

QLDC

IN THE ENVIRONMENT COURT
CHRISTCHURCH

1 FEB 2011

ENV-CHC-

QUEENSTOWN

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an appeal under clause 14 of the First Schedule
of the Act

BETWEEN

AIR NEW ZEALAND LIMITED

Appellant

AND

QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST A DECISION ON
PLAN CHANGE 35 TO THE QUEENSTOWN LAKES DISTRICT PLAN

20 December 2010

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AIR NEW ZEALAND LIMITED ("ANZL") appeals against a decision made by the Queenstown Lakes District Council ("Council") through a panel of independent commissioners ("Commissioners") on District Plan Change 35 ("Plan Change") and a notice of requirement for an alteration to Designation 2 ("Designation") of the Queenstown Lakes District Plan ("District Plan").

1. Background

1.1 This decision relates to an application by Queenstown Airport Corporation ("QAC") seeking to amend objectives, policies and rules in the District Plan dealing with the management of growth in areas adjoining Queenstown Airport ("Airport"). In addition, the Plan Change proposes to extend the air noise boundary ("ANB") and outer control boundary ("OCB") as now forecast by the revised airport noise projection up to 2037.

1.2 The Commissioners recommended that the Council approve the Plan Change with the exception of all of those provisions dealing specifically with the proposed extension of hours of operation and airport noise boundaries to enable 11 scheduled passenger aircraft arrivals between 10pm and 12 midnight. The Council adopted the Commissioners' report and therefore approved QAC's application ("Decision") pursuant to Clause 29(4) of the First Schedule of the Resource Management Act 1991 ("Act").

1.3 ANZL acknowledges that at this stage the Council has only provided a recommendation to QAC on the Designation, and that it is still to receive a decision from QAC.

1.4 ANZL was a submitter and a further submitter on the Plan Change.

1.5 ANZL received the Decision on 17 November 2010.

2. General Submission

2.1 ANZL is generally supportive of the Decision and is confident that it will result in positive changes to the District Plan which will allow the Airport to develop and grow to meet the future operational requirements of the Airport.

2.2 ANZL specifically supports those aspects of the Decision which:

- (a) recognise the regional importance of the Airport and seek to ensure its continued safe and efficient operation;
- (b) acknowledge the reverse sensitivity effects that can arise from activities sensitive to aircraft noise ("ASANs") establishing in close proximity to the Airport;

- (c) require acoustic insulation for all residential units, visitor accommodation, office space and community facilities which are to be located within the OCB;
- (d) accept the revised OCB and ANB as proposed by the Plan Change; and
- (e) delete the Night-time Noise Boundary ("NNB") and Sound Insulation Boundary ("SIB").

2.3 This appeal relates to that part of the Decision relating to the continued provision of land use controls for the location of new ASANs within the OCB at the Frankton Flats Special Zone (A) ("FFA Zone").

2.4 ANZL has also reviewed the recommendation in the Decision as it relates to the Noise Management Plan ("NMP"), which is to be contained within the Airport's designations. ANZL agrees that, as a restriction on the Airport, the NMP appropriately sits within the Airport's designations rather than the District Plan. Accordingly it will comment on the NMP at the time QAC releases its decision on the Notices of Requirement sought.

3. Reasons for Appeal

3.1 In this appeal, ANZL seeks clarification of how ASANs within the OCB are to be treated by the District Plan, and in particular the continued provision for ASANs in the FFA Zone.

3.2 In this respect, ANZL considers that the Plan Change, in its present form, does not adequately provide for the Airport's current and predicted future activities, nor protect against reverse sensitivity effects of ASANs locating within the OCB, and to that extent, the Plan Change:

- (a) will not promote sustainable management of resources and is therefore contrary to Part 2 and other provisions of the Act;
- (b) is inappropriate and inconsistent with the purposes and provisions of the Act and other relevant planning documents;
- (c) will not appropriately avoid, remedy or mitigate the adverse effects of the proposed activity; and
- (d) does not represent the most appropriate means of exercising the Council's functions, having regard to costs and benefits, and the efficiency and effectiveness of other available means and is therefore not appropriate in terms of section 32 and other provisions of the Act.

