

Closing Reply

# **Hearing 25: Zone extents of Mercer and Meremere**

prepared by

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## I Introduction

1. I am the author of the RMA s42A report, rebuttal and opening statement for the zone extents: Mercer and Meremere (Hearing 25). This closing reply deals with submissions and evidence heard in Hearing 25.
2. Five separate properties are discussed in my s42A report. These are:
  - a. Mercer Village extension: Lot 9 DP 461781 on Koheroa Road - near Mercer submissions on a change to the zone of a property near Mercer from Rural Zone to Village Zone to provide for low-density residential development.
  - b. Meremere Industrial/Business zone : 25 Island Block Road – 2 properties near Meremere - submissions on a change to the zone of the properties at Meremere from Rural Zone to Industrial Zone and Business Zone to support a structure-planned business precinct.
  - c. Extension of the Special Zone: Hampton Downs Motor Sport and Recreation Zone (HDMP) (Lot 6 DP 411257 at Hampton Downs Road, near Meremere) submissions on a change to the zoning of land adjoining Hampton Downs Motor Sport and Recreation Zone from Rural Zone to Hampton Downs Motor Sport and Recreation Zone Precinct E, to allow for industrial activities.
  - d. Special Zone: Mercer Airport (570C Koheroa Road, near Mercer) submissions on a new special zone - Mercer airport - together with objectives, policies, rules, obstacle limitation surface, and noise insulation provisions.
  - e. Special Zone: Corrections (113 Hampton Downs Road, near Meremere) submissions on a new special zone (over Springhill Corrections Facility).

## 2 Evidence lodged by submitters

3. Evidence relevant to the H25 Mercer and Meremere was filed by the following submitters:
  - TKDM Farms Ltd [351]: S Nairn (planning)
  - Mercer Airport [921] and [FS/302]: Chris Dawson (planning), Dave Park (aeronautical engineering), Rhys Hegley (Engineering - acoustics), and Dee Bond (shareholder and pilot) for Mercer Airport.
  - Mercury NZ Limited [2053]; [FS/223, FS/387 and FS3034]
  - Reid Investments Ltd [783] and [FS/279]: A White (planning)
  - HD Lands Limited and Hampton Downs [657] and [FS/194] P Rolfe (planning)
  - Department of Corrections [496] and [FS/210] S Grace (planning)
4. Two letters were received signed by a number of land owners of properties neighbouring Mercer Airport.

## **2.1 Extension of the Special Zone: Hampton Downs Motor Sport and Recreation Zone (HDMP) to include Lot 6 DP 411257 at Hampton Downs Road, near Meremere**

5. The Panel asked Ms Rolfe whether the submitter might be considered to be a trade competitor. As the Panel may be aware, the RMA includes measures to prevent anti-competitive behaviour by trade competitors. Persons who could gain an advantage in trade competition through a submission may only make submissions if directly affected by an effect of the policy statement or plan that adversely affects the environment, and does not relate to trade competition or the effects of trade competition.
6. The original submission made by HD Lands Limited and Hampton Downs [657], and the original submission made by Reid Investments Ltd [783] state that they could not gain an advantage in trade competition through those submissions.
7. The submission made by Reid Investments seeks that the zoning of Lot 6 DP 411257 be changed to Hampton Downs Motor Sport and Recreation Zone, and that the site be included in Precinct E (Industrial Units) of that zone, or a similar relief; and also seeks some amendments to the standards that apply in the special zone to increase height limits, site coverage, and amendments to the Appendix 12 Hampton Downs development plan in the proposed plan.
8. Hampton Downs Motor Sport and Recreation Zone is a 'specific zone', providing for motor sport and recreation activities. There was some discussion in the hearing about applying an Industrial zone to the property. The scope in the submission to amend the zoning of Lot 6 DP 411257 to an industrial zone may fit under the submission point seeking 'similar relief'. However, a change to an industrial zone would enable all industrial activities, not just warehousing, and this is not in keeping with the strategic growth direction in WRPS Policy 6.14 and the Future Proof Industrial Land allocation in Table 6.2 of the WRPS. WRPS Policy 6.14 does recognise that there may be new industrial development outside the strategic industrial nodes in some circumstances, and requires that adverse effects on the arterial function of the road network, and on other infrastructure, be avoided, remedied or mitigated.
9. The planning evidence of Mr White on behalf of Reid Investments indicated that the only intended activities on the site were warehousing and carparking. The Rural Zone does have a consenting path for non-rural activities. Discretionary activity Rule 22.1.5 D10 provides for industrial activities in the Rural Zone, and the consent process allows the potential effects on the motor sport zone, the road network, and the capacity for stormwater or trade waste infrastructure to be considered.
10. In my view, that part of the submission made by Reid Investments that seeks changes to the activity-specific standards that apply in the special zone should be rejected, because these have the potential to create a permitted baseline, and the potential traffic effects have not been investigated or addressed. The submission point seeking changes to the provisions should be rejected if the Panel decide to include the land in the Hampton Downs Motor Sport and Recreation Zone Precinct E.

