

SECTION 42A REPORT

Rebuttal Evidence

Hearing 25: Zone Extents Mercer & Meremere

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on behalf of Waikato District Council

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I Introduction

I.1 Background

1. My name is Yvonne Legarth. I am employed by Waikato District Council as a Principal Policy Planner.
2. I am the writer of the original s42A report for Hearing 25: Mercer Meremere Zone extent.
3. My qualification and experience are set out in paragraph 2 of that report, and I have not repeated the information contained in section 1.1 to 1.4 of that s42A Hearing Report here, and request that the Hearings Panel take this as read.

I.2 Code of Conduct

4. I confirm that I continue to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014, and that I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearings commissioners.

I.3 Conflict of Interest

5. I confirm that I have no real or perceived conflict of interest.

I.4 Preparation of report H25: Zone Extents: Mercer & Meremere

6. I am the author of this report which has been prepared on behalf of Waikato District Council in accordance with section 42A of the Resource Management Act 1991 (RMA).

2 Rebuttal evidence received

7. Rebuttal evidence was received from the following submitters on the matters discussed in my section 42A Report 25 Mercer Meremere zone extents:
 - i. Sean Grace planning evidence on behalf of the Department of Corrections submitter 496
 - ii. Sarah Nairn planning evidence on behalf of TKDM Farms submitter 351
 - iii. Dave Park on behalf of Neale Russell Limited (Mercer Airport) submitter 921
 - iv. Chris Dawson planning evidence on behalf of Neale Russell Limited (Mercer Airport) submitter 921
 - v. Rhys Hegley Acoustics evidence on behalf of Neale Russell Limited (Mercer Airport) submitter 921.

3 Corrections to the Section 42A Report

3.1 Omitted further submissions in response to Mercer Residents and Ratepayers Committee [367.15]

8. The scope of this report relates to three further submissions that were inadvertently omitted from my section 42A Report H25. The further submissions were made in response to the original submission made by Mercer Residents and Ratepayers Committee [367.15] to add Mercer Airport to Chapter 9 of the plan, using Te Kowhai Airpark as a model.

9. The further submissions are:

Further Submission number	Submitter	Further submission point	Reasons
<i>FS1302.1</i>	<i>Mercer Airport</i>	<i>Support 367.15 Mercer Airport supports this submission point and seeks that the whole of this submission point is allowed.</i>	<i>The further submission point is that submission 367.15 is consistent with the submission made by Mercer Airport to include Mercer Airport as a 'specific zone' in Chapter 9 of the Proposed District Plan.</i>
<i>FS1202.66</i>	<i>New Zealand Transport Agency</i>	<i>Oppose submission point 367.15.</i>	<i>Any rezoning of land which enables more development than currently provided for must be planned to ensure that adverse effects (for example, on the transport network) including cumulative effects, are identified and addressed. The effects upon surrounding transport infrastructure of the rezoning have not been addressed.</i>
<i>FS1277.138</i>	<i>Waikato Regional Council</i>	<i>Oppose 367.15 Do not amend Chapter 9 to include Mercer Airport.</i>	<i>When determining the extent and location of development matters such as high class soils, hazards, landscapes and indigenous biodiversity must be taken into consideration. The district plan must give effect to the relevant policies and association implementation methods in the WRPS. Further consideration of this area and this proposal is required.</i>

10. The issues raised in original submission [367.15] and my recommendation on original submission [367.15] are dealt with in section 7 of my RMA s42A report.¹
11. The further submission of Mercer Airport [1302.01] supports the inclusion of Mercer Airport as a special zone. As I discussed there, a Specific Zone: Mercer Airfield imposes costs and a higher degree of regulation on neighbouring rural properties. Consultation with the rural community and a cost-benefits analysis need to be addressed by the submitter. Good planning practice would usually result in a consistent approach between the objectives and policies that apply in the Special Zone: Te Kowhai Airfield, if the same outcomes are intended. A Specific Zone is not necessarily the most efficient way of enabling or controlling the effects of land use. In the event that safety concerns associated with the operation of the airfield need height controls through an OLS, and insulation requirements to manage noise effects, these can be included in the plan without a zone change from rural to a specific zone.
12. I consider that the potential effects of airport expansion are not fully addressed in the rules sought by the submitter, and that the costs and benefits of the regulatory solutions fall unevenly. The costs to the local community do not outweigh the benefits to that community, and a rural zone is more appropriate to implement the objectives of the rural and urban environments, and achieve the purpose of the RMA.

