations

It is recommended that Council:

- 1) *Approve District Plan Change 15 without change and as publicly notified on 26 February 2003 (Appendix Two).*
- 2) *Accept or reject all the submissions and further submissions to the extent that they accord with recommendation (1) above.*

3. Background

District Plan Change 15 was initiated by the Wellington City Council to amend the airport curfew exemption rules to provide New Zealand heads of state and New Zealand senior dignitaries with the same level of dispensation to the night flying curfew that currently exists for foreign heads of state and foreign senior dignitaries.

The Plan Change was developed in response to a request from the Airport Noise Committee to amend the District Plan to address practical difficulties in managing the travel requirements of New Zealand and international heads of state and senior dignitaries, particularly when these occur in times of national or international crisis or as a result of sudden unforeseen events of national or international importance.

The problem is exacerbated by the inability to respond quickly to such requests through the resource consent process.

4. Discussion

Proposed District Plan Change 15 was publicly notified on 26 February 2003. Sixteen main submissions and two further submissions were received on the proposed Plan Change.

A hearing was held on 14 July 2003 at which four submitters made further representations. The Hearing Committee was persuaded, taking into account both the oral and written submissions, that District Plan Change 15 be approved by Council without amendment and as detailed in the report at Appendix One.

Once approved by Council the decision will be publicly notified and served on the submitters. Submitters then have the option of referring the matter to the Environment Court within 30 working days. If no references are made the District Plan Change will become operative.

Report from: Sue Piper

Chairperson of the District Plan Hearings Committee on Plan Change 15

Appendix One – Report of the Hearing Committee

WELLINGTON CITY COUNCIL REPORT OF THE HEARING COMMITTEE

SUBJECT: **PROPOSED DISTRICT PLAN CHANGE
15: AIRPORT CURFEW EXEMPTION
RULES**

COMMITTEE MEMBERS: **CRS PIPER
HUTCHINGS**

DATE OF HEARING: **14 JULY 2003**

1. RECOMMENDATIONS

- 1) *That District Plan Change 15 is approved without change as publicly notified on 26 February 2003(Appendix Two).*
- 2) *That all the submissions and further submissions be accepted or rejected to the extent that they accord with recommendation (1) above.*

2.0 INTRODUCTION

This decision relates to a Council initiated plan change to amend the airport curfew exemption rules to provide New Zealand heads of state and New Zealand senior dignitaries with the same level of dispensation to the night flying curfew that currently exists for foreign heads of state and foreign senior dignitaries.

The Plan Change was developed following a request from the Wellington Airnoise Management Committee to amend the District Plan to address practical difficulties in anticipating the travel requirements of New Zealand and international heads of state and senior dignitaries, particularly when these occur in times of national or international crisis or as a result of sudden unforeseen events of national or international importance. The problem is exacerbated by the inability to respond quickly to such requests through the resource consent process.

Sixteen main submissions and two further submissions were received on the proposed Plan Change. Six submitters supported the Plan Change as proposed, two submitters supported the Plan Change subject to minor wording changes, and nine submitters opposed the Plan Change.

The following individuals attended the hearing and spoke to their submission:

- Robyn Boldarin (for Miramar Maupuia Progressive Association)
- Alex Fechner (for Wellington Airnoise Management Committee)
- Colin Stuart (Rufus) Dawe
- Robert Murray

The Committee gave careful consideration to all the issues raised by the submitters, including those issues elaborated on in presentations by the individuals who appeared before the Committee. The following discussion sets out the key issues and the Committee's reasons for making its decision.

3.0 ISSUES & REASONS

3.1 Need for a Plan Change

The Committee gave careful consideration to this issue as there were strong levels of support and opposition for the need for a Proposed Plan Change.

The Committee considered submissions in opposition that a plan change was not justified as alternative arrangements are easy to make. The Committee also heard from submitters that the need for a Plan Change was not justified due to the relative infrequency of such requests and due to the scope for exemptions to occur under the existing exemption provisions in the District Plan.

The Committee also noted the strong levels of support received from a number of submissions (including an oral submission by the Wellington Airnoise Management Committee) that the Plan Change was required to address practical difficulties in managing the travel requirements of New Zealand and international senior dignitaries, particularly when urgent responses were required as a result of unforeseen events of national or international importance.