## 2.2 Special Zone: Corrections (Spring Hill Corrections Facility)

11. The underlying zone in the proposed plan is rural. Rural zones do have activities that would be inappropriate in other zones, due to the nature and scale of adverse effects. Quarries, smaller airfields and landfills are examples of the type of activity that operates in a rural zone under conditions imposed through a resource consent. The other approach is to have a special zone that only provides for those activities.
12. The National Planning Standard describes a number of special purpose zones. One of these is a Special Zone: Corrections zone. The Minister of Corrections has also issued a Notice of Requirement (NOR) for a designation, with the Minister being the decision maker.

### Activities not for Corrections purposes

13. The National Planning Standard includes a description of the Special Zone: Corrections Zone, which is: *“Areas used predominantly for the efficient operation and development of prisons and associated facilities and activities and the security requirements of prisons. The zone may also be used for new and changing approaches to prisoner reintegration and rehabilitation.”*
14. The designation covers a large area of land that is outside of the security fence, that is not currently occupied by prison facilities, and is used for rural activities. If the Panel are of a mind to include the special zone sought by the Department of Corrections, the portion of the 215 hectare site used for rural activities could reflect the current use and remain zoned for rural activities, and still remain subject to the Notice of Requirement for a designation providing for any corrections activities.
15. In my view, the prescribed purpose of the zone and its description in the Standard means that the special zone should not include provisions that promote activities that are not for corrections purposes, such as rural or non-rural activities that are not undertaken by the Department of Corrections. This has the potential for a gap in the plan, if any part of the land were transferred or leased to another user or owner. The special zone sought by the Department of Corrections should also include an objective and policy to address non-rural and non-corrections activities, as well as a policy that addresses the potential effects on the existing activities at the landfill and motor sport sites.

### No requirement to obtain a resource consent

16. There is also a question about the effectiveness of a resource consent requirement in a special zone, where there is also a NOR for a designation in place.
17. Once a designation is in the District Plan, the ‘Requiring Authority’ does not have to comply with the District Plan rules for activities authorised by the designation. Instead, they must follow the process in RMA s176A, and submit an outline plan to allow the territorial authority to request changes before construction begins. The Minister, not the Council, is the decision maker.
18. The Council can waive the requirement for an outline plan. This might occur if the proposal would otherwise be a permitted activity and would meet any relevant performance standards of the underlying zone. A number of District Plans have included the criteria that will be applied when considering a waiver.
19. The proposed plan includes a discretionary activity rule in the Rural Zone for a correctional facility (Rule D7). If the designation was not in place a resource consent would be needed.
20. The main difference between Mr Grace’s draft special zone provisions and the proposed Rural Zone is that there are additional permitted activity rules for the number of residential units and number of occupants, and the loading and unloading of vehicles and hours of operation for rehabilitation and non-custodial corrections activities.

