

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2021] NZEnvC 123

IN THE MATTER of the Resource Management Act 1991
AND an appeal under clause 14 of the First
Schedule of the Act
BETWEEN WYUNA PRESERVE RESIDENTS
ASSOCIATION INCORPORATED
(ENV-2018-CHC-143)
Appellant
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner J T Baines
Environment Commissioner S Myers
Hearing: In Chambers at Christchurch
Last case event: Minute dated 18 August 2021
Date of Decision: 23 August 2021
Date of Issue: 23 August 2021

FINAL DECISION OF THE ENVIRONMENT COURT
Topic 14 – Glenorchy Aerodrome designation

A: The designation conditions are confirmed as modified in Annexure 1. The associated designation maps are confirmed subject to the incorporation of the map in Annexure 2. QLDC is directed to modify D 239 in the District



Plan accordingly.

B: Costs are reserved and a timetable is set.

REASONS

Introduction

[1] This appeal, concerning the rollover of the designation for Glenorchy Aerodrome ('D 239'), was allowed in part. Modifications to D 239, by way of conditions, were made subject to leave being reserved for parties to file supplementary submissions on any issues of drafting infelicity.¹

Parties' responses

[2] Counsel for QLDC and the appellant ('Wyuna') filed memoranda in response.² Ms Balme for QLDC recommended some drafting refinements that Mr Matheson, for Wyuna, confirms are agreed. We do not need to traverse these matters. Ms Balme has also provided the requested designation map and a clean copy of the designation for approval for inclusion in the District Plan. Subject to the matters we now address, we are satisfied that these documents are in order.

[3] The only issue of difference concerns two conditions as follows:

(a) condition 1(b) which specifies as one of the designation purposes:

... Not increase aircraft movements above those levels recorded in the 2019 AIMMS flight movements data ...

(b) condition 3 which relevantly reads:

¹ Decision [2021]NZEVC 103, at [140].

² Memorandum of counsel for QLDC, dated 13 August 2021, memorandum of counsel for the appellant, dated 13 August 2021.

3. Noise from aircraft operations must not exceed 65 dB Ldn outside the Air Noise Boundary (ANB) and 55 dB Ldn outside the Outer Control Boundary ('OCB'). The ANB and OCB are as shown on the District Plan Maps and shall be based on the 2019 flight movement data. Compliance with the ANB and OCB shall be determined on the following basis:
 - (a) Aircraft movements shall be recorded monthly by the Aerodrome operator using aircraft logging software (such as AIMMS).
 - (b) Within 1 month of the end of each calendar year, the total annual number of aircraft movements shall be provided by the Aerodrome operator to QLDC.
 - (c) Where recorded aircraft movements are less than 6000 per annum, no further compliance assessment is required.
 - (d) When recorded aircraft movements exceed 6000 movements per annum, compliance with this condition shall be determined by noise contour calculations derived from records of actual aircraft operations at Glenorchy Aerodrome.
 - (e) When recorded aircraft movements exceed 8000 movements per annum measurement of noise levels shall be undertaken annually, in addition to the calculations undertaken for Clause (d) above, and the results shall be reported to QLDC. The measurements shall occur for a period not less than one month and the results calculated over the busiest three-month period of the year.

[4] Ms Balme points out that the maximum aircraft movement figures in condition 3(c), (d) and (e) were formulated by QLDC on the premise, not ultimately accepted by the court, that 60% growth should be allowed for. Consequential on the court's determination in [2021] NZEnvC 103 that there should be no growth allowed for on 2019 levels, she says these trigger numbers should be revised down to 4,000 and 5,000 respectively. On this aspect, counsel

explains:³

The revised triggers are considered appropriate given the contours in Appendix 1 have been calculated based on 5,300 aircraft movements (being the number of movements in 2019). The revised triggers will provide the community with certainty as to the points in time where the Council is required to take further action. However, the amount of noise generated at this level of use is considered acceptable and the 55dB Ldn Outer Control Boundary is almost entirely contained within the Aerodrome Reserve. Given the limitations on the amount of noise allowed, the Council will also be actively monitoring use at the Aerodrome, through other means, to ensure that activity is not allowed to increase beyond the 2019 level.

