

Before the Queenstown Lakes District Council

In the Matter of the Resource Management Act 1991

And

In the Matter of the Queenstown Lakes Proposed District Plan

**Chapter 7 (Low Density Residential Zone) and Chapter
27 (Subdivision)**

**Legal Submissions for
Queenstown Airport Corporation Limited
(Submitter 433 and Further Submitter
1340)**

Dated: 24 October 2016

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Introduction

1. These legal submissions address Queenstown Airport Corporation Limited's (**QAC**) submissions and further submissions on Chapter 7 (Low Density Residential Zone) (**LDRZ**) and Chapter 27 (Subdivision) of the Proposed Queenstown Lakes District Plan (**Proposed Plan**).

QAC

2. QAC is the Airport Authority responsible for operating Queenstown Airport.
3. Queenstown Airport is presently owned by QLDC (75.1%) and the Auckland International Airport Limited (**AIAL**) (24.9%).
4. QAC also manages operations at, and the administration of, Wanaka Airport, on behalf of QLDC, and has a caretaker role for Glenorchy Airport.
5. Queenstown Airport is a significant strategic resource that provides direct and indirect benefits to the local and regional economies. It provides an important national and international transport link for the local, regional and international community. The Airport is a fundamental part of the social and economic wellbeing of the community.

QAC's Submission

6. Through its submissions and further submissions on Chapters 7 and 27, QAC is concerned to ensure that the Proposed Plan:
 - (a) Affords appropriate recognition to and protection of Queenstown Airport as a significant regional resource and infrastructure;
 - (b) Contains a planning framework for residential development in the LDRZ, including subdivision and infill development, that both avoids potential reverse sensitivity effects on Queenstown Airport, and ensures a reasonable level of residential amenity is achieved;
 - (c) Ensures the above by incorporating the Plan Change 35 (**PC35**) provisions in the Proposed Plan, without substantive amendment.

Evidence

7. The expert planning evidence of John Kyle has been pre-lodged (dated 30 September 2016) which addresses QAC's submission points in detail.
8. A section 42A report has been notified and expert evidence pre-lodged for the Queenstown Lakes District Council (**Council**), and summary statements have been presented.
9. It appears there are no outstanding issues as between the Council's witnesses and My Kyle, and that all of QAC's important submission points are supported by the Council. This is addressed in further detail shortly.

Previous Legal Submissions Adopted for Present Hearing

10. Comprehensive legal submissions (dated 29 February 2016) were presented for QAC at the hearing of submissions on Chapters 3, 4 and 6¹ of the Proposed Plan. They are adopted for the purposes of this hearing, to the extent they are relevant to QAC's submissions on Chapters 7 and 27.
11. Particular attention is drawn to the following parts of QAC's February legal submissions:
 - (a) Paragraphs 4 – 10, where an overview of Queenstown Airport is provided;
 - (b) Paragraphs 11 – 22, where the statutory framework within which QAC operates is set out;
 - (c) Paragraphs 23 – 30, where QAC's landholdings are detailed;
 - (d) Paragraphs 31 – 38, where QAC's recent growth and projects are discussed;
 - (e) Paragraphs 45 – 63, where the statutory framework within which submissions on the Proposed Plan must be considered, and decisions made, is detailed; and

¹ Hearing Stream 1.

- (f) Paragraphs 80 – 114, where the background to Plan Change 35, and the reasons why its provisions should be incorporated into the Proposed Plan without substantive amendment, is set out.
12. A copy of QAC's 29 February 2016 legal submissions is **attached**, for the Panel's convenience. For the avoidance of doubt, the paragraphs identified above form part of these submissions and should be read by the Panel for the purposes of this hearing.
13. Legal submissions were also prepared in relation to the proposed LDRZ minimum allotment size and infill provisions contained in Chapter 27 (Subdivision). The hearing of QAC's submissions on these Chapter 27 provisions was deferred to this hearing (Chapter 7). The Chapter 27 legal submissions are therefore now **attached**, and form part of QAC's case for this hearing, and should also be read by the Panel (refer paragraphs 15 – 25, and 41 - 42 in particular).
14. PC35 will now be addressed in some detail, given its relevance to this hearing, and because the Panel is differently comprised than previous hearings.

Plan Change 35

Background

15. Plan Change 35 (**PC35**) was a change to the Operative District Plan (**Operative Plan**) initiated by QAC and adopted by QLDC in or around 2008.
16. In conjunction with a related notice of requirement (**NOR**) to alter the Aerodrome Purposes designation (Designation 2)², PC35 sought to rationalise and update the noise management regime that applies to the Airport, while providing for the predicted ongoing growth in aircraft

² In conjunction with PC35 QAC gave notice of a requirement to modify Designation 2 to update its aircraft noise monitoring obligations and introduce new obligations relating to the management and mitigation of aircraft and engine testing noise, including a requirement that QAC prepare a Noise Management Plan and establish a Noise Liaison Committee. Additionally, the NOR required QAC to operate within the noise limits set by the updated (PC35) noise boundaries. The NOR was confirmed by the Environment Court in Decision [2013] NZEnvC 28. The obligations it contains have and continue to be given effect to (as explained QAC's Acting CEO, Mark Edghill's evidence for Hearing Stream 1), and QAC seeks the obligations be rolled over in the Proposed Plan.

operations and protecting it (to the extent possible giving existing development around the Airport) from reverse sensitivity effects. (The concept of reverse sensitivity is summarised in **Appendix A**).

17. Accordingly, Plan Change 35 updated the Airport's noise boundaries (Air Noise Boundary (**ANB**) and Outer Control Boundary (**OCB**)) to provide for predicted growth in aircraft operations to 2037, and made numerous changes across a number of zones and to other parts of the District Plan, including changes to various objectives, policies, rules, statements, implementation methods, definitions and planning maps, relating to land use within the updated noise boundaries likely to be affected by increased aircraft noise. Mr Kyle's evidence explains the rationale and effect of PC35 in further detail.
18. PC35 was largely confirmed by QLDC, but was the subject of a number of Environment Court appeals. The appeals were largely resolved by agreement in early 2012, which was jointly presented to the Court during the course of two hearings and the filing of subsequent memoranda.
19. During the course of the Court proceedings the provisions were, at the Court's direction, redrafted by the parties to correct errors, ambiguities and inconsistencies contained in the Council's decision. A final set of provisions, giving effect to the Court's directions, was filed jointly by the parties in May 2013.
20. The Court issued three interim decisions that together, confirmed the Plan Change, as agreed by the parties: *Air New Zealand Ltd v Queenstown Lakes District Council* [2013] NZEnvC 28, [2012] NZEnvC 195, [2013] NZEnvC 93.
21. The Court's decisions were framed as 'interim' because they did not make a final decision on the planning map (District Plan Map 31a) which is to show the location of the updated ANB and OCB, or more particularly, final a decision on the location of these boundaries in the vicinity of Lot 6 (i.e. within part of the Remarkables Park Zone).
22. A decision was not made on the noise boundaries' location in the vicinity of Lot 6 because part of Lot 6 is subject to an NOR by QAC for Aerodrome Purposes, which is opposed the Lot 6 landowner, RPL (**Lot 6 NOR**). The Lot 6 NOR is currently before the Environment Court, unresolved.