21. In both cases, the rule requiring a consent to be obtained when the permitted activity standards and rules are not met has no effect.
22. A Notice of Requirement for a Designation has been issued, and this means that the district plan rules do not apply<sup>1</sup>. Instead of obtaining a resource consent to accommodate more than 3 supported residential units and/or more than 30 residents, for example, the Minister may rely on the outline plan process for corrections activities.
23. If the issue is the outline plan requirement for supported housing, corrections activities and operating hours for rehabilitation and non-custodial corrections activities, then there is an alternative. Criteria could be added to the plan that can be used when waiving the outline plan requirement. The criteria could refer to activities that otherwise meet the permitted activity rules, for example residential activities in the area identified for “external self-care units” mapped in the plan, and carried out in accordance approved designation plan RC03, Revision 3.

### **Permitted activities sought and lack of activity-specific standards**

24. If the Panel are of a mind to accept the planning evidence for a Special Zone Corrections, the provisions in the proposed plan, as well as provisions sought in planning evidence may need to be amended.

### **P2 Non-custodial rehabilitation activity and P3 Community corrections activity**

25. Permitted activity rules sought in planning evidence are P2 Non-custodial rehabilitation activity and P3 Community corrections activity that apply to the use of land and buildings.
26. The drafting approach in the permitted activity rules in the proposed rural chapter includes an explanatory statement in 22.1.1(1), followed by the permitted activity rules and the activity-specific conditions that apply that also specifically include “Land Use – Effects in 22.2” and “Land Use – Building in Rule 22.3. The rule does not rely on the statement in 22.1.1(1) to be clear that 22.2 and 22.3 must also be met. Using Marae complex as an example, the conditions in the rule itself in P1 refer to “(a) Land Use – Effects in Rule 22.2” and “(b) Land Use – Building rules in Rule 22.3 except...” followed by the list of exceptions.
27. A different drafting approach is used in the planning evidence of Mr Grace. Special Zone Rule 29.1.1(1)(b) contains a general explanatory statement, but unlike the approach in the Rural Rules, there are no activity-specific standards included in the activity-specific conditions in Rule 29.1.1P1. The only conditions specified in the permitted activity Rules P2 and P3 relate to hours of operation.
28. I do not think that it is clear that activity specific standards in 22.2 and 22.3 will apply, because other permitted activity rules in the proposed plan do specifically identify the activity-specific conditions, by referring to 22.2 and 22.3 where these apply.
29. In answering questions from the Panel, Mr Grace referred to the initial explanatory statement in his special zone: 29.1.1(1), and indicated an intention that the standards in 22.2 (the specific activity standards for earthworks, noise, glare and artificial light spill) and 22.3 (the specific activity standards for height, setbacks, daylight admission, building coverage etc.) would also need to be met, unless specifically excluded.

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<sup>1</sup> RMA s176(1)(a)

30. The permitted activity Rules P2 and P3 sought by Corrections might be interpreted as only being breached if the hours of operation are exceeded; and it is also not clear whether the standards in 22.2 would also apply to the permitted activity Rule P4 sought by Corrections.
31. I recommend that the drafting approach in the proposed plan is followed for any special zone, and that the permitted activity rules and activity specific conditions column include the activity specific standards 22.2 Land Use effects, and 22.3 Land Use – Building to be met. Exceptions can be specified in the rule
32. I have included an example below:

Activity	Activity specific conditions
PI [activity]	(a) Land Use – Effects in rule 22.2 <sup>2</sup> .  (b) Land Use – Building in rule 22.3 except:  (i) Rule 22.2.1 (Number of dwellings)

33. Defining the terms used in the rules that are not defined in the National Planning Standards would assist with certainty in the permitted activity rules. Definitions for ‘non-custodial rehabilitation activity’, ‘supported residential accommodation’ and ‘custodial correctional facilities’ would add certainty to the permitted activity rules.

