

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2024] NZEnvC 098

IN THE MATTER OF an appeal under clause 14 of the First
Schedule of the Resource Management
Act 1991

BETWEEN NEALE RUSSELL LIMITED

(ENV-2022-AKL-000061)

Appellant

AND WAIKATO DISTRICT COUNCIL

Respondent

AND GLENBON FARMS LIMITED

KOPUERA LAND COMPANY
LIMITED

Section 274 parties

Court: Environment Judge S M Tepania sitting alone under s 279 of the
Act

Last case event: 12 April 2024

Date of Order: 6 May 2024

Date of Issue: 6 May 2024

CONSENT ORDER

Neale Russell Limited v Waikato District Council



A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

(1) the appeal is allowed subject to the amended plan provisions attached as **Appendix A** to this order; and

(2) the appeal is resolved in its entirety.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent determination relates to an appeal by Neale Russell Limited (**NRL** or **the Appellant**) against parts of the decisions of Waikato District Council (**Council** or **Respondent**) on the Proposed Waikato District Plan (**PDP**).

[2] The relief sought in the NRL appeal has been assigned to Topic 15: Land use provisions – other zones.

[3] This consent order resolves the appeal in its entirety.

Background

[4] NRL owns the Mercer Airport located on Koheroa Road, which is operated by Palms on George Ltd. The Airport operates under a resource consent issued in 1996 which allows for the operation of the consent holder's private airstrip as a commercial airport with skydiving, flight training and light commercial airwork (**original consent**). In 2013 NRL was granted a further consent to vary three of the conditions of the original consent, which was appealed to the Environment Court. A consent order resolving the appeal was issued on 3 March 2014. Mercer Airport therefore currently operates under one consent, being the original consent from 1996 as amended by the 2014 consent order which imposes operational limits (**existing resource consent**).

[5] NRL's original submission on the PDP sought to recognise and provide for the activities at Mercer Airport through the following amendments to the PDP as notified:

- (a) Rezone the Mercer Airport from Rural to a Special Purpose Mercer Airport Zone;
- (b) Provide objectives and policies to support existing and proposed activities within the Mercer Airport Zone, as appropriate;
- (c) Amend the PDP to include:
 - (i) an Obstacle Limitation Surface (**OLS**) for Mercer Airport, together with consequential rules regarding height control for buildings, structures and trees; and
 - (ii) an Airport Noise Control Boundary and Outer Control Boundary (**ANB**) for Mercer Airport and the inclusion of consequential rules regarding noise insulation;
- (d) Include aerodrome design characteristics (runway and runway strip dimensions) as an Appendix to the Mercer Airport Zone (**MAZ**).

[6] The s 42A report recommended that the Rural zone not be changed to a Special Purpose Airport Zone, and that the OLS and ANB provisions not be included in the PDP for the following reasons:¹

- (a) The ANB and OLS rules impose restrictions on the neighbouring property owners;
- (b) The Special Purpose Airport Zone as proposed by the submitter allows permitted activities that may have potential adverse effects on the rural environment;
- (c) There are concerns regarding a lack of consultation with the community, and that the ability for the neighbouring landowners and the community

¹ Hearing 25: Zone Extents Mercer and Meremere, Opening Statement, at [26].

to express their views was limited to the opportunity to make a further submission; and

- (d) Whilst the National Planning Standards enable Council to include a Special Purpose Airport Zone in the PDP, including such a zone is not mandatory.

[7] In the PDP hearings, NRL presented legal, planning, aviation and acoustic evidence in support of its submission. Having closely considered the evidence presented on behalf of NRL, the IHP concluded they were satisfied that a special purpose zone, the MAZ, with the proposed ANB and OLS should be created for the existing Mercer Airport.² With respect to the proposed noise provisions for the special zone, the IHP made a series of amendments to the provisions proposed by NRL. One such amendment was the introduction of hours of operation, consistent with the existing consent. This was on the basis that aircraft operations during the night are likely to impact on the amenity of adjoining landowners. Consistent with the approach to Te Kowhai Airfield, the IHP amended the Special Purpose Airport Zone to reduce hours of operation over the winter period (rule MAZ-S1).³

Appeal

[8] On 28 February 2022, NRL filed an appeal against the decisions version of the PDP seeking the following:⁴

- (a) The deletion of rule MAZ-S1, which controls the hours of aircraft operation on the basis that:
 - (i) The IHP's decision is inconsistent with both the existing resource consent because it imposes more limited hours of operation during winter months, and NZS6805 Airport Noise Management and Land Use Planning insofar as it approaches night time noise;

² Decision Report 28N: Zoning – Mercer and Meremere, at [5.21].