23. The outcome of the Lot 6 NOR will affect the location of the updated (i.e. PC35) ANB and, to a much lesser extent, the OCB.³ The extent of the effect is known to the Court and to the parties to the PC35 proceedings however, because during the PC35 proceedings the parties jointly presented the Court with two different versions of Planning Map 31a – one that provides for the designation of part of Lot 6 (i.e. assumes the Lot 6 NOR is confirmed) and one that does not.
24. Excepting the decision on Planning Map 31a, the PC35 appeals have been finally resolved. There is no opportunity for any further debate as to the content of the District Plan provisions and the Court is *functus officio*⁴ in respect of them.
25. Specifically, and for the avoidance of doubt, the provisions filed jointly by the parties in May 2013 at the direction of the Court (the **Court Confirmed Provisions**) are the final provisions which give effect to the Court's interim decisions.
26. Accordingly, (other than Planning Map 31a) these provisions (the Court Confirmed Provisions) can be treated as operative under section 86F. That is so for the rules, definitions, and all other provisions, including the location of the noise boundaries where they are not affected by the Lot 6 NOR (i.e. all of Frankton Flats and the wider area, but excepting parts of the Remarkables Park Zone).
27. The PC35 objectives and policies, which are not addressed by section 86F, are also beyond challenge and therefore should be given full weight in terms of the Operative Plan.

Proposed Plan

28. The Proposed Plan rewrites a number of chapters of the Operative Plan which are addressed by PC35, including the LDRZ.
29. The proposed new chapters are different in form and structure to the Operative chapters they replace, and incorporating the PC35 Court

³ Because the Airport's noise 'footprint' will alter depending on where GA and helicopter activities are located. It will only alter in the vicinity of Lot 6 however.

⁴ That is, the appeals can not be reopened and the Court can not revisit its Decision.

Confirmed Provisions into these new chapters is not always a straightforward exercise.

30. QAC's submission on the LDRZ was concerned with ensuring the PC35 provision were appropriately incorporated into Chapters 7 (LDRZ) and 27 (Subdivision). Mr Kyle's evidence explains why that is necessary, and the amendments that are required to the notified chapter to ensure Queenstown Airport is adequately protected against potential reverse sensitivity effects while achieving a reasonable level of residential amenity for properties in proximity to the Airport.
31. QAC considers it is appropriate that the PC35 approach be adopted in the Proposed Plan, including the incorporation of the PC35 provisions without substantive amendment, for reasons including:
 - (a) The PC35 Court Confirmed Provisions have been the subject of considerable and detailed scrutiny. They have been through two public hearing processes (Council and Environment Court).
 - (b) They have been agreed by the most affected parties (i.e. those original submitters who chose to be joined to the Environment Court proceedings as section 274 parties).
 - (c) The wording of each and every provision has been carefully and thoroughly considered by the Court and evaluated under section 32, and the objective, policy and rules package has been considered and evaluated as an integrated whole.
 - (d) This detailed scrutiny has been undertaken recently; the Environment Court's final (interim) decision was only issued in May 2013.⁵
 - (e) Given (c) and (d) above it would be inefficient and may lead to unintended consequences and inconsistencies if the Court Confirmed Provisions are substantively altered or otherwise 'tinkered' with in the Proposed Plan.

⁵ *Air New Zealand Ltd v Queenstown Lakes District Council* [2013] NZEnvC 28.

- (f) The Court Confirmed Provisions are the most appropriate to ensure Queenstown Airport is adequately protected against reverse sensitivity effects, and in terms of section 32.
- (g) QAC has commenced noise mitigation works on those properties likely to be affected by increased aircraft noise,⁶ as required by Designation 2,⁷ in reliance on PC35 and the updated noise boundaries being confirmed. It is therefore only fair and reasonable that these provisions be included in the Proposed Plan.
- (h) The Proposed Plan generally excludes from review, so as not to alter, those provisions of the Operative Plan that became operative within the last 5 - 7 years, or where the provisions relate to a discrete topic or zone. Given PC35 affects multiple zones it was not possible to exclude it from the District Plan review in its entirety, however, it is appropriate and consistent with the general approach to other recent plan changes that its provisions not be substantively altered.

Any Material Changes Since PC35 was Confirmed?

- 32. During Hearing Stream 1 (when the above legal submissions were first presented) the Panel queried of the Council whether it was permissible for it to rely on the Environment Court's consideration of PC35 for the purposes of the Panel's own assessment of the Proposed Plan under section 32 of the Act.
- 33. In its Right of Reply the Council stated⁸:

"4.3 In general terms, we submit that it would be permissible for the Panel to place some reliance on the Environment Court's consideration of very similar issues as part of the PC35 appeals process. It is submitted however that this could not act as a substitute for applying section 32 to the present facts and circumstances."

⁶ Refer Mr Edghill's Hearing Stream 1 evidence.

⁷ As modified by the NOR associated with PC35.

⁸ Legal Submissions on behalf of QLDC as Part of the Council's Right of Reply, dated 7 April 2016, at paragraphs 4.2 – 4.5.

4.4 *An Environment Court decision is not binding – only a High Court decision is authoritative on the Council in terms of the correct application of the law. However, factors which would make it reasonable to have regard to and place some weight on the Court's PC35 analysis in this instance include:*

- (a) *the relatively recent consideration by the Court of very similar issues;*
- (b) *the very high level of scrutiny by the Environment Court over the PC35 provisions and alternatives; and*
- (c) *the Council's intention to effectively integrate the PC35 approach into the structure and style of the PDP with as little substantive change as possible.*

4.5 *Some caution should however be exercised for the following reasons:*

- (a) *there may be a materially different planning approach being proposed to areas of land which are likely to be subject to the effects of airport noise, and that change would need to be accounted for and appropriately analysed for the purposes of section 32;*
- (b) *there may be materially different facts and circumstances at the present time compared to those which applied when the Environment Court reached its conclusions on the merits of PC35;*
- (c) *we understand that the Environment Court was applying the previous version of section 32 when it determined PC35, whereas the Panel will need to apply the latest (post-2013) version; and*
- (d) *there still needs to be an analysis of the proposed PDP approach which meets the requirements of section 32AA."*

34. QAC generally agrees with the submissions for the Council at paragraphs 4.3 and 4.4, as cited above.

35. In respect of the 'caution' the Council suggests may need to be exercised (at cited paragraph 4.5), it is noted that:

- (a) QAC agrees that if a materially different planning approach was now proposed to that adopted in PC35, that change would need to be appropriately accounted for and analysed for the purposes of section 32. However, no such change is proposed presently. In the case of the LDRZ, the notified chapter and the Council's evidence makes clear that the Council seeks to maintain the PC35 approach

in the Proposed Plan, and incorporate the relevant PC35 provisions into Chapter 7 (LDRZ) and Chapter 27 (Subdivision) without substantive amendment.