#### **P4 Supported residential accommodation**

34. The Permitted Activity P4 sought in the Special Zone: Corrections applies to “Supported residential accommodation”. As sought, the activity-specific standards 22.3.1 and 22.3.2 that restrict the number of buildings on a site would not be applied; but the other activity-specific standards in 22.3 would apply. I recommend that the standards in 22.2 Land Use effects also be included in the conditions of the rule so that it is clear that these must be complied with.
35. It would assist users of the plan if the area identified for “supported residential accommodation/external self-care units” were identified as a precinct in the planning maps.

#### **Earthworks permitted for building platforms**

36. In the rural zone there is a relationship between the permitted activity rules for buildings and the earthworks Rule 22.2.3.1 PI that permits building platforms for residential activities. The proposed Rural Zone Rule 22.3.1 PI(b) permits no more than two dwellings per lot on a lot of more than 40 hectares, and earthworks for a building platform are permitted under Rule 22.2.3.1 PI(a)(iv).
37. However, the scale and potential effects of earthworks for a building platform required for one or two dwellings could differ significantly when compared to building platforms needed for up to 5 units, or a building that can accommodate up to 30 residents, as sought by Rule P4 in the Special Zone: Corrections.
38. There may need to be an amendment to Earthworks Rule 22.2.3.1 PI to deal with the potential effects of earthworks associated with the larger footprint for supported residential

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<sup>2</sup> See proposed plan rural zone 2rule 22.1.2 P1.

accommodation. Consideration should also be given to the permitted baseline arising from the rule.

39. There may also need to be an amendment to Noise – 22.2.1.1 P3, that states that noise standards “*in a zone other than the Rural Zone*” must meet the permitted noise levels for that zone. There are no zone-specific noise standards in the Corrections special zone, therefore as drafted, no noise controls would apply.
40. There may be other activity-specific standards in Chapter 22.2 (Land use effects) - such as 22.2.2 Glare and Artificial Light Spill - that should be amended to refer to the special zone, and added to the conditions in the permitted activity rules in the special zone sought in the planning evidence made on behalf of the Department of Corrections.

### **2.3 Special Zone: Mercer Airport**

41. Mercer airfield currently operates in the rural zone under the parameters set in a resource consent.
42. The National Planning Standard includes a description of the Special Zone: Airport, which is as follows: *Areas used predominantly for the operation and development of airports and other aerodromes as well as operational areas and facilities, administrative, commercial and industrial activities associated with airports and other aerodromes.*
43. In my view, the prescribed purpose of the zone and its description in the Standard means that the special zone can provide for activities associated with the airport, but should not include provisions that allow activities that are not directly associated with the airport.
44. The Panel heard from Mr Dawson, Mr Park, Mr Hegley and Ms Bond. Mr Dawson provided planning evidence that included revised provisions for a Special Zone: Mercer Airport.
45. The Mercer airport operates within the parameters of the conditions on a resource consent, rather than relying on the permitted activities in the operative or proposed plan. Currently there is no Obstacle Limitation Surface (OLS) in place, and no noise contours apply.
46. The special zone sought by the submitter is intended to allow the expansion of activities at the airfield.
47. The following details emerged at the hearing:
  - a. The extent of the Obstacle Limitation Surface (OLS) sought is to address requirements for a Catalina aircraft. It is unusual for an aircraft of that size to operate from a small airfield, and the size of that aircraft means that the OLS is larger than would otherwise be needed.
  - b. An OLS would also allow the use of the airfield by smaller aircraft under instrument flight rules (IFR), rather than visual flight rules (VFR), but the OLS would not need to be as large.
  - c. The noise contours would enable the use of any number of aircraft of a similar size and noise profile as the Catalina.
  - d. An assumption has been made that existing trees in an OLS have existing use rights, and that the trees that could breach an OLS can be the subject of future discussions with neighbours.
  - e. The submitter confirmed that there had been no engagement with neighbours, beyond the RMA Schedule 1 process.
  - f. That there are many aircraft using the airspace in the vicinity of Mercer, not just aircraft using Mercer airfield.

