

BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 28

IN THE MATTER of the Resource Management Act 1991 (**the Act**) and appeals pursuant to clause 14 of the First Schedule and a designation under section 174 of the Act

BETWEEN AIR NEW ZEALAND LTD

(ENV-2011-WLG-001)

QUEENSTOWN AIRPORT
CORPORATION LTD

(ENV-2011-WLG-003)

REMARKABLES PARK LTD AND
SHOTOVER PARK LTD

(ENV-2011-WLG-004)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

BETWEEN AIR NEW ZEALAND LTD

(ENV-2011-WLG-014)

REMARKABLES PARK LTD AND
SHOTOVER PARK LTD

(ENV-2011-WLG-016)

Appellants

AND QUEENSTOWN AIRPORT
CORPORATION LTD

Respondent



Resumed Hearing: at Christchurch on 6 November 2012

Court: Environment Judge J E Borthwick
Environment Commissioner R M Dunlop
Environment Commissioner D J Bunting

Appearances: M M E Wikaira for Air New Zealand Limited
R M Wolt for Queenstown Airport Corporation Limited
J D Young for Remarkables Park Limited and Shotover Park
Limited
M A Ray for Queenstown Lakes District Council

Date of Decision: 5 March 2013

Date of Issue: 5 March 2013

SECOND INTERIM DECISION OF THE ENVIRONMENT COURT

REASONS

Introduction

[1] Following the release of the Interim Decision¹ in September 2012, this proceeding was resumed for the purpose of deciding discrete issues in relation to plan change 35, the notice of requirement to amend Designation 2 (the aerodrome designation) to include new or amended conditions for the airport noise boundaries, noise predictions, noise monitoring and noise mitigation measures and finally, the draft Noise Management Plan.

[2] Prior to the hearing the parties addressed to a substantial degree the concerns expressed by the court in its Interim Decision and filed updated documentation recording their agreement. In addition, the parties had taken on board the recommendations made by the court in respect of the Noise Management Plan.



¹ [2012] NZEnvC 195.

[3] As a consequence of evidence exchange, and with the benefit of a short hearing, all outstanding matters have been resolved as between the parties. In this Second Interim Decision we address, to the extent we consider necessary, the draft documentation filed by the parties under a joint memorandum dated 30 November 2012 and set out the agreements reached.

Planning map 31a and Figure 2 – Airport Measures and Activity Areas and related policies methods and rules

[4] Before we do so, we adjourn again the issue of an amendment to planning map 31a and the proposed amendment of Figure 2 – Airport Measures and Activity Areas.² A final determination on the planning map and Figure 2 will be made in conjunction with the second Queenstown Airport Corporation Ltd (QAC) notice of requirement lodged in relation to Designation 2. Referred to as **Lot 6 NOR**, the Environment Court released its decision on the second notice of requirement in September 2012: *Queenstown Airport Corporation Ltd* [2012] NZEnvC 206. This decision has been appealed to the High Court, including by RPL.

[5] We record that Ms Wolt for Queenstown Airport Corporation Ltd accepted that the planning map and Figure 2 are dependent on the outcome of the Lot 6 NOR.³ Mr Young for Remarkables Park Ltd (RPL) was more equivocal.⁴ While he agreed that planning map 31a cannot be approved prior to the outcome of the High Court appeal, his position on Figure 2 was not clear. This lack of clarity may reflect an agreement between RPL and QAC for the purpose of these proceedings only, and that Figure 2 would be based on the noise contours that would apply if the QAC's notice of requirement to extend Designation 2 (i.e. Lot 6 NOR) was confirmed.

[6] Be that as it may, the extension of the aerodrome designation determines future noise contours and, it follows, the outer control and air noise boundaries on planning map 31a. In turn the noise boundaries determine the spatial arrangement of certain land uses within the Remarkables Park Zone which are recorded, amongst other places, in

² Plan Change 35, Remarkables Park Zone – rules at 12-93/94.
³ Transcript at 6.
⁴ Transcript at 137-8.



Figure 2.⁵ The parties do not suggest that the wording of policies, rules and methods that are contingent upon the approval of the amended Figure 2 will alter and so these provisions are able to be approved notwithstanding Figure 2 may yet be amended.

[7] If QAC's notice of requirement for Lot 6 is ultimately cancelled, the parties will need to address Figure 2 (for example, should it revert back to the Figure in the operative District Plan?).