- (b) There are no materially different facts and circumstances at the present time compared to when the Environment Court reached its conclusions on the merits of PC35. At that time, the Airport was experiencing significant growth that outstripped projections. That growth has continued, month on month, year on year, since the Environment Court's decisions. If anything, this ongoing growth, coupled with the significant contribution Queenstown Airport makes to the District's economy,⁹ highlights the importance of ensuring the Airport is adequately protected against reverse sensitivity effects, and that a reasonable level of amenity for the community around the Airport is maintained.

The Council's evidence suggests there may be a need for additional appropriately zoned land to provide for the District's growing population (so to address housing availability and affordability), but it does not provide a basis for providing for intensified land use that is inconsistent with the PC35 approach, within the LDRZ around the Airport.

The Council's evidence is consistent and clear that the significance of Queenstown Airport should not be compromised by providing for intensified residential development within the Airport's noise boundaries.

- (c) Section 32 has been amended since the Environment Court assessed and made its decisions on PC35. However, the amendments do not change the overall purpose of the section, which is to ensure rigour in plan decision making through requiring a critical evaluation of the objectives, policies, and methods of proposals. A rigorous and critical evaluation of the PC35 provisions has already (and recently) been undertaken by the Council and the Environment Court Such.

⁹ Refer Mr Kyle's statement of evidence dated 30 September 2016 at paragraph 2.3, and the earlier evidence from which this statement draws.

- (d) Mr Kyle has assessed any amendments recommended to the notified LDRZ provisions in accordance with section 32AA.

Evidence Supports Maintaining PC35 Approach in Proposed Plan

36. QAC's and the Council's evidence is consistent and supports the incorporation of the PC35 provisions in Chapter 7 (LDRZ) and Chapter 27 (Subdivision) without substantive amendment.

Mr Kyle's Evidence

37. For QAC, Mr Kyle's evidence is that the land use management framework put in place for the LDRZ under PC35 achieves a balance between accommodating the needs of the Airport on an on-going basis and providing for the health, amenity values and development aspirations of those people occupying and using land surrounding the Airport.¹⁰
38. His evidence is that the PC35 provisions enable Queenstown Airport to continue to grow and operate in line with its 2037 growth projections and thus to continue to fulfil its role as a contributor to the social and economic wellbeing of the community.
39. In Mr Kyle's opinion, allowing the intensification of activities sensitive to aircraft noise (**ASAN**) within Queenstown Airport's noise boundaries (ANB or OCB) will ultimately increase the number of people exposed to the increasing effects of aircraft noise over time, which will also inevitably lead to an increase in reverse sensitivity concerns. As a result, QAC may be required to curtail aircraft operations because of growing community concern.¹¹
40. If the operation of the Airport is unduly curtailed and projected growth is not accommodated, then this will compromise the attractiveness of Queenstown as a destination for airlines, which could result in the curtailment of aircraft activity over time. This would likely have a significant effect on the essential underpinnings of the Queenstown economy.¹²

¹⁰ Mr Kyle's evidence dated 30 September 2016, at paragraph 4.3.

¹¹ *Ibid*, at paragraph 2.11.

¹² *Ibid*.

Section 42A Reporting Officer for Chapter 7 (Ms Leith)

41. For the Council, the section 42A reporting officer's opinion is that while LDRZ properties within Queenstown Airport's noise boundaries are well located in terms of access to amenities and transportation networks, these properties are also located within an area that is subject to significant noise effects which have the potential to give rise to reverse sensitivity issues, such that provision for intensified residential development (over and above that provided for under PC35) is not supported.¹³
42. The section 42A reporting officer is in full agreement with Mr Kyle as to the amendments required to the LDRZ provisions to ensure such effects are appropriately addressed.¹⁴

Dr Chiles

43. For the Council, Dr Chiles' evidence is that increasing residential density over and above that provided for under PC35 will, even with appropriate acoustic treatment for buildings, inevitably result in more complaints about airport noise, leading to increased potential for reverse sensitivity effects on the Airport.
44. His evidence is that acoustic treatment of buildings can not address outdoor amenity and broader wellbeing.
45. Dr Chiles does not support the use of no-complaints covenants as an alternative method by which to enable increased residential densities in proximity to Queenstown Airport, for reasons including such covenants will not prevent the community from becoming annoyed about aircraft noise, nor will they protect the community's wellbeing.
46. Further, in Dr Chiles' opinion, it would be difficult for a Council to ignore any complaints made in spite of any such covenant, given its responsibilities under the RMA.¹⁵

¹³ Section 42A Report for Chapter 7, LDRZ, dated 14 September 2016, at paragraphs 9.53 and 9.55 for example.

¹⁴ Amanda Leith, Summary of Evidence dated 7 October 2016, at paragraph 17.

¹⁵ Orally, in response to questions by the Panel on 7 October 2016.

Mr Osborne

47. Mr Osborne's evidence is that focussing on development in the High and Medium Density Residential Zones is the preferable method of adding to land supply within the District.¹⁶
48. In his expert opinion, even with appropriate acoustic treatment for buildings to address internal noise levels, it would not be appropriate to increase residential densities around Queenstown Airport within the Airport's noise boundaries, given the significance of the Airport to the District.¹⁷

Section 42A Reporting Officer for Chapter 27 (Mr Bryce)

49. The section 42A reporting officer for Chapter 27 (Subdivision) supports the need for Chapter 27 provisions to accord with the rule framework set out in PC35, and notes that Strategic Direction Objective 4.2.6 seeks to manage urban growth issues on land in proximity to Queenstown Airport to ensure that the operational capacity and integrity of the Airport is not significantly compromised.¹⁸ He therefore recommends the incorporation of the relevant PC35 subdivision related provisions into the Proposed Plan without substantive amendment.

Conclusions from Evidence

50. The evidence is clear and consistent that, notwithstanding the growth pressures currently faced by the District (housing availability and affordability), providing for increased residential densities within Queenstown Airport's noise boundaries (OCB and ANB) is not appropriate.
51. Given this, it is submitted that there is no evidential or other basis to depart from the Environment Court confirmed PC35 densities for land located within the Airport's noise boundaries.

¹⁶ Orally, in response to questions by the Panel on 7 October 2016.

¹⁷ Ibid.

¹⁸ Section 42A Report for Chapter 27, Subdivision and Development, dated 29 June 2016, at paragraphs 16.2 – 16.11 for example.

No Complaints Covenants

52. It is understood the Panel has taken some interest in whether no-complaints covenants could be an alternative method by which to address reverse sensitivity issues that may potentially arise by providing for increased residential densities within the Airport's noise boundaries. The law relating to no-complaints covenants under the RMA is therefore now addressed.

General

53. In general terms, a 'no-complaints covenant' is an agreement which prevents the owner or occupier of land nearby an effects-producing activity (e.g. an Airport) from complaining about the effects of that activity.

54. Such an agreement may impose various restrictions on the nearby owner, preventing them from taking action against the owner/occupier of the effects-producing site.