In responding to these comments, the Committee was of the view that the current provisions in the District Plan relating to VIP travel imposed an unreasonable level of constraint, particularly for New Zealand heads of state and senior dignitaries. The Committee also agreed with the comments put forward at the hearing by the Wellington Airnoise Management Committee) that the current wording in the District Plan, by only allowing such flights when they occur on foreign military aircraft, made it impractical to apply the dispensation in accordance with the intent of the rule. The Committee, in coming to the conclusion that a plan change was required, acknowledged the problems in relying on the resource consent process to respond quickly to requests for exemptions to the curfew.

The Committee was also of the opinion that the relative infrequent nature of likely requests under the proposed change was insufficient grounds for not going ahead with the Plan Change. The Committee noted that requests to fly in the curfew period do, on occasions, occur and that continuing to refuse such requests in times of crisis and for sudden events would have the potential to unnecessarily inconvenience the travelling dignitary and lead to considerable embarrassment for the City. The Committee was also of the view that the changes would enhance the ability of Wellington to function more effectively as the capital of New Zealand.

3.2 Potential Effects

There was considerable discussion in submissions on the potential effects of the proposed Plan Change.

Submitters opposing the plan change raised concerns (through written and oral submissions) about the potential for increased sleep disturbance for the community through increased noise, including the need to consider noise expected from one off events during the curfew.

The Committee acknowledged there will be some additional noise if more flights are permitted to occur during the curfew but that the extent of effect is primarily dependant on the frequency of such events. To this effect, the Committee was guided by the evidence from the Wellington Airnoise Management Committee and New Zealand Defence Force that the frequency of requests under the proposed Plan Change were likely very low (one or two a year). The Committee also noted that some submitters were confused about the frequency and type of flights that occur during the curfew period under the existing exemption rules. Monitoring data obtained from the Wellington Airnoise Management Committee clearly indicates that there are very few departures during the curfew period and such flights are primarily required for medical emergencies. The Committee was of the opinion that the Wellington Airnoise Management Committee should provide information to make the public more aware of the purpose of the current operations during the curfew.

The Committee concluded that the extent of noise received in residential areas from one off flights was dependant on a wide range of variables (such as fog, wind levels, wind direction, type of aircraft, and whether the aircraft is taking off or landing). The Committee also noted that the noise effect from New Zealand Defence Force aircraft (most common aircraft used for VIP transportation) has been significantly reduced with the recent introduction of New Zealand Defence Force's new Boeing 757 aircraft (Chapter 3 Compliant). On this basis and due to the likely very low frequency of dignitary flights in the curfew, the Committee was of the view that effects of allowing the Plan Change would be considered to be no more than minor.

The Committee heard from Rufus Dawe that sleep deprivation was an issue for senior dignitaries (by flying at night) and that this should be given consideration in the Plan Change as this would have an adverse effect on the political, economic and social welfare of New Zealand through poor decision making. The Committee noted Mr Dawes comments but was of the view that the connection between sleep deprivation and poor decision making was too difficult to tie specifically to the Plan Change.

3.3 *Scope of the Rule*

The effect of Plan Change 15 is that it widens the scope to enable New Zealand heads of state and senior dignitaries to have the same level of dispensation to the curfew to that of foreign heads of state and senior dignitaries. In doing so, it removes the constraint of the type of aircraft used to carry the dignitary and places a greater emphasis on the reasons for which the exemption provision might be used by the introduction of the words "*...acting in their official capacity*".

Submissions ranged from full support to deletion of the entire rule.

The Committee considered submissions indicating that the scope of the Plan Change was too wide and, if not rejected, should be further tightened to ensure the rule is not abused. More specifically, the Committee heard that there was insufficient information to determine who could apply for the exemption as a senior dignitary and that the proposed wording would enable Ministers of the Crown to travel during curfew on ordinary commercial passenger flights returning from overseas.

In responding to these concerns, the Committee was of the view that the revised rule, by referring to "heads of state and senior dignitaries acting in their official business" provided sufficient guidance as to the scope of the rule and that it was clear from the wording that the exemption is intended to apply to business associated with government. The Committee noted that commercial airline companies are well aware

that they cannot schedule flights to occur during the curfew period and that in attempting to do so was clearly not in accordance with the scope or intent of the policy. Accepted practice for commercial airline companies is not expected to change as a result of this plan change.