¹ RMA section 42A report H25: Mercer Meremere zone extents on page 69 at paragraph 324

13. The further submission of NZ Transport Agency [FSI202.66] is that rezoning must consider the effects on the transport network, and that the effects upon surrounding transport infrastructure of the rezoning have not been addressed.
14. The access to the Mercer Airport is along a rural road, and a private driveway. No evidence has been provided about the potential effects on the rural road or the transport network. I agree with the submitter that the actual and cumulative effects on the transport network need to be assessed and managed, and I consider that this can occur through a consent application should the airport expand beyond the scale authorised by the existing resource consent, rather than a special zone that provides for airport expansion, higher vehicle movements and temporary events.

3.2 Recommendations

15. For the reasons in section 7 of my s42A report: Mercer Meremere zone extents: Special Zone Mercer Airport, I recommend that the Hearings Panel:
 - (a) **Reject the further** submissions made by *Mercer Airport* [FSI 302.1].
 - (b) **Accept** the further submissions made by *New Zealand Transport Agency* [FSI 202.66] and *Waikato Regional Council* [FSI 277.138].

4 Consideration of evidence received

4.1 Topics addressed in planning evidence of Sean Grace on behalf of Department of Corrections

16. The main topics raised in evidence from Sean Grace on behalf of the Department of Corrections are:
 - (a) a legal question on submission scope and natural justice issue;
 - (b) that the National Planning Standards use of the Special Zone: Corrections *may also be used for new and changing approaches to prisoner reintegration and rehabilitation.*
 - (c) that the Corrections Zone 'tool' was being made available through national direction to assist with better planning for modern prisons in NZ;
 - (d) that I have made no comment on the provisions proposed in Mr Grace's planning evidence.

4.1.1 Response to submitter evidence

17. The mandatory directions in the National Planning Standards that relate to district plans are at the beginning of the relevant sections (sections 7 and 8 in the case of the district-wide matters and zone framework).
18. In my opinion, the National Planning Standards do not direct the use of a Special zone: Corrections. The National Planning Standards prescribe the names of zones, and that those zones must only be used consistently with the description of those zones. There is no mandatory direction or requirement to use the zone in a district plan, instead it "may" be used.
19. The effect of a designation is that the provisions in a district plan do not apply to activities within the purpose of a designation². I consider that it is inefficient to include a special zone that provides for, or requires a consent for, activities that are undertaken for corrections purposes when a designation is in place to provide for those activities. I remain of the view

² RMA s176(1)

that activities that are not undertaken for corrections purposes should comply with, or obtain a resource consent under, the rural zone provisions.