- g. The submitter considers that a special zone might assist with managing reverse sensitivity associated with the existing airfield operations. The OLS and noise contours sought by the submitter are intended to provide certainty that an airfield is present, and that there are controls that apply that protect the on-going safe operation of the airfield.
- h. There is a need to define ‘ex-military jets’ to provide certainty for plan users. The potential and cumulative effects and noise profile jets differs from the small aircraft currently using the airfield. The effects on adjacent properties are uncertain and cannot be adequately controlled by a permitted activity rule. In my view, the non-aviation-related activities and jet aircraft should be deleted from the permitted activity rules, and a rule added to require a resource consent for non-aviation-related activities, and for jet aircraft using the airfield and facilities.
- i. The submitter agreed that consistency with the provisions for the Te Kowhai Airfield would be useful.
48. Mr Dawson drew the Panel’s attention to proposed policies in the rural zone.<sup>3</sup> These included:
- proposed Policy 5.3.2 ‘Productive Rural Activities’, that recognises and protects the rural productive working environment by providing for lawfully-established rural activities and protecting them from sensitive land use; and
  - proposed Policy 5.3.7 ‘Reverse sensitivity effects’; that recognises features that are typical of the rural environment and the effects are accepted and able to be managed. Mr Dawson referred to subsections (b) to (d):
    - that effects outside of the site should be mitigated if these cannot be avoided;
    - that effects form reverse sensitivity can be managed by setbacks; and
    - that the scale, intensity, timing and duration of activities are managed to ensure compatibility with the amenity and character of the rural environment
49. Decision makers would have regard to these proposed policies when considering applications for resource consent for non-rural activities in the rural zone, and for any variations to the conditions on the resource consent currently held by Mercer Airfield.
50. Mr Dawson identified a traffic assessment prepared in 2020 that suggests that a number of minor upgrades to the road would be needed to ensure that access to the Mercer airfield would be of a sufficient standard to enable 160 vehicles (320 movements) per day to safely access the site<sup>4</sup>.
51. Ideally, a single “Special Zone: Airport” should be included in the plan, with plan provisions covering both locations, with any necessary differences reflected in the plan provisions. The approach in the objectives, policies and rules in the plan to OLS and noise contours should be consistent, with any differences being necessary to manage the particular environmental context, safety requirements and differing runway size, orientation and surfaces.

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<sup>3</sup> Summary of evidence of Mr Dawson at para 1.5 and 1.6

<sup>4</sup> Transport Assessment report prepared by BBO dated August 2020 see Attachment 3



52. In my view, any special zone for an airfield should be consistent with the Te Kowhai airfield provisions as amended in the recommendations of the Te Kowhai Special Zone s42A report and rebuttal. Mitigation measures should restrict the number of temporary events to one air show per year, and include controls over non-aviation activities, the duration, the number of movements of both jet aircraft and other aircraft, limits on operating hours, and setting noise control standards at the notional boundary of any site for activities that do not involve the take-off and landing of aircraft, as well as noise control standards for aircraft using the airfield and engine testing.
53. A noise management plan included as an appendix to the plan might also assist with informing the community by setting out the mitigation measures, and may also assist with managing potential compliance issues and meeting the general duty in RMA s16 to adopt the 'best practicable option' to ensure that the emission of noise from that land or water does not exceed a reasonable level.

#### **Other submissions on Zones**

54. I have no additional comment to make following the hearing on the submissions in respect of:
- a. Mercer Village extension: Lot 9 DP 461781 on Koheroa Road, near Mercer
  - b. Meremere Industrial/Business zone : 25 Island Block Road, near Meremere (2 properties).

Y Legarth