Issue: Should the District Council implementation method for partial funding of sound insulation of existing buildings refer to the 2037 Noise Contour?

[8] In the Interim Decision we invited the parties to provide further technical evidence if the court had misapprehended the purpose and effect of any provision within the draft documentation. In his further supplementary evidence of 17 October 2012 Mr Day clarified the reason for including the words "... based on the 2037 1 dB Noise Contours contained in the NMP", namely that a building which qualified for noise mitigation when the noise level reached 65 dB before 2037 could ultimately be subjected to a higher noise level by 2037. It was therefore necessary for the noise mitigation measures to be designed for this higher 2037 noise level rather than 65 dB. We agree.

[9] The situation is different where a building owner may be eligible for partial funding for mechanical ventilation for Critical Listening Environments within the 60 dB Projected AANC. While condition 16 of the Designation does not refer to the 2037 Noise Contour, QAC nevertheless proposes reference to this is retained in various places in the District Plan. For example the District Wide Issues Objective 7, Implementation Method (i) District Plan,⁶ with reference to Activities Sensitive to Aircraft Noise between the Air Noise Boundary and the 60 dB AANC, includes the words "... Retrofitting shall be based on the 2037 Noise contours ..." and also in the Residential Areas and Business and Industrial Areas Sections.

⁵ Plan Change 35, Remarkables Park Zone, Objective 1 and related policies, Explanation and Principal Reasons for Adoption at p12-3.

⁶ Page 4-59 fifth paragraph.



[10] Mr Day's evidence was that the reference to the "2037 Noise Contours" in the Plan Change, but not in condition 16 of the Designation, would not compromise the intent of these provisions, but agreed with the court that the 2037 Noise Contours are irrelevant when considering funding for noise mitigation outside of the Air Noise Boundary.⁷ Instead, the obligation to offer funding for mechanical ventilation is triggered by the projected AANC.

[11] We find the continued reference to the 2037 Noise Contours unhelpful since – as Mr Day says – it is irrelevant to the determination of funding for properties outside the Air Noise Boundary. It is preferable that terms in the District Plan and the Designation are used deliberately and are consistent in their employment.⁸ We have amended, accordingly, the provisions at [17].

Issue: are the implementation methods consistent in their use of terms?

[12] Having reviewed the agreed plan change provisions filed in November 2013, it has come to our attention that the same implementation methods inconsistently refer to the "60 dB AANC" and the "2037 60 dB Noise Contour" also in the context of the funding of retrofitting of mechanical ventilation. The Implementation Method in the District Wide Section at page 4-57 of the plan change refers to "existing buildings containing an Activity Sensitive to Aircraft Noise located between the Air Noise Boundary and the 60 dB AANC" [our emphasis]. Other versions of the same implementation method refer instead to the "2037 60 dB Noise Contour".

[13] The definitions in the plan change and the draft Noise Management Plan at paragraph 7.7-7.10 make clear these noise contours are not the same. From our understanding of Mr Day's evidence the reference to 60 dB AANC is correct. If that is the case, other than the Implementation Method appearing in the District Wide Issues Section, all other Implementation Methods are incorrect and are to be amended to reference 60 dB AANC.



⁷ Resumed hearing, Transcript at 25.

⁸ Resumed hearing, Transcript at 25, 45-47.

Issue: Are additional policies and rules required in relation to the rural, business and industrial areas?

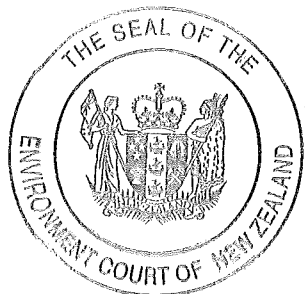
[14] The structure of the proposed change to the District Plan was not clear at the time the Interim Decision was released. As recorded we were unsure whether there were any existing buildings within the 60 dB Ldn contour and the air noise boundary over Rural areas and secondly, Business and Industrial areas.⁹ If there were then we queried whether there should be policies, rules and methods for the funding of noise mitigation.