[5] In addition, on the advice of QLDC's noise expert (Mr Peakall), Ms Balme recommends that the monitoring conditions of the designation be adjusted to properly align with the court's decision not to provide for growth beyond the 2019 level of usage. Counsel explains:⁴

Mr Peakall has recommended that compliance is required to be demonstrated only at the 55dB Ldn Outer Control Boundary (rather than also at the 65db Ldn Air Noise Boundary). The reason for this is that the Air Noise Boundary is so small at this level of usage that it is adversely affected by modelling artefacts, and therefore would not provide a true representation of the noise produced. The Council considers that this change would not result in any adverse effects, as requiring compliance with the 55dB Ldn Outer Control Boundary is the more stringent measurement and is closer to the receiving properties.

[6] Mr Matheson submits there is potential ambiguity between these conditions, particularly as between:

- (a) the specification in condition 1(b) 'Not increase aircraft movements above those levels recorded in the 2019 AIMMS flight movements data';

³ Memorandum of counsel for QLDC, dated 13 August 2021, at [8].

⁴ Memorandum of counsel for QLDC, dated 13 August 2021, at [10].

- (b) the requirement in condition 3(b) to report, within one month of the end of each calendar year, about the total annual number of aircraft movements; and
- (c) the “control imposed pursuant to a 55 dBA Ldn contour, which is calculated in accordance with NZS: 6805” under condition 3.

[7] Mr Matheson explains this as follows:⁵

Counsel understands from its expert witness that, because the 55 dBA Ldn contour is based on the busiest 3 month period, it would be possible for the 55 dBA Ldn contour to be complied in any year with [sic] but for the total number of aircraft movements to exceed the total in the 2019 AIMMS movement data. To avoid any ambiguity and potential future litigation, and to provide a limit understandable to the community, the Appellant wishes to file short submissions seeking clarification of the Court’s intention in this regard, and seeking an additional operative clause that would limit the number of movements to the number in the 2019 AIMMS movement data.

[8] QLDC does not agree that there is such ambiguity. Counsel says that the purpose of the designation, in condition 1(b), is clear and the requirement to report on annual movements is “necessary to determine when the triggers for noise monitoring are met”. Counsel adds that the court “clearly found” that NZS6805 was a suitable basis for framing noise contour conditions. Furthermore, the court agreed with the three month averaging approach in Mr Peakall’s evidence.⁶ Counsel submits that Wyuna is essentially seeking to introduce a new annual cap on movements condition contrary to the court’s decision and not supported by evidence.⁷ As to this, counsel observes that the court found that the most appropriate set of modifications to D 239 to respond to Wyuna’s appeal included:⁸

⁵ Memorandum of counsel for the appellant, dated 13 August 2021, at [5].

⁶ Memorandum of counsel for QLDC, dated 13 August 2021, at [14].

⁷ Memorandum of counsel for QLDC, dated 13 August 2021, at [15].

⁸ Memorandum of counsel for QLDC, dated 13 August 2021, at [14], referring to [2021] NZEnvC 103 at [74].

no conditions prescribing caps, either for fixed wing aircraft or helicopters, but capacity in the NMP for this to be revisited.

Discussion

[9] By Minute, the court declined counsel's request for leave to file further supplementary submissions. In essence, the leave conferred in [2021] NZEnvC 103 was confined to supplementary submissions on drafting infelicity. We agree with Ms Balme that the appellant's request goes materially beyond that in seeking what is in substance a movement caps condition contrary to the findings in that decision. In particular, we refer to:

- (a) [68] – [74] as to the modified expression of the designation purpose, the noise contours amended so as to not allow for growth and the rejection of movement cap conditions;
- (b) [95] – [96], in discussion of skydiving, as to the lack of supporting evidence for movement cap conditions and the potential role of the Noise Management Plan ('NMP') as a means for imposing caps that are properly informed by community engagement; and
- (c) [120] – [123] as to the importance of flexibility in the expression of the designation purpose and the sufficiency of the modified designation conditions for the management of the effects of developing usage of the Aerodrome.

