

IN THE ENVIRONMENT COURT  
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU

IN THE MATTER OF

The Resource Management Act 1991 (“the Act”)

AND

IN THE MATTER OF

An appeal under clause 14 of the First Schedule of the  
Act with respect to decisions on the Proposed Waikato  
District Plan

BETWEEN

**Neale Russell Limited**  
Appellant

AND

**Waikato District Council**  
Respondent

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NOTICE OF APPEAL TO THE ENVIRONMENT COURT

ON DECISIONS BY WAIKATO DISTRICT COUNCIL TO THE PROPOSED DISTRICT PLAN

DATED 28<sup>th</sup> February 2022

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**Julian  
Dawson**  
BARRISTER

e [julian@rmalawyer.co.nz](mailto:julian@rmalawyer.co.nz)

m 0274 200 223

post PO Box 531,  
Whangarei 0140

**Auckland Office:**  
28 Customs Street East,  
Britomart, Auckland  
**Northland Office:**  
Suite 6, 27 Rust Avenue  
Whangarei 0110

**TO:** The Registrar  
Environment Court  
Auckland

1. Neale Russell Limited (“**Neale Russell**”) appeals against decisions of the Waikato District Council on the Proposed District Plan contained in Decision Report 28N: Zoning - Mercer and Meremere: Mercer Airport.
2. Neale Russell made a submission and a further submission on the Proposed Waikato District Plan.
3. Neale Russell is not a trade competitor for the purposes of section 308D of the Act.
4. Neale Russell received notification of the decision on 17 January 2022.
5. The decision was made by Independent Hearings Commissioners on behalf of Waikato District Council.
6. The particular parts of the decision Neale Russell is appealing are:  
  
MAZ-S1- Hours of operation for aircraft operations (“**the Decision**”). That is, the part of Decision Report 28N regarding the introduction of hours of operation for Mercer Airport.

**The reasons for the appeal are as follows:**

7. Mercer Airport has a resource consent (LUC0063/12). Condition (h) of that consent states:  
  
*“Aircraft movements are to be confined to between the hours of 7.00 am and 10.00 pm.”*

8. MAZ-S1 Hours of operation for aircraft operations limits aircraft operations to:
  - (i) 0700 hours to 2200 hours in the summer period; or
  - (ii) 0700 hours to 1900 hours in the winter period.

However, some aircraft operations are excluded from this rule, for example aircraft landing or taking off in an emergency.

9. The rationale set out in the Decision for the introduction of MAZ-S1 is:

*5.12 We have made a further amendment to introduce hours of operation, consistent with the Mercer Airport consent. We find that aircraft operations during the night are likely to impact on the amenity of adjoining landowners. For consistency, we have amended the Special Purpose Airport Zone to include the same approach for Te Kowhai Airfield where hours of operation are reduced over the winter period.*

10. However, the Decision:

- (a) fails to have regard to the actual and potential effects on the environment and neighbouring properties of aircraft movements after 2200 hours in the summer and 1900 hours in the winter;
- (b) fails to have regard to the other performance standards and mitigation measures of the Mercer Airport Zone, including Noise Contours;
- (c) is inconsistent with the existing resource consent because it imposes more limited hours of operation during winter months;
- (d) incorrectly determines that the Mercer Airport Zone and the Te Kowhai Airfield should follow the same approach to hours of operation, when the receiving environment, and nature of the Te Kowhai Airfield, is patently different to that of Mercer Airport;
- (e) made a finding as to amenity impact on adjoining landowners from night-time aircraft operation which was contrary to the expert evidence before them and/or of which there was no evidence of a negative effect justifying MAZ-S1;
- (f) is inconsistent with NZS 6805: Airport Noise Management and Land Use Planning, especially insofar as it approaches night-time noise;
- (g) fails to provide for the safe and efficient operation of Mercer Airport and the benefits arising;
- (h) fails to promote the sustainable management of the natural and physical resources of the Respondent's District and does not achieve the purpose of the Resource Management Act 1991;
- (i) does not manage the use of resources in a way that enables the community to provide for its social and economic wellbeing;

- (j) does not represent the most appropriate way to achieve the objectives of the Proposed District Plan in terms of s32 of the Act;
- (k) is contrary to Part 2 and other provisions of the Act.

11. Neale Russell seeks the following relief:

- (a) Deletion of MAZ-S1; and/or
- (b) Such other consequential relief as may be necessary to address its concerns over hours of operation;
- (c) Costs.

12. I attach the following documents to this notice:

- (a) a copy of my submission and further submission;
- (b) a copy of the relevant decision;
- (c) a list of names and addresses of persons to be served with a copy of this notice.

Dated: 28<sup>th</sup> February 2022

A handwritten signature in blue ink, appearing to read 'J.C. Dawson'.

J.C Dawson – Counsel for Neale Russell Limited

**Address for service of appellant:**

Mr Julian Dawson - Barrister

**Telephone:** (0274)200 - 223

**Email:** julian@rmalawyer.co.nz

**Post:** PO Box 531, Whangarei 0140

**Advice to recipients of copy of notice of appeal***How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (*see* form 38).

***How to obtain copies of documents relating to appeal***

The copy of this notice served on you does not have the attachments included. These documents may be obtained, on request, from the appellant.

***Advice***

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

ATTACHMENT ONE

A Copy of My Submission and Further Submission

ATTACHMENT TWO

A Copy of the Relevant Decision

## ATTACHMENT THREE

## Names and Addresses of Persons to be Served with a Copy of this Notice

Waikato District Council	<b>Attention:</b> Sandra Kelly  <b>Email:</b> districtplan@waidc.govt.nz
Mercer Residents and Ratepayers Committee (Submitter)	<b>Attention:</b> Liam McGrath  <b>Email:</b> mercer.committee123@gmail.com