3.3 In particular, and without limiting the generality of paragraph 3.2 above, the Decision inappropriately provides for further visitor accommodation or other ASANs within the OCB as it lies over the FFA zone:

- (a) Whilst ANZL generally opposes any provision for ASANs within an OCB, it acknowledges that there are existing resource consents granted by the Council for a certain amount of visitor accommodation within the FFA Zone (a list of which are attached at Schedule 1). For this reason, the Decision finds that it would be inappropriate to restrict the development of ASANs in this area, seemingly adopting the view that "the horse has bolted". Further, the Decision finds that the provision for development of the FFA Zone in accordance with its underlying purpose as a mixed use zone (and in accordance with the Council's Frankton Development Strategy) necessitates provision for the development of more ASANs in the FFA Zone.
- (b) ANZL recognises that a level of activity has already been consented, but does not consider that, in light of the Commissioners' approval of aspects of the Plan Change and the accepted desire for and likelihood of predicted Airport growth, this justifies any future increase in the development of ASANs within the FFA Zone. In particular, ANZL opposes the establishment of new planning rules which could have flow-on effects for treatment of ASANs in the new Frankton Flats (B) zone (the subject of Plan Change 19, appeals on which are also before the Court).
- (c) ANZL acknowledges that while the current resource consents are live, development to the consented level could occur as of right, operating as a type of baseline for new activities in the FFA Zone until the consents lapse. ANZL is also aware that future development is proposed for the area and would not oppose a variation of the existing consent to allow this to proceed (so long as any variation provides for less, or a level of development of no greater scale than, the currently consented level of development).
- (d) Accordingly, ANZL seeks confirmation that the existing consented visitor accommodation activity represents the limit for development of any ASANs within the FFA Zone.
- (e) ANZL considers that this outcome strikes an appropriate balance between providing for the FFA Zone to be developed in accordance with its purpose, the Council's Frankton Development Strategy, and avoiding reverse sensitivity effects that are likely to arise from the location of ASANs within the OCB as expanded by the Plan Change.

4. RELIEF

4.1 ANZL seeks the following relief:

- (a) that the Plan Change be adopted to reflect the amendments set out in paragraph 3.3;
- (b) such further orders, relief or other consequential or other amendments as considered appropriate and necessary by the Court to address the concerns set out herein; and
- (c) costs of and incidental to this appeal.

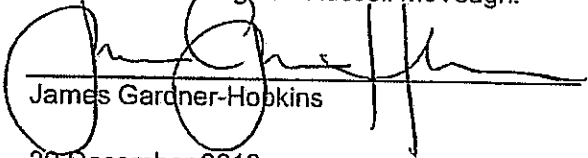
5. ATTACHMENTS

5.1 The following documents are attached to this notice.

- (a) a list of existing resource consents for visitor accommodation in the FFA Zone;
- (b) a copy of ANZL's submission and further submission;
- (c) a copy of the Decision; and
- (d) a list of names and addresses of persons to be served with a copy of this notice.

AIR NEW ZEALAND LIMITED by its solicitors
and authorised agents Russell McVeagh:

Signature:


James Gardner-Hopkins

Date:

20 December 2010

Address for Service:

C/- James Gardner-Hopkins / Liz Hardacre
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TO: The Registrar of the Environment Court at Christchurch

The Respondent

Other persons whose submissions relate to this appeal

SCHEDULE 1 - RESOURCE CONSENTS

1. The following resource consents have been granted for visitor accommodation within the FFA Zone:
 - (a) RM070382; and
 - (b) RM071051.
2. These consents allow for a total of 324 visitor accommodation units.

**SCHEDULE 2 - COPIES OF ANZL'S SUBMISSION AND FURTHER
SUBMISSION**

SCHEDULE 3 - COPY OF THE DECISION

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

If you wish to be a party to the appeal, you must lodge a notice in form 33 with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington, or Christchurch.