55. A no-complaints covenant does not avoid, remedy or mitigate the primary effects of the existing effects-producing activity (e.g. effects on amenity arising from aircraft noise), but it may avoid or mitigate the secondary effects of complaints about that activity (i.e. reverse sensitivity).¹⁹

56. A no-complaints covenant will bind subsequent purchasers of the land if it is registered on the title of the purchased land.²⁰

57. A no-complaints covenant restricts rights under the Bill of Rights Act 1990 (**NZBORA**) (specifically the right to freedom of expression²¹) and the right to participate under the RMA. Therefore, in order for a no complaints covenant to be valid and enforceable, it must be entered into voluntarily.²² Neither a council nor the Court can order an unwilling party to surrender such rights.²³

¹⁹ *Ngatarawa Development Trust Limited v The Hastings District Council* W017/08, 15 April 2008 at paragraph [27]

²⁰ Section 302 of the Property Law Act 2007

²¹ Section 14 of the NZBORA

²² *Christchurch International Airport v Christchurch City Council* (1996) 3 ELRNZ 96, *Rowell v Tasman District Council* (1997) 3 ELRNZ 139, *South Pacific Tyres N.Z. Limited v Powerland (NZ) Limited* [2009] NZRMA 58.

²³ *Ports of Auckland v Auckland City Council* (1998) 5 ELRNZ 90 at page 108

58. Notwithstanding any covenant, other people who are not constrained by the covenant, or the council, may still apply for an enforcement order or an abatement notice²⁴ in respect of the effects producing activity, and the Environment Court may still hear enforcement applications.²⁵

Resource Consent Context

59. No-complaints covenants are most commonly encountered in the context of resource consent applications.
60. In certain circumstances, the grant of a land use consent may be subject to a condition which prevents the consent holder from complaining about an effects producing neighbour. Noting the discussion in the previous section, such a condition must be volunteered, and must also be 'reasonable'.²⁶
61. Where such a condition is imposed (volunteered), under section 108(2)(d) the consent holder may be required (volunteer) to enter into a covenant, in favour of the council (as the consent authority), in respect of performance of that condition. Section 109 then allows the registration of the covenant on the certificate of title of the consent holder's land, and provides that the burden of the covenant runs with the land.²⁷
62. Section 108(2)(d) expressly precludes councils from imposing covenant conditions on subdivision consents, however section 220(1)(f) has been used to similar effect in terms of barring the consent holder or its successors from complaining about a neighbouring effects producing activity.
63. A covenant under section 108(1)(d) benefits the council and is only enforceable by the council (it does not attach to any land). If a no-complaints covenant is breached it may be possible for the council to seek

²⁴ *South Pacific Tyres NZ Ltd* at paragraph [63]

²⁵ *South Pacific Tyres NZ Ltd* at paragraph [48]

²⁶ The condition must be for a resource management purpose and not for an ulterior purpose; the condition must fairly and reasonably relate to the development authorised by the consent to which the condition is attached; the condition must not be so unreasonable that no reasonable planning authority duly appreciating its statutory duties could have approved it (*Newbury DC v Secretary of State for the Environment* [1981] AC 578). The concept of 'reasonableness' is discussed further in the *Wednesbury* case.

²⁷ A covenant is required in addition to any condition as there can be problems with enforcing specific conditions where the purchaser may not have had notice of the requirement, the use of a covenant, or easement under section 220, is a 'reinforcement' tool, to ensure the purchaser does have specific notice of the condition.

to injunct the complaint (via non RMA High Court proceedings) so that it has no further effect.

64. In contrast, in the case of an easement under section 220(1)(f) the parties are the consent holder and the effects producing neighbour. Only the neighbour (not the council) can enforce the easement, in a similar manner to enforcement of a covenant under section 108(1)(d).

District Plan Context

65. Counsel is aware of only one example of no-complaints instruments being used in a district plan context, namely, for Lyttelton Port Company under the Christchurch City Plan.
66. Under that Plan, there is²⁸ a rule under which a no-complaints covenant in favour of the Port Company can be voluntarily agreed to by an applicant for resource consent in order for an activity to be classified as a restricted discretionary as opposed to non-complying.
67. The covenant covers any adverse effects arising from any lawfully established Port activities.
68. The rule came about as a result of mediation between all parties involved in a district plan review appeal and was approved by the Environment Court (i.e. it was agreed by all parties).
69. Given that a covenant or easement must be volunteered by the consent applicant, it is submitted that an approach similar to that taken in the Christchurch City Plan for Lyttelton Port is the only method possibly available in the present case.
70. The method²⁹ is not supported by QAC however for a number of reasons, including:³⁰

NZS 6805

²⁸ Counsel is unsure whether the rule has survived the Replacement Plan process.

²⁹ Irrespective of how any such rule might be framed.

³⁰ Largely as per Asher Davidson's "Reverse Sensitivity – Are No-Complaints Instruments the Solution" paper.

- (a) Enabling increased residential densities within the Airport's noise boundaries is inconsistent with NZS 6805,³¹ irrespective of any consent condition that prevents complaints, no-complaints covenant, or similar legal instrument.

Change of Consent Condition/Extinguishment of Instrument

- (b) A challenge to a condition that prevents complaints may be made at any time by a consent holder via an application under section 127 of the Act for a change or cancellation of a consent condition. The consent holder is not required to show or prove that the circumstances have changed significantly such that the condition is no longer appropriate.
- (c) It is possible to alter or extinguish a covenant or easement in a similar way. Section 126G(1) of the Property Law Act enables the Court to modify or extinguish a covenant or easement where there has been any change since the creation of the instrument in the nature or extent of the use of the effect producer's land, or in the character of the neighbourhood, or in any other circumstance the Court considers relevant. Any of the situations contemplated by section 126G(1) could arise in the present context, particularly if the effects producing activity (the Airport) has increased its effects, by expanding its operations for instance. Similarly, the character of the neighbourhood could be materially changed simply by allowing more residential activity in the vicinity of the effects producing activity.
- (d) Only the owner of the benefit of the easement or covenant has the right to object to any application for modification or extinguishment. For covenants imposed under section 108(1)(d), only the council (not the effects producing activity) is able to object. The effects producing activity would be unable to take part in any hearing.
- (e) Accordingly, a covenant or easement does not provide perpetual protection to an effects producing activity, particularly if there are

³¹ Mr Kyle explains the relevance of NZS 6805 in his evidence.

plans to expand its operations, or the character of the neighbourhood surrounding it changes.

Breach and Enforcement of Instruments

- (f) If a section 108(1)(d) covenant is breached, the effects producing activity is powerless to prevent the breach or to obtain any remedy for it. That must be left to the council. That can be fraught with potential difficulties in that:
- (ii) it will depend on the political will of the council as to whether it is willing to issue High Court proceedings in respect of the breach;
 - (iii) there could be a great deal of bad publicity for a council if it is seen to be taking proceedings against an individual, whom the public may perceive as merely exercising their right to enjoy their land;
 - (iv) the council could be susceptible to criticism for defending the effects producing activity over an individual ratepayer;
 - (v) the council may be reluctant to invest ratepayer funds in Court proceedings where the outcome is uncertain and the 'pay off' for a win small.
- (g) If a section 220(1)(f) easement is breached, only the effects producing activity can seek a remedy for the breach (in the High Court), which inappropriately places the burden (including cost) of enforcement of RMA issues on the effects producing activity, instead of the council. It could also be problematic for the Council in the present context, as the Council would have no ability to enforce the easement (if complaints were made), once it had allowed (consented) residential development at an increased density than would have been permitted absent the easement. If this circumstance resulted in a reverse sensitivity effect on the Airport, the relevant rule (and the Council) would fail to meet the requirements of the Act.