[15] Mr Kyle, QAC's planner, acknowledged that the structure of the plan change would not have been clear from what he referred to as the first tranche of documents.¹⁰ At the resumed hearing he explained the structure advising that no objectives or policies were proposed for funding the retrofitting of sound insulation and, as the case may be, mechanical ventilation for existing buildings. The obligation on QAC to offer funding arises from the amendments made to the Aerodrome Designation and not the District Plan. The funding obligations are recorded as implementation methods within various Sections of the District Plan. In contrast there are policies and rules obliging the owners of new or altered buildings to install, as necessary, mechanical ventilation and sound insulation. These obligations arise under the District Plan, and not the Designation. The plan change was not consistent in its approach, omitting the latter in the Sections addressing Rural, Industrial and Business areas. In response to the Interim Decision there have been substantial changes to these two Sections, which (subject to our findings below) we generally approve.

[16] We are satisfied with the structure of the proposed plan change, particularly with the amended objectives and policies and find the provisions appropriate without the need to add policies and rules to address the funding of noise mitigation by QAC. The objectives and policies within the District Wide Issues supported by the Implementation Methods are sufficiently broad to guide the implementation methods in different chapters of this District Plan.

⁹ At 31 and 35.

¹⁰ Transcript at 102.



Issue: Is the wording of objective 4, Business & Industrial Areas Section appropriate?

[17] In our Interim Decision on plan change 19 we criticised the wording of certain airport related objectives and associated policies for containing imprecise language such as “complementary to the operations current and reasonably foreseeable future operational capability” (QLDC policy 3.3); and “existing and reasonably foreseeable future operational capability and capacity” (QLDC policy 3.4).¹¹ This is so where growth in the Airport’s operations and measures to address the adverse effects arising from its existing and future operations are dealt with in the Interim Decision on plan change 35.

[18] More of the same language appears in the new objective for the Business and Industrial Areas Section (objective 4). Given the breadth of changes being considered in these proceedings and the related plan change 19 proceedings – any differences in wording in the higher order provisions relevant to the Queenstown Airport were not at the forefront of our minds at the resumed hearing.

[19] We have amended the objective at paragraph [20] below to bring it in line with the higher order provisions of plan change 19, as proposed to be amended by the court, and set out in Part 16 of *Queenstown Airport Corporation Ltd and ors v Queenstown Lakes District Council* [2013] NZEnvC 14.

Outcome

[20] For the reasons that we give above, we find that the wording of the Designation Condition 16 should prevail, and for clarity and consistency, in relation to the implementation methods that appear in plan change 35 at:

- page 4-57 amend Implementation Methods (i);
- page 5-6 amend Implementation Methods (v);
- page 5-9 amend Implementation Methods (i)(i);
- page 7-6 amend Implementation Method (j);

¹¹ *Queenstown Airport Corporation Ltd and ors v Queenstown Lakes District Council* [2013] NZEnvC 14 at [691].



- page 11-6, of the Business & Industrial Area Section, Implementation Methods (i) as follows:
 - the relevant paragraph is to read:

Queenstown Airport Corporation Limited shall offer to part fund retrofitting over time of mechanical ventilation of any Critical Listening Environment within existing buildings containing an Activity Sensitive to Aircraft Noise located between the Air Noise Boundary and the 60 dB AANC ~~2037 60dB Noise Contour~~. This ventilation is to enable windows and doors to remain closed to achieve the Indoor Design Sound Level if required. ~~Retrofitting shall be based on the 2037 Noise Contours and~~ shall be offered at the time the Projected 60 dB AANC reaches the property.

[21] If the court is not correct in its understanding that the 60 dB AANC and not 2037 60 dB Noise Contour applies, then the parties are to file a joint memorandum by **15 March 2013** explaining the reason for the difference. If no memorandum is filed, the court approves the implementation methods subject to the amendments at [17].

[22] At page 7-13 amend Implementation Method (c) to read “Rules to require ...”.

[23] Amend objective 4 at page 11-6 of the Business and Industrial Areas Section to read:

Manage business and industrial areas in proximity to Queenstown Airport to ensure that the operations ~~at capacity and integrity~~ of the Airport is are not adversely affected now or in the future by Activities Sensitive to Aircraft Noise.

[24] We otherwise approve plan change 35 and confirm the conditions of Designation 2 (the Aerodrome Designation) that were filed together with the joint memorandum of counsel dated 30 November 2012. No further recommendations are made in relation to the Noise Management Plan.

For the Court:


J E Borthwick
Environment Judge

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