³ Decision Report 28N: Zoning – Mercer and Meremere, at [5.12].

⁴ Notice of Appeal on behalf of Neale Russell Ltd, dated 28 February 2022, at [10].

- (ii) The IHP incorrectly determined the MAZ and the Te Kowhai Airpark Zone should follow the same approach to hours of operation, when the receiving environment and nature of the Te Kowhai Airpark Zone, is patently different to that of the MAZ; and
- (iii) The IHP made a finding as to amenity impact on adjoining landowners from night-time aircraft operation which was contrary to the expert evidence before them.

[9] Glenbon Farms Limited (**Glenbon**) and Kopuera Land Company Limited (**Kopuera**), who both own land within the noise contours of the MAZ, joined the appeal under s 274 of the Act.

Agreement reached

[10] Since lodging the appeal, the parties have taken part in direct discussion, a Court-assisted mediation, expert conferencing between the acoustic experts and expert conferencing between the planners. Following the expert conferencing, the parties entered into further discussions and have now reached an agreement which will resolve the appeal in its entirety.

[11] The amendments to the relevant chapters of the PDP decisions version as a result of the agreement reached are set out in **Appendix A** to this memorandum (additions marked as underlined and deletions as ~~striketrough~~).

Section 32AA evaluation

[12] Section 32AA of the Act requires a further evaluation of any changes to the proposed plan change since the initial s 32 evaluation report and the Decision. Council prepared a standalone s 32AA evaluation, which was attached to the joint memorandum of the parties dated 12 April 2024.

[13] In summary, the s 32AA assessment concludes that:

- (a) The scale and significance of the proposed amendments are assessed as low given:

- (i) They amount to a minor shift in outcomes in the decisions version of the PDP, with the inclusion of more specific provisions to guide the use of Mercer Airport;
 - (ii) They have a very confined spatial impact;
 - (iii) They recognise the need to manage airfield activities in a way that minimises adverse effects on properties in close proximity to the airfield; and
 - (iv) They will not introduce any compliance costs or other financial impacts on third parties;
- (b) The objectives of the proposed amendments, to enable aircraft movements at Mercer Airfield in a way which effectively manages any adverse effects, are the most appropriate way to achieve the purpose of the RMA as:
- (i) The proposal will support future generations of users of the airfield as well as nearby residents and will enable the continued use of the airfield, which is an efficient use of resources, in accordance with s 5(2)(a) of the Act;
 - (ii) The proposal will enable surrounding residents to provide for their health and safety in accordance with s 5(2) of the Act, in that the amendments manage noise and hours of operation of the Mercer Airport;
 - (iii) The proposal constitutes an efficient use of land in this particular location, in accordance with s 7(b) of the Act, as the Mercer Airport has been in this location for some time, and the objective of the proposal is to enable continued use of the airfield; and
 - (iv) The proposal will maintain and enhance the quality of the environment and amenity values in accordance with s 7(c) and (f) of the Act as the objective of the proposed amendments is to

manage adverse effects arising from activities associated with the Mercer Airfield thus ensuring amenity values are, at the very least, maintained for surrounding residents;

- (c) The proposed amendments are considered the most appropriate method for achieving the objectives of the MAZ, and other related objectives in the decisions version of the PDP, as:
- (i) Prohibiting aircraft movements during the hours of 10pm and morning civil twilight (**MCT**) is the most appropriate way to achieve Objective MAZ-O2 and Policy MAZ-P5, by managing and mitigating the adverse noise effects arising from the aircraft movements and maintaining amenity outcomes compatible with surrounding land uses;
 - (ii) Certain flight activities that are particularly noisy, such as circuit training, skydiving, and aerobatics, have been specifically excluded as they are not considered essential during the early morning hours;
 - (iii) Requiring the preparation of a daily record of number and purpose of aircraft movements between MCT and 7am will provide more certainty to affected parties and make NOISE-R34 more measurable and enforceable. The extended aircraft operating hours will provide more flexibility for the airport operator while protecting the rural environment from unacceptable noise impacts during the most sensitive periods of the night; and
 - (iv) They seek to strike a balance between growth and amenity in line with PDP strategic Objective SD-O1, which seeks to provide a thriving economy, and Objective SD-O10 which protects existing activities from reverse sensitivity effects.