- (h) Covenants/easements generally bind the landowner. While they can also bind occupiers of land (e.g. tenants and visitors), the utility of such instruments in respect of such persons is limited, given it is highly likely occupiers will not be made aware of, and/or may not be concerned with observing them. Enforceability against occupiers (as opposed to owners) is also likely to be difficult, for the reasons outlined above.
- (i) Covenants and easements do not restrict members of the public who are not constrained by the relevant instrument (e.g. visitors to the LDRZ) from making complaints about the effects producing activity, nor the council from investigating those complaints or taking enforcement action against the effects producing activity. It would be difficult for a council to ignore complaints from the community if they were received.

Other RMA Duties

- (j) While a no-complaints covenant may address potential reverse sensitive effects on the effects producing activity, it does not prevent people being annoyed, or protect their amenity or wellbeing. A council is required to consider and address such effects when preparing a district plan (section 76(3)).
71. Given QAC does not support the use of no-complaints conditions, covenants or easements in this instance, and noting again the requirement that they be entered into voluntarily by the parties (as they were in the Lyttleton Port case), a rule similar to the Lyttleton Port rule would have no utility in this case.

Conclusion

72. PC35 put in place a management framework for land use within the Low Density Residential Zone around Queenstown Airport that achieves a balance between accommodating the needs of the Airport on an on-going basis and providing for the health, amenity values and development aspirations of those people occupying and using land surrounding the Airport.

73. The PC35 provisions have been recently and thoroughly scrutinised by the Environment Court and found to be appropriate.
74. There have been no material changes to the facts and circumstances of land use in the district since PC35 was confirmed by the Environment Court. If anything, the issues addressed by PC35 have become more important.
75. No evidence has been presented that gives rise to any cause or justification to depart from the PC35 approach.
76. Accordingly, the relevant PC35 provisions should be incorporated in Chapter 7 (LDRZ) of the Proposed Plan without substantive amendment, as supported by both QAC's and the Council's expert evidence.

R Wolt
Counsel for Queenstown Airport Corporation Limited

APPENDIX A

Reverse Sensitivity

- The concept of reverse sensitivity is used to refer to the effects of new sensitive activities (such as residential activity) on other existing legitimate (i.e. lawful) activities in their vicinity, particularly if it becomes necessary to restrain those existing activities in order to accommodate the new sensitive activity.³²
- The Court has recognised reverse sensitivity as an “*effect*” for the purposes of the Act, and as such there is a duty, subject to other statutory directions, to avoid, remedy or mitigate it, so as to achieve the Act’s purpose of sustainable management.³³
- The Court has adopted the following of definition of the term:³⁴
- *“Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new benign activity is proposed for the land. The ‘sensitivity’ is this: if the new use is permitted the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.”*
- The reverse sensitivity doctrine benefits effects-producing activities, and the public interest in allowing nationally, regionally, and locally important industries to continue.³⁵

³² See for example *Auckland Regional Council v Auckland City Council* A10/97.

³³ See for example *Winstone Aggregates v Matamata-Piako DC* W55/2004. Also refer section 76(3) (District Rules) of the Act which provides that in making a rule, a territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.

³⁴ See for example, *Gateway Funeral Services v Whakatane District Council* W5/08, and *Winstone Aggregates v Matamata-Piako DC* W55/2004, referring to ‘*Reverse Sensitivity – the Common Law Giveth and the RMA Taketh Away*’, 1999 3 NZSEL 93.

³⁵ “Reverse Sensitivity – Are No-Complaints Instruments a Solutions?” Asher Davidson, at 2.2.2.

Before the Queenstown Lakes District Council

In the Matter of the Resource Management Act 1991

And

In the Matter of the Queenstown Lakes Proposed District Plan

Chapter 27 (Subdivision)

**Legal Submissions for
Queenstown Airport Corporation Limited
(Submitter 433 and Further Submitter
1340)**

Dated: 14 August 2016

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Introduction

1. These legal submissions address Queenstown Airport Corporation Limited's (**QAC**) submission on Chapter 27 (Subdivision) of the Proposed Queenstown Lakes District Plan (**Proposed Plan**).

QAC

2. QAC is the Airport Authority responsible for operating Queenstown Airport.
3. Queenstown Airport is presently owned by QLDC (75.1%) and the Auckland International Airport Limited (**AIAL**) (24.9%).
4. QAC also manages operations at, and the administration of, Wanaka Airport, on behalf of QLDC, and has a caretaker role for Glenorchy Airport.
5. Queenstown Airport is a significant strategic resource that provides direct and indirect benefits to the local and regional economies. It provides an important national and international transport link for the local, regional and international community. The Airport is a fundamental part of the social and economic wellbeing of the community.
6. Through its submission, QAC is concerned to ensure that the Proposed Plan appropriately recognises and provides for the ongoing operation and growth of the Airport, in a safe and efficient manner, whilst ensuring that reverse sensitivity effects are avoided.
7. QAC is also concerned to ensure that Wanaka Airport is appropriately recognised and provided for, given its management of that airport on behalf of QLDC.

QAC's Submission on Chapter 27

8. QAC made submissions on Chapter 27 of the Proposed Plan in respect of the following issues:
 - (a) The proposed minimum allotment size and infill provisions of the Low Density Residential Zone;

- (b) The recognition of birdstrike as a potential safety issue for Queenstown and Wanaka Airports, arising from inappropriate development around those airports; and
- (c) The notification to QAC of applications for development, including subdivision, within close proximity to Queenstown and Wanaka Airports.

9. These issues are addressed in some detail shortly.

Previous Legal Submissions Adopted for Chapter 27 Hearing

- 10. Comprehensive legal submissions (dated 29 February 2016) were presented for QAC at the hearing of submissions on Chapters 3, 4 and 6 of the Proposed Plan. They are adopted for the purposes of this hearing, to the extent they are relevant to QAC's submission on Chapter 27.
- 11. Particular attention is drawn to the following parts of QAC's February legal submissions:
 - (d) Paragraphs 4 – 10, where an overview of Queenstown Airport is provided;
 - (e) Paragraphs 11 – 22, where the statutory framework within which QAC operates is set out;
 - (f) Paragraphs 23 – 30, where QAC's landholdings are detailed;
 - (g) Paragraphs 31 – 38, where QAC's recent growth and projects are discussed;
 - (h) Paragraphs 39 – 41, where QAC's management of Wanaka Airport is explained (see also the evidence of QAC's CEO, Mark Edghill, dated 29 February, paragraphs 4.1 – 4.3);
 - (i) Paragraphs 45 – 63, where the statutory framework within which submissions on the Proposed Plan must be considered, and decisions made, is detailed; and
 - (j) Paragraphs 80 – 114, where the background to Plan Change 35, and the reasons why its provisions should be incorporated into the Proposed Plan without substantive amendment, is set out.