20. A Special zone: Corrections can only manage activities undertaken for corrections purposes³. The land use provisions in the district plan are overridden by the designation. The district plan can manage activities on land in the rural environment that are not undertaken for corrections purposes, and that is the practical purpose of the underlying rural zone where the designation for corrections purposes is in place.
21. The planning evidence of Mr Grace includes the provisions sought in Appendix I of his evidence. If the Panel are of a mind to accept the further submission made by the Department of Corrections to include a Special Zone: Corrections, I consider that there are some refinements that should be made to the objectives and policies, and rules to clarify the outcomes sought and to ensure that the effects on the rural environment are managed.
22. The rules sought by the submitter permit more intensive residential development for corrections purposes. Mr Grace does not provide details about the self-care units and accommodation used by inmates on release to work programmes, and whether the accommodation at Arohata, Rimutaka and Wiri prisons was provided for using the designation and outline plan provisions, or whether a resource consent was necessary.
23. The focus of the objectives sought in the planning evidence is to provide for Corrections activities. Objective 9.1.2 (c) appears to be in conflict with Objective 9.1.2 (d), and it is unclear how the tension between the two might be resolved. One part of the objective is that the corrections facility is not constrained or compromised by other activities, and another part is that activities on the site that are unrelated to corrections purposes are compatible with the rural zone.
24. The objective is implemented by a rule that any activity in the rural zone is permitted, so there is no ability for the council to assess whether a rural activity might constrain or be incompatible with corrections activities. In practice, this is likely to be resolved through the landowner function and restrictions on public access and use of the land, rather than a consent process.
25. Other permitted activity rules sought in the further submission and planning evidence are that the limits on numbers of residential buildings in the rural zone rules do not apply. The rules in the rural zone control the number of dwellings to maintain rural character, and to ensure that the water and waste, and stormwater effects, are addressed. Intensive residential development is not in keeping with the rural zone outcomes, and if the accommodation in Rule P4 is not for corrections purposes, it is unlikely to occur in a manner consistent with the rural zone provisions.

4.1.2 Recommendations

26. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.

4.1.3 Recommended amendments

27. I have not made any alternative amendments to provisions.

4.2 Topics addressed in planning evidence of Sarah Nairn on behalf of TKDM Farms

28. The main topics raised in evidence from Sarah Nairn on behalf of TKDM Farms are:

³ National Planning Standard section 8 Zone framework mandatory direction I " ...must only contain the zones listed in table 13 consistent with the description of those zones ..."

- (a) Higher-Order Planning Instruments/Urban Growth;
- (b) Urban Growth;
- (c) Village Character;
- (d) Planning Constraints.

4.2.1 Response to submitter evidence

29. The rebuttal evidence from Sarah Nairn on behalf of TKDM Farms includes a map⁴ that shows the size of lots that are within the Village Zone. I agree with the map and lot sizes as shown, however in my opinion the lot sizes shown demonstrate that there are sites that have development potential remaining within the existing Village Zone, and that infill development would be better than expanding the extent of the zone. The WRPS promotes planned growth in identified growth nodes, and Mercer Village is not a Future Proof Growth node.

4.2.2 Recommendations

30. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.

4.2.3 Recommended amendments

31. I have not made any alternative amendments to provisions.

4.3 Topics addressed in planning evidence on behalf of Neale Russell Limited (Mercer Airport)

32. The main topics raised in rebuttal evidence from Dave Park on behalf of Neale Russell Limited (Mercer Airport) are:

- (a) The Obstacle Limitation Surface (OLS) operation and its importance for protecting the ongoing operation of Mercer Airport;
- (b) The location and extent of the OLS;
- (c) The terrain heights beneath the OLS;
- (d) Existing buildings or trees affected by the proposed OLS;
- (e) What constraints will be placed on neighbouring landowners (if any) under the proposed OLS.

33. The main topics raised in the rebuttal evidence from Chris Dawson on behalf of Neale Russell Limited (Mercer Airport) are:

- (a) The most appropriate zoning for the Mercer Airport land under the RMA;
- (b) Comparison of the 1996 consent conditions and the rezoning rules;
- (c) A revised s32AA assessment.

34. The main topic raised in the rebuttal evidence from Rhys Hegley on behalf of Neale Russell Limited (Mercer Airport) is in respect of noise and reverse sensitivity in the event of future development on surrounding land.

4.3.1 Response to submitter evidence

35. I agree with Mr Park that the Obstacle Limitation Surface cannot be provided for through a resource consent condition. My comments in respect of the OLS sought by the submitter are that it is not necessary to have a special zone in the plan in order to include an OLS. I consider

⁴ Rebuttal Evidence of Sarah Nairn on behalf of TKDM Farms Figure 1 on page 5

that where the safety needs demonstrate a need for an OLS, that can be included as a separate planning tool.