[10] We reiterate our findings as to the important role of the NMP including in providing for meaningful engagement on these matters by the community.

[11] We find the various amendments proposed on behalf of QLDC truly consequential on our decision and appropriate.

Conclusion

[12] The designation conditions are confirmed as modified in Annexure 1. The

associated designation maps are confirmed subject to the incorporation of the Map in Annexure 2. QLDC is directed to modify D 239 in the District Plan accordingly. QLDC is reminded to add into condition 3, after the word ‘confirmed’ and in place of the words ‘*insert date*’, the date that the designation is confirmed. That date will be the date D 239 is modified in the District Plan to reflect this decision.

[13] Subject to our observations in [2021] NZEnvC 103 regarding costs, any application must be made within five working days of the date of this decision and any reply within a further five working days.

For the court



J J M Hassan
Environment Judge

Annexure 1

37 Designations

37.2 Schedule of Designations

No.	Map No.	Authority Responsible	Purpose	Site/ Legal Description and Conditions
239	9, 25a	Queenstown Lakes District Council	Local Purpose Reserve (Airport)	Glenorchy Aerodrome, Section 11 Survey Office Plan 443869. For conditions refer to C.82 below.

C Conditions for Specific Designations

C.82 Designation # 239 – Glenorchy Aerodrome – Local Purpose (Airport)

Interpretation

1X. In this designation:

- (a) 'Aerodrome Manager' means Queenstown Airport Corporation or any other person from time to time appointed by the requiring authority to that role;
- (b) AIMMS refers to the proprietary analytics software called Advanced Interactive Multidimensional Modelling Systems.

Purposes and works

1. The purposes (objectives) of this designation are to:

- (a) Enable and protect the use and operation of Glenorchy Aerodrome (as shown on Map 9) (the 'work') including:
 - (i) Aviation facilities including the runway and navigation and safety aids;
 - (ii) Aircraft movements (including take offs, landings and ground movements);
 - (iii) Ancillary aircraft maintenance that does not occur within dedicated facilities and aircraft parking; and
- (b) Not increase aircraft movements above those levels recorded in the 2019 AIMMS flight movements data; and
- (c) Manage the effects of the work according to the conditions of this designation.

1A. For the avoidance of doubt, except as provided under Condition 1, this designation does not authorise skydiving.

Restrictions on Activities

2. Hours of operation for all aircraft operations (except those specified under the Exemptions in Condition 7) shall be between 0800 hours or morning civil twilight (whichever is later) and 2000 hours or evening civil twilight (whichever is earlier).
3. Noise from aircraft operations must not exceed 55 dB Ldn outside the Outer Control Boundary (OCB). The OCB is as shown on the District Plan Maps and shall be based on the 2019 flight movement data. Compliance with the OCB shall be determined on the following basis:
 - (a) Aircraft movements shall be recorded monthly by the Aerodrome Manager using aircraft logging software (such as AIMMS).
 - (b) Within 1 month of the end of each calendar year, the total annual number of aircraft movements shall be provided by the Aerodrome Manager to QLDC.
 - (c) Where recorded aircraft movements are less than 4000 per annum, no further compliance assessment is required.
 - (d) When recorded aircraft movements exceed 4000 movements per annum, compliance with this condition shall be determined by noise contour calculations derived from records of actual aircraft operations at Glenorchy Aerodrome.
 - (e) When recorded aircraft movements exceed 5000 movements per annum measurement of noise levels shall be undertaken annually, in addition to the calculations undertaken for Clause (d) above, and the results shall be reported to QLDC. The measurements shall occur for a period not less than one month and the results calculated over the busiest three-month period of the year.

Advice note:

Ldn shall be as defined within NZS6805:1992 Aircraft Noise Management & Land Use Planning.