12. A copy of QAC's 29 February 2016 legal submissions is **attached**, for the Panel's convenience.
13. Further legal submissions were presented for QAC¹ at the hearing of submissions on Chapter 21 (Rural Zone). New Panel members may find it useful to also read these submissions to further understand the nature and context of QAC's submission.

Evidence

14. Expert planning evidence has been pre-lodged for QAC (refer Statement of Evidence of Kirsty O'Sullivan dated 15 July 2016) which addresses the issues raised in QAC's submission in detail.

Issues for QAC

Proposed Minimum Allotment Size and Infill Provisions (Section 42A Report - Issue 7, Section 16)

QAC's Submission

15. The land surrounding Queenstown Airport comprises a mixture of zonings, including the Low Density Residential Zone (refer Proposed Planning Map 31a). The proximity of this Zone to the Airport is of some concern for QAC because, as the name of the zone suggests, it provides for and enables residential activity to establish within it.
16. Residential activity is recognised as an "Activity that is Sensitive to Aircraft Noise" and is encapsulated within the definition of that term ("ASAN") as contained within the Operative and Proposed Plans.
17. Given the regional and strategic significance of Queenstown Airport, it is appropriate that ASAN (i.e. residential activity, including further development) be managed so as not to give rise to reverse sensitivity² effects on the Airport.

¹ Dated 16 May 2016.

² The concept of reverse sensitivity is used to refer to the effects of new sensitive activities (such as residential activity) on other existing legitimate (i.e. lawful) activities in their vicinity, particularly if it becomes necessary to restrain those existing activities in order to accommodate the new sensitive activity: see for example *Auckland Regional Council v Auckland City Council A10/97*. Reverse sensitivity has been recognised as an "effect" for the purposes of the Act, and as such there is a duty, subject to other statutory directions, to

18. To further explain, it is trite that airports can be noisy, and that the establishment of ASAN in close proximity to airports has the potential to give rise to reverse sensitivity effects - if residents complaint about aircraft noise, which results in a requirement in the airport to curtail aircraft operations.
19. It is a logical inference that the greater the intensity of noise sensitive land use around an airport, the greater the risk of complaints about aircraft noise, and consequently, the greater the risk of the reverse sensitivity effect on the airport.
20. Accordingly, through its submission on the Proposed Plan, QAC is concerned to ensure that the number and intensity of noise sensitive land uses around Queenstown Airport – specifically, residential land use within the Airport’s ANB and OCB (being noise boundaries within which potential future aircraft noise levels are known, and where aircraft noise may be more likely annoy some people), is maintained at the level provided for under the Operative District Plan, so to minimise the potential for reverse sensitivity effects. This is consistent with PC35³.
21. The history of PC35 and the appropriateness of incorporating its provisions into the Proposed Plan, without substantive amendment, is addressed in detail in QAC’s legal submissions dated 29 February 2016 (paragraphs 80 - 114). To the extent they are relevant, those submissions are adopted presently.
22. It is additionally submitted that, given the recent detailed scrutiny given by the Environment Court to PC35, the Panel would need to be presented with detailed and robust evidence (including economic evidence) that the approach endorsed by the Court for protecting Queenstown Airport from potential reverse sensitivity effects (which includes the Operative Plan’s density provisions) is no longer appropriate, and/or the Airport no longer warrants such protection, before departing from the Court’s decisions. No such evidence has been presented to date.

avoid, remedy or mitigate it, so as to achieve the Act’s purpose of sustainable management: see for example *Winstone Aggregates v Matamata-Piako DC W55/2004*. Also refer section 76(3) (District Rules) of the Act which provides that in making a rule, a territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.

³ Refer John Kyle’s evidence dated 29 February 2016, Sections 5 and 6, and his evidence dated 16 March 2016, Section 5, for an overview of PC35.

Section 42A Report

23. The Reporting Officer correctly recognises that in terms of the minimum allotment size and infill provisions of the Low Density Residential Zone, the key issue for QAC is the Proposed Plan's consistency (or, as notified, its inconsistency) with development outcomes enabled under PC35.
24. As explained above, and by Ms O'Sullivan, underpinning this is a very real concern that enabling intensification of noise sensitive activities within Queenstown Airport's noise boundaries (ANB and OCB) will increase the potential for reverse sensitivity effects on the Airport.
25. The Reporting Officer acknowledges QAC's concerns as valid, and recommends the relief it seeks be accepted 'in part'. QAC supports this recommendation. Ms O'Sullivan addresses this in further detail.

Bird strike (Section 42A Report - Issue 9, Section 18)

26. Bird strike is the collision between an airborne animal (usually a bird) and an aircraft. Bird strike is a significant threat to flight safety, and can result in damage⁴ to aircraft, accidents and human casualties. In addition, there are numerous indirect and ancillary costs.⁵ A collision is usually fatal to the bird involved, and most commonly occurs during take-off or landing (or low altitude flight).
27. The risk of bird strike can be exacerbated by activities that encourage the congregation (including feeding and nesting) of birds around airports, including landfills, wastewater treatment plants, stormwater detention areas, agriculture (growing of crops, particularly grains and cereals, and rearing of animals), recreation areas (golf courses, parks etc), and waterbodies.
28. Given their locations, bird strike is a potential issue for both Queenstown and Wanaka Airports.

⁴ For example, damage to: engines, wings, flaps, lights landing gear, windscreens, pitot tubes and navigation aerials (reference: CAA AC139-16).

⁵ E.g. lost and dumped fuel, mechanical repairs, accommodating stranded passengers and crew, disruption and delay of flight schedules, missed connections, lost business opportunities as a result of delays, runway closures and cleanups, airport emergency response costs, etc (reference CAA AC139-16).

29. For aerodromes certificated under Civil Aviation Rules, Part 139 *Aerodromes – Certification, Operation and Use*, (e.g. Queenstown Airport), the aerodrome operator (e.g. QAC) is required to have an environmental management programme for minimising or eliminating any wildlife hazard.⁶
30. The CAA Advisory Circular accompanying this rule⁷ recommends the adoption of both active management techniques, and longer term strategic methods to reduce bird hazard, and notes that bird hazard management programmes are most effective when all stakeholders are involved in their development and implementation.
31. The Advisory Circular identifies local authorities as important stakeholders, given their responsibility for planning land use activities around airports. It also notes it is crucial that aerodrome operators make submissions during the preparation of district plans, and work with local authorities to ensure they are aware that certain activities can influence bird populations, which can be hazardous to air transportation if near an aerodrome and approach or take-off flight paths for aircraft.
32. Accordingly, through its submission, QAC seeks to ensure that the Queenstown Lakes District Council is cognisant of, and provides for this important issue in the Proposed Plan, in terms of land use and management around both Queenstown and Wanaka Airports.
33. QAC is mindful of the realities of land-use around these airports however. Rather than seeking to prevent or prohibit activities that may increase the risk of bird strike around Queenstown and Wanaka Airports, through its submission it instead seeks the introduction of a new policy to support Objective 27.2.2, that discourages activities which may give rise to the congregation of birds within aircraft flight paths. Such a policy will ensure that the potential for bird strike is given proper consideration when resource consent is sought for certain activities.