36. While I agree with Mr Park⁵ and Mr Dawson⁶ that the OLS sought by the submitter may not impact on existing dwellings, it does impact on the development potential for the future where existing use rights cannot be relied upon. The insulation requirement in Rule 7.1 'Conditions for permitted activities inside the Mercer Airport Outer Control Boundary'⁷ sought in the revised plan provisions attached to the rebuttal evidence of Mr Dawson would apply to the new development.
37. At paragraph 4.5 Mr Park identifies the rural height limits in the proposed plan as 10m. This is not quite accurate. The height is a condition of the permitted activity rule in the proposed plan. It is possible to apply for a resource consent for a building higher than 10m. If there was an obstacle limitation surface in the plan, then non-complying activity Rule 22.3.4.4 would apply to a proposed building over 10m in height in the rural zone.
38. The issue I raise in respect of an OLS and noise controls is that the costs of that planning constraint fall unevenly on the adjacent land owners, and that their views have not been represented in this process.
39. At paragraph 3.5 Mr Dawson suggests that my description of the National Planning Standards suggests that a Special Zone: Mercer Airport may be appropriate. This is not the case. My discussion on the National Planning Standard is in the context of what zones are 'allowed' by that document, and that the zone naming and descriptions include a zone that the Council "may" use. I conclude that the special zone sought by the submitter is not appropriate.
40. At paragraph 3.8 Mr Dawson disagrees that the level of regulation arising from the previous Environment Court consent order can inform the regulatory approach needed to manage effects on the community.
41. In my opinion, the reason why the consent order can inform the regulatory approach in the plan is that it was the subject of evidence, and provided information about what conditions were considered necessary to manage potential effects of the operation of the airport. The rural zone objectives, policies and rules of the operative plan were applied to the consideration of the consent application. The conditions imposed on the consent provide context for management of potential effects that may arise as a result of the airport operation.
42. In addition to the consent order, the correspondence received by the community does suggest that there are options that would properly form part of an RMA section 32A evaluation of the options. I have not undertaken a full s32AA evaluation of the special zone, but I have considered some of the requirements in my s42A report. I do not agree with Mr Dawson's RMA s32AA evaluation attached to his rebuttal that there are no regulatory costs, no environmental costs above those associated with development, no social costs, and no economic costs. There are also 'orphan' rules permitting non-aviation-related activities, and requiring resource consent where conditions are not met that have no objective or policy support.
43. The main issue is whether there should be a Special Zone that provides for Mercer Airport, together with a range of permitted activities, building coverage, noise and traffic effects that are different from those that might be expected in a rural environment. The special zone is packaged together with OLS and noise insulation requirements imposed on the future development of neighbouring properties. The airfield and its ancillary activities appear to be operating satisfactorily under the existing resource consents, including the current consent

⁵ Rebuttal evidence of Dave Park for Mercer Airport at section 5 and paragraph 7.1

⁶ Rebuttal evidence of Chris Dawson for Mercer Airport at paragraph 3.22

⁷ Rebuttal evidence of Chris Dawson for Mercer Airport Appendix on page 10

conditions. The special zone implies a desire for airfield expansion. In my opinion, it would be better to assess increases in the nature and scale of the activities at the airfield, and if appropriate, to accommodate those through further consent requirements. An assessment under the Rural Zone provisions can be used to manage the effects on the rural environment arising from expansions at Mercer Airport.