The Committee was also satisfied that the existing monitoring and administrative arrangements set up under the Wellington Noise Management Plan (reported through the Wellington Airnoise Management Committee) provided a good “backstop” to ensure any compliance issues are picked up and dealt with quickly. The Committee was guided in this matter by the multi-stakeholder membership of the Wellington Airnoise Management Committee and noted comments in support on the basis that the Plan Change was supported by the Wellington Airnoise Management Committee.

3.4 Reliance on the Good Neighbour Principle

A number of submissions (both oral and written) expressed concern that the agencies dealing with the travel arrangements for heads of state and senior dignitaries were unlikely to comply with the policy intent of the exemption rule.

The Committee was of the view that there are sufficient processes in place to ensure that the good neighbour principle is adhered to by agencies dealing with the travel arrangements for heads of state and senior dignitaries. In coming to this conclusion, the Committee was guided by the fact that both New Zealand Defence Forces and the Department of Internal Affairs (the agencies responsible for organising government VIP travel) had provided a commitment in writing to continued compliance with the intent of the curfew and scope of the proposed plan change. The Committee also noted the submission by New Zealand Defence Force reiterating its policy to mitigate any adverse effects of New Zealand Defence Force aircraft activity at the airport and to ensure, where practicable, all flights by New Zealand Defence Force occur outside the curfew period.

Given this level of commitment, the Committee was surprised that some submitters did not accept that these agencies would comply with the intent and scope of the rule.

3.5 Other Issues

The Committee heard from Robert Murray challenging the right of organisations to have a say about the curfew which is intended to provide an amenity (a good nights sleep) which an organisation cannot benefit from. Mr Murray’s concern stems from the premise that the curfew was put in place for the benefit of the surrounding residents and organisations as such would not receive any benefit in terms of noise effects or improved sleep patterns. The Committee noted these comments but considered that there was a need to regard both the potential effects (in terms of noise) and potential benefits (in terms of operational needs) of the Plan Change.

The Committee also heard that the plan change should not be accepted as it was not consistent with the decision of the Environment Court regarding the present curfew. The Committee was of the opinion that the proposed Plan Change (by further refining an existing provision) is not inconsistent with the Environment Court’s findings. The Committee noted that the existing provisions have been in place for over three years and it would not be unexpected to have some refinement over that time. Furthermore, the proposed change makes a very specific adjustment to improve the workability of an existing provision – it does not propose any changes to the curfew period and it does not propose to introduce changes that would detract from the policy intent of the Court findings.

4.0 CONCLUSION

The Committee accepted that the current provisions in the District Plan relating to travel during the curfew imposed an unreasonable level of constraint for New Zealand heads of state and senior dignitaries, particularly when urgent responses were required as a result of unforeseen events of national or international importance.

The Committee was persuaded, taking into account both the oral and written submissions, that the effects of allowing the Plan Change can be considered to be no more than minor and that there were sufficient processes in place to ensure compliance with the intent and scope the amended rule. Furthermore, the Committee accepted the commitment from New Zealand Defence Forces and the Department of Internal Affairs that they would ensure, where practicable, that all VIP flights would continue to occur outside the curfew period.

The Committee considered that the proposed Plan Change (as notified on 26 February 2003) would improve the workability of the Plan and at the same time enhance the ability of Wellington to function more effectively as the capital of New Zealand.

Sue Piper
Chairperson, Hearing Committee

Appendix Two - District Plan Change 15

The Wellington City District Plan is amended as follows:

11A AIRPORT RULES

Rule 11.1.1.1.5 (exemptions to the night flying curfew)

Amend the wording of clause (g) of Rule 11.1.1.1.5 by:

- deleting the words “*foreign military*” at the beginning of the clause; and
- replacing the words “*senior foreign dignitaries*” at the end of the clause with the words “*senior dignitaries acting in their official capacity*”.

The amended clause would read:

(g) aircraft carrying heads of state and/or senior dignitaries acting in their official capacity.