Consideration

[14] In making this order, the Court has read and considered the notice of appeal dated 28 February 2022 and the joint memorandum of the parties dated 12 April 2024.

[15] The Court is making this order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order; and
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[16] The Court is satisfied that the agreement reached is within the scope of NRL's submission and appeal.

Order

[17] The Court orders, by consent, that:

- (a) The appeal is allowed subject to the amended plan provisions in **Appendix A** to this order;
- (b) The appeal is resolved in its entirety; and
- (c) There is no order as to costs.



S M Tepania
Environment Judge



Appendix A – Tracked change agreed amendments to the PDP decisions version

(a) Addition of two new definitions in Part 1 – Interpretation – definitions:

Term	Definition
<u>Morning civil twilight (MCT)</u>	<u>Means, for the purpose of Rule MAZ-S1, the beginning of daylight or when the centre of the rising sun’s disc is 6 degrees below the horizon as defined by the Civil Aviation Authority.</u>
<u>Flight Movement</u>	<u>Means, for the purpose of Rule MAZ-S1, either one take off or one landing of an aircraft / aeroplane.</u>

(b) Amendments to MAZ-S1 in Part 2 – Mercer Airport zone:

MAZ-S1	Hours of operation for aircraft operations
<p>(1) Activity status: PER</p> <p>Where:</p> <p>(a) Aircraft operations shall be carried out between:</p> <p>(i) 0700 hours to 2200 hours in the summer period; or <u>and</u></p> <p>(ii) <u>Morning civil twilight to 0700 hours for up to five (5) flight movements except for circuit training, skydiving, and aerobatics.</u></p> <p>0700 hours to 1900 hours in the winter period.</p> <p>(b) <u>MAZ-S1(1)(a) does not apply to the following:</u></p> <p>(i) Aircraft landing or taking off in an emergency; or</p> <p>(ii) Emergency flights required to rescue persons from life threatening situations; or</p> <p>(iii) Emergency flights to transport patients, human vital organs or medical personnel in a medical emergency; or</p> <p>(iv) Flights required to meet the needs to a national or civil defence emergency declared under the Civil Defence Emergency Management Act 2002; or</p> <p>(v) <u>Flights required to meet the requirements of national security; or</u></p> <p>(vi) <u>(vi) Aircraft using the airfield due to unforeseen circumstances as an</u></p>	<p>(2) Activity status where compliance not achieved: DIS</p>

<p>essential alternative to landing at a scheduled airport elsewhere; or</p> <p>(vi) (vii) Aircraft being used in the course of firefighting duties; or</p> <p>(viii) (viii) Aircraft being used in the course of police duties.</p>	
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(c) Amendments to NOISE-R34 in Part 3 – NOISE:

NOISE-R34	Noise – aircraft operations	
<p>MAZ – Mercer airport zone</p>	<p>(1) Activity status: PER Where:</p> <p>(a) Noise from aircraft operations in the MAZ – Mercer Airport zone shall not exceed 65 dBA Ldn outside the Air Noise Boundary and 55 dBA Ldn outside the Outer Control Boundary as shown on the planning maps. For the purpose of this rule aircraft noise shall be assessed <u>per night in accordance with NZS6805:1992 “Airport Noise Management and Land Use Planning” and logarithmically averaged over a three month period.</u> The following operations are excluded from the calculation of noise for compliance with noise limits:</p> <ul style="list-style-type: none"> (i) Aircraft engine testing and maintenance; (ii) Aircraft landing or taking off in an emergency; and (iii) Air Show (for one air show per year). <p>(b) Aircraft movements shall be recorded monthly and noise contours for the purpose of assessing compliance with rule NOISE-R34(1)(a) shall be calculated no later than 12 months from the date the rule becomes legally operative and thereafter once every two years. When the calculated noise level is within 1 decibel of the limit noise contours for the purpose of assessing compliance with Rule NOISE-R34(1)(a) shall be calculated annually and verified with infield monitoring once every two years.</p> <ul style="list-style-type: none"> (i) A report detailing the noise contours and calculations and in-field noise levels in the years that these are monitored, shall be prepared and forwarded to the Council on an annual basis by the airport operator. (ii) <u>The airport operator shall prepare a report on a daily basis that records the number and purpose of aircraft movements taking place between morning civil twilight to 0700 hours. Reporting of these results to Council must be on a 3 monthly basis.</u> 	<p>(2) Activity status where compliance not achieved: DIS</p>