44. If the panel are of a mind to include a Special Zone: Airport in the district plan, I remain of the view that there needs to be a consistent approach to the provisions within those airport zones, with constraints such as night curfews and noise controls included to ensure that the effects on neighbouring properties are addressed, and the relevant objectives around maintaining rural amenity can be implemented.
45. The provisions sought by the submitter in a special zone: Mercer Airport allow activities of a nature and scale that are greater than those activities permitted, subject to conditions in the rural zone. The potential offsite effects of an increase in airport operations and non-rural land use are not addressed in evidence. This includes potential effects of an increase of traffic on vulnerable road users, such as people on foot moving stock and cyclists, in a rural environment. Access to the airport is via a rural road, and a difficult access along a long private driveway in from the road. This could be an issue with road users who are unfamiliar with rural roads and evening operating hours for the use of the airport, accommodation and events.
46. I agree with Mr Dawson that his amended Objective 2⁸ more clearly states the outcome for managing the effects of the airport on the surrounding rural environment. I consider that the amendments made to the policies and rules⁹ more clearly focus on the management of adverse effects. There is no policy that deals with non-aviation activities in the zone. This should be included to provide a policy platform for the permitted activities, and a decision-making framework for those activities that do not comply with the permitted activity conditions.
47. The permitted activity rules sought by the submitter include a number of activities that are indirectly related to aviation, including unspecified temporary events, and a café, that I consider should be the subject of an assessment to ensure that the effects on the rural character of the surrounding environment can be considered. The rebuttal evidence of Mr Dawson has revised Rule 29.2.12 Jet Flights (compared to that sought in the submission) to include a noise curfew, but that curfew is limited to 'jet flights'.
48. At paragraph 10 Mr Hegley suggests that the noise controls are needed to manage future development, and concludes that the airport requires adequate protection from reverse sensitivity effects. I agree that reverse sensitivity may become an issue in a future scenario where the airport has expanded and the rural environment has been the subject of more intensive urbanised development.
49. Noise insulation can only be effective inside a building. I consider that there may be implications for rural amenity from the airport expansion enabled by a special zone, and that there are increased regulatory costs that would fall on the neighbouring properties.

4.3.2 Recommendations

50. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.

4.3.3 Recommended amendments

51. I have not made any alternative amendments to provisions.

⁸ Rebuttal evidence of Chris Dawson for Mercer Airport at paragraph 3.10.

⁹ Rebuttal evidence of Chris Dawson for Mercer Airport Attachment: Mercer Airport Proposed Objectives and Policies: 3 May Supplementary Evidence version

5 Conclusion

52. I have considered the matters raised by submitters in rebuttal on the matters discussed in my section 42A Report 25 Mercer Meremere zone extents, and I have not changed my recommendations.

Appendix I:

Recommendations on submissions and further submissions in RMA s42A report: H25 Mercer Meremere zone extents:

Section 7: Special Zone: Mercer Airport

Submission point	Submitter	Decision requested	Recommend accept / reject	section in s42A report H25 Mercer Meremere zone extents
367.15	Mercer Residents and Ratepayers Committee	Add Mercer Airport to Chapter 9 Specific Zones using Te Kowhai Airpark as a model, to create future proofing for potential users and for future growth within the area	reject	7
<u>FS1302.1</u>	<u>Mercer Airport</u>	<u>supports 367.15</u>	<u>reject</u>	<u>7</u>
<u>FS1202.66</u>	<u>New Zealand Transport Agency</u>	<u>opposes 367.15 any rezoning must be planned to ensure that effects on the transport network, including cumulative effects are identified and addressed.</u>	<u>accept</u>	<u>7</u>
<u>FS1277.138</u>	<u>Waikato Regional Council</u>	<u>opposes 367.15</u>	<u>accept</u>	<u>7</u>
367.30	Mercer Residents and Ratepayers Committee	Add Mercer Airport as its own appendix under Appendix 1 Acoustic Insulation	reject	7
<u>FS1302</u>	<u>Mercer Airport</u>	Supports the submission for a special airport zone	reject	7
921.1 and 921.2	Mercer Airport	Add a special zone for Mercer Airport a and amend the zoning from Rural to Mercer Airport 1 Zone, and add a new section to Chapter 9.5	reject	7

Additional submission points in this response:

FS1302.1 Mercer Airport supports 367.15
 FS1202.66 New Zealand Transport Agency opposes 367.15
 FS1277.138 Waikato Regional Council opposes 367.15