Section 42A Report

34. The Reporting Officer expresses a concern that because QAC has not also sought the inclusion of a related method (i.e. rule) to implement the policy,

⁶ CAR 139.71.

⁷ AC 139-16.

the practical application of the policy will not achieve the outcome QAC seeks, and invites QAC to address this at the hearing.

35. In response, Ms O'Sullivan addresses the issue in detail in her evidence, and recommends the introduction of further provisions to address the Reporting Officer's concerns. As explained by Ms O'Sullivan, these further provisions are required only because the Reporting Officer has recommended that all subdivision (excepting subdivision within the Rural zone) require restricted discretionary consent, (as opposed to fully discretionary, as was the case when the Proposed Plan was notified).
36. Having considered Ms O'Sullivan's evidence, including the detailed explanation and reasoning contained therein, the Council accepts it is appropriate that the bird strike issue be recognised and addressed in the Proposed Plan. Through its legal submissions, the Council recommends the relief proposed in Ms O'Sullivan's evidence be accepted, albeit with some minor modifications.
37. QAC supports the Council's position in this regard, and considers the amended policy and (27.2.2.11) and related matter of discretion (Rule 27.5.5) are necessary and appropriate provisions to ensure this important issue is addressed for both Queenstown and Wanaka Airports.

Notification (Section 42A Report – Issue 14, Section 23)

38. Through its submission on Chapter 27 QAC sought Rule 27.9.2 be amended so to require that all applications for subdivision of land within the ANB or OCB at Queenstown or Wanaka Airports be notified to QAC, as an affected party.
39. The Reporting Officer recommends that this relief be rejected, for reasons that potential reverse sensitivity issues – with which QAC is concerned – are already adequately addressed by the PC35 provisions, (which the Reporting Officer, for all intents and purposes, recommends be incorporated in the Proposed Plan).
40. Having considered the issue further, including the Reporting Officer's reasoning, Ms O'Sullivan agrees that the relief sought by QAC on this

issue is unnecessary. That is, she accepts the Reporting Officer's recommendation. Accordingly, QAC is no longer pursuing this relief.⁸

Summary

41. The Reporting Officer and Ms O'Sullivan are fully aligned in the expert opinions as to how the Proposed Plan ought to be amended in order to appropriately address Queenstown and Wanaka Airport related issues.
42. Both expert planners have carefully and fully considered and assessed each issue before reaching a position. The Panel can therefore place considerable weight on their evidence and, it is submitted, confidently adopt the recommendations contained therein.



R Wolt
Counsel for Queenstown Airport Corporation Limited

⁸ But to clarify, QAC does withdraw this relief.

Before the Queenstown Lakes District Council

In the Matter of the Resource Management Act 1991

And

In the Matter of the Queenstown Lakes Proposed District Plan

**Chapter 3 (Strategic Direction), Chapter 4 (Urban
Development) and Chapter 6 (Landscape)**

**Legal Submissions for
Queenstown Airport Corporation Limited
(Submitter 433 and Further Submitter
1340)**

Dated: 29 February 2016

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Introduction

1. These legal submissions are filed on behalf of Queenstown Airport Corporation Limited (**QAC**) in respect of its submission on Chapter 3 (Strategic Direction), Chapter 4 (Urban Development) and Chapter 6 (Landscape) of the Queenstown Lakes Proposed District Plan (**Proposed Plan**).
2. These submissions and the evidence to be presented for QAC also address, at a high level, the changes QAC seeks to other chapters of the Proposed Plan¹ to appropriately incorporate the regime established under Plan Change 35 (**PC35**) for managing noise sensitive land use around Queenstown Airport.
3. Although these chapters are not the subject of this hearing, it is necessary and appropriate to present an overview of the changes QAC has sought to them (to be addressed in detail at later hearings) in order to properly understand the changes it has sought to Proposed Chapter 4. This will be explained in further detail later in these submissions.²

Queenstown Airport – An Overview

4. Queenstown Airport (**Airport**) is an important existing strategic asset to the Queenstown Lakes District and Otago Region. It provides an important national and international transport link for the local, regional and international community and has a major influence on the Region's economy. The Airport is a fundamental part of the social and economic wellbeing of the community.
5. Queenstown Airport is one of the busiest airports in New Zealand, operating a mixture of scheduled flights, corporate jets, general aviation and helicopters. It is by some margin the largest of the regional airports

¹ Specifically, Chapters 7, 15, 17, 21, 36 and 37.

² It is noted this circumstance was raised with the Panel Chair in advance of the hearing, and appears to be expressly contemplated on page 3, 4th paragraph of the First Procedural Minute, dated 25 January 2016. For the avoidance of doubt, further detailed evidence (and possibly legal submissions) will be presented at the later hearings of chapters on which QAC has submitted and where the appropriate incorporation of the operative PC35 provisions is at issue, but the evidence and submissions presented for at this hearing will not be repeated.

and the fourth largest in New Zealand in terms of passenger numbers and revenue.

6. The Airport is one of Australasia's fastest growing airports, and as the gateway to southern New Zealand, is a vital part of the national and regional tourism industry.
7. It provides an essential link for domestic and international visitors to New Zealand's premier destinations of Queenstown, the Lakes District, Milford Sound and in general, the lower South Island. Consequently, it is a significant strategic resource and provides direct and indirect benefits to the local and regional economy.
8. Queenstown Airport has been experiencing significant growth in the use of its facilities and infrastructure over recent years, particularly in international and domestic passengers. Growth is predicted to continue.
9. Accordingly, QAC is concerned to ensure that the Proposed Plan appropriately recognises and provides for the ongoing operation and growth of the Airport, in a safe and efficient manner, whilst ensuring that reverse sensitivity effects are avoided.
10. QAC is also concerned to ensure that Wanaka Airport is appropriately recognised and provided for, given its management of that airport on behalf of QLDC.

QAC's Statutory Framework

11. QAC was formed in 1988 under section 3(1) of the Airport Authorities Act 1966 to manage Queenstown Airport.
12. Queenstown Airport is presently owned by QLDC (75.1%) and the Auckland International Airport Limited (**AIAL**) (24.9%).
13. QAC also manages Wanaka Airport, and has an informal caretaker role for Glenorchy Aerodrome, on behalf of QLDC. (As well as its more general submissions on Chapters 3, 4 and 6 of the Proposed Plan, QAC has made submissions that are specific to Wanaka Airport, which will be addressed at later hearings.)