5. Within 6 months of the date of this designation being confirmed [*insert date*] the requiring authority must engage a suitably qualified and experienced person to prepare a Noise Management Plan (NMP) and consult with all current members of the Glenorchy Airstrip Consultative Governance Committee ("GACGC") and submit the draft NMP to QLDC's Resource Consents Manager for approval to the Manager's reasonable satisfaction that it:
 - (a) achieves the objectives in Condition 5A; and
 - (b) provides for all matters required to be provided for under Condition 6 and such other matters as that Manager considers should be provided for under that condition.
- 5A. The objectives of the NMP are to:
 - (a) manage the operation of the Aerodrome consistent with the purpose of the designation, including by providing a basis for ongoing noise management and mitigation at the Aerodrome;
 - (b) demonstrate how aircraft operations will comply with the noise contour required by Condition 3;
 - (c) demonstrate how aircraft operations will comply with any caps on aircraft movements as required by the NMP; and
 - (d) set out the procedures for monitoring and reporting of compliance with the conditions of this designation in relation to aircraft movements and the effects of

noise from aircraft movements.

6. The NMP:
- (a) must:
 - (i) specify the names of current members of the Glenorchy Airstrip Consultative Governance Committee (GACGC) which must include the Aerodrome Manager and 1 representative from each of the Glenorchy Community Association, Wyuna Preserve, Blanket Bay Lodge, and Resident Commercial Operators;
 - (ii) set out the roles of the GACGC which must include:
 - A. receiving monitoring and operational data, including on investigations of noise complaints and any non-compliance; and
 - B. providing a liaison role between the community and Airstrip Manager and users; and
 - C. agreeing to the imposition of any restrictions on aircraft movements and/or operations additional to any specified in the conditions of this designation.
 - (iii) provide for and direct the Aerodrome Manager concerning the investigation of noise complaints and non-compliance and reporting to GACGC;
 - (iv) provide for the monitoring of aircraft operations to ensure compliance with conditions of the designation (and any additional restrictions imposed through the NMP under clause (b));
 - (v) specify a procedure to assess noise levels in accordance with condition 3 of this designation and to ensure compliance with that condition;
 - (vi) include, for information purposes, a copy of the district plan map showing the ANB and OCB noise contours;
 - (vii) specify the best practicable options and operational controls to manage the exposure of the community to noise from aircraft operations, including fixed wing aircraft and helicopter noise abatement procedures including specified take-off and landing routes and restrictions on the extent of “touch and go” circuit training activities (ie limiting these to certification procedures);
 - (viii) specify the procedure for reporting the outcome of monitoring data, complaints and assessed noised levels to the GACGC on at least a quarterly basis; and
 - (ix) specify a procedure for review of the NMP;
 - (b) subject to the conditions of this designation, may:
 - (i) impose additional or more stringent restrictions on aircraft movements including, without limitation, caps on maximum numbers of aircraft movements and/or aircraft operational hours (whether for particular types of aircraft or purposes or generally);
 - (ii) allow for curfew exemption for flights servicing the Department of Conservation provided these are agreed with the GACGC.
- 6A. The requiring authority must use its best endeavours to have an approved NMP in place within 9 months of the date of this designation being confirmed [*insert date*].
- 6B. The requiring authority must ensure that all aircraft operators comply with the approved NMP with any breach by an operator being a breach of this designation.
- 6C. The requiring authority must ensure effective arrangements are in place and maintained for the investigation of noise complaints and non-compliance and reporting of these to GACGC and QLDC.

Exemptions

7. Conditions 2 to 6C inclusive do not apply to:
- (a) aircraft landing or taking off in an emergency or for precautionary safety reasons;
 - (b) emergency flights required to rescue persons from life threatening situations or to transport patients, human organs or medical personnel in medical emergency;
 - (c) aircraft using the aerodrome due to unforeseen circumstances as an essential alternative to landing at their planned destination;
 - (d) flights required to meet the needs of a national or civil defence emergency declared under the Civil Defence Act 1983;
 - (e) flights certified by the Minister of Defence as necessary for reasons of National Security in accordance with Section 4 of the Act; and
 - (f) aircraft undertaking firefighting and search and rescue duties.

Annexure 2

Additional designation map