14. QAC is a council-controlled trading organisation (**CCTO**) of QLDC pursuant to the Local Government Act 2002 (**LGA**). Section 59 LGA sets out the principal objectives of a CCTO which are to:
 - (a) achieve the objectives of its shareholders, both commercial and non-commercial, as specified in the statement of intent (**SoI**); and
 - (b) be a good employer; and
 - (c) exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so; and
 - (d) conduct its affairs in accordance with sound business practice.
15. The objectives stated in QAC's SoI 2016 – 18 include the following:

“5. Pursue operational excellence including being an outstanding corporate citizen within the local community.”
16. As an Airport Authority, QAC must operate or manage the Airport as a commercial undertaking (section 4(3) Airport Authorities Act).
17. As an Airport Authority QAC is also a network utility operator under section 166 of the Resource Management Act (**RMA** or **Act**).
18. QAC is an approved acquiring authority under Resource Management (Approval of Queenstown Airport Corporation Limited as Requiring Authority) Order 1992/383 and Gazette Notice 1994/6434. As well as general approval for the operation, maintenance, expansion and development of Queenstown Airport, this Order conferred approval as a requiring authority for airport related works on all the land that is to the south of the Airport, between the existing airport and the Kawerau River; all the land to the north between the existing airport and SH6, and all the land to the east between the existing airport and Shotover River (i.e. the whole of Frankton Flats).

19. QAC is currently the requiring authority for three designations in the Operative District Plan:³
- (a) Designation 2 - Aerodrome Purposes, the purpose of which is to protect the operational capability of the Airport, while at the same time minimising adverse environmental effects from aircraft noise on the community until at least 2037. The Designation is subject to conditions which include obligations on QAC in respect of noise management and mitigation.
 - (b) Designation 3 - Air Noise Boundary, the purpose of which is to define the location of the Air Noise Boundary (**ANB**) for the Airport. This designation is outdated and QAC has given notice to QLDC that it is to be withdrawn⁴.
 - (c) Designation 4 - Airport Approach and Land Use Controls, the purpose of which is to provide obstacle limitation surfaces around the Airport to ensure the safe operation of aircraft approaching and departing the Airport.
20. Excepting Designation 3, QAC seeks these designations be 'rolled over,' with modifications, in the Proposed Plan. The modifications will be addressed at separate hearings.
21. QAC is a 'lifeline utility' under the Civil Defence Emergency Management Act 2002 (**CDEMA**). Under this Act, lifeline utilities have a key role in planning and preparing for emergencies, and for response and recovery in the event of an emergency. As a lifeline utility QAC must, amongst other things, ensure it is able to function to the fullest possible extent, even though this may be at a reduced level, during and after an emergency (section 60 CDEMA).
22. QAC's operation of Queenstown Airport as an aerodrome is subject to the provisions of the Civil Aviation Act 1990 and to the controls imposed on civil aviation by that Act, and the regulations and rules made under it, which include matters relating to safety.

³ Refer Schedule of Designations on page A1-2 of the Operative District Plan.

⁴ Noting that under PC35 the ANB is shown in the District Plan maps instead.

QAC's Current and Future Landholdings

23. QAC owns approximately 137 ha of land on Frankton Flats comprising:
- (a) Approximately 83 ha incorporating the airfield, runways and aprons, rescue fire facilities and air traffic control. This land is generally located within the Aerodrome Purposes Designation (Designation 2). The underlying zoning of this land in the Operative District Plan (**Operative Plan**) is Rural, however under the Proposed Plan it forms part of the Queenstown Airport Mixed Use Zone, which is essentially a new zone⁵ and is generally supported by QAC.⁶
 - (b) 8 ha of terminal, carparking, road network and commercial land leased to airport related business. This land is currently a mix of zonings under the Operative Plan, however in the Proposed Plan it also forms part of the new Airport Mixed Use Zone.
 - (c) 17 ha of land used by general aviation, generally located within Designation 2. QAC anticipates this general aviation activity will ultimately be relocated from its current location to free it up for other Airport related uses.
 - (d) 17 ha of undeveloped land recently rezoned for industrial activity under Plan Change 19. This land is not included in Stage 1 of the Proposed Plan.
 - (e) 12 ha of undeveloped rural and golf course land. The golf course land is leased to QLDC (for a nominal rate) for the Frankton Golf Course.
24. Mr Kyle's evidence⁷ contains a plan showing these landholdings and the location of the Aerodrome Purposes designation boundary.

⁵ The zone exists in the Operative Plan but is significantly amended and extended in the Proposed Plan.

⁶ To be addressed at a later hearing.

⁷ Dated 29 February 2016.

Lot 6

25. QAC is currently seeking to designate and ultimately acquire part (approximately 16 ha) of Lot 6 DP 304345 (**Lot 6**) for Aerodrome Purposes. Lot 6 is located immediately south of the main runway and east of the cross wind runway, and is owned by Remarkables Park Limited (**RPL**).
26. The designation of Lot 6 will enable, *inter alia*, general aviation and helicopter activities to relocate from their currently constrained cul-de-sac location near Lucas Place, enabling further growth in these activities and freeing up the land comprising their current location for other Airport related uses. It will also enable the establishment of new private jet and Code C aircraft facilities, and the creation of a Code C parallel taxiway, which will significantly enhance the Airport's capacity at peak times.
27. RPL opposes the designation and acquisition of its land and consequently the matter has had a complex and lengthy Environment and High Court history, and currently remains unresolved. A final decision on the notice of requirement is expected to be issued by the Environment Court later this year (having been referred back to it by the High Court for reconsideration).
28. An interim decision was issued in December 2012⁸ in which the Court confirmed that the Lot 6 land is the appropriate location for the relocation of GA and helicopter activities and the other works described above, and that the area required is about 16 ha, as sought by QAC. The Court is expected to confirm the 16 ha designation once QAC completes an aeronautical study (currently underway) in relation to, and obtains CAA approval for, the works enabled by the Designation.
29. If QAC is ultimately successful with the designation and acquisition of Lot 6, its Aerodrome Purposes Designation will be expanded by approximately 16 ha.
30. The matter of Lot 6 is traversed in these submissions as the outcome of the proceeding will have a bearing on the Environment Court's final

⁸[2015] NZEnvC 222.

decision on the location of the PC35 noise boundaries. This is further explained later in these submissions.

Airport Growth and Recent Projects

Recent Growth

31. 2015 continued the trend of previous years and was another record breaking year of growth for the Airport. The Airport recorded a total of 1.5 million passengers for the first time over a 12 month period, comprised of just under 450,000 international passengers and just over 1,050,000 domestic⁹ passengers. There were also significant increases in private jet and commercial general aviation operations.¹⁰
32. An economic analysis¹¹ undertaken in 2014 found that the Airport generates gross output into the District's economy of some \$88 million dollars, sustaining the equivalent of 520 fulltime workers each year. The same report found it facilitates between \$392m and \$423m of tourist spending in the District's economy, which is between 26% and 28% of the total tourist spend.¹²
33. An economic analysis undertaken for QAC in relation to Plan Change 35 indicated that in 2037 gross output will increase to \$522 million and will sustain the equivalent of 8,100 fulltime workers each year. This contribution is likely to be understated given recent Airport growth projections.¹³
34. Given the above, it is clear the Airport provides significant direct and indirect benefits to the local and regional economies.
35. Consequently, and noting again QAC's role as a lifeline utility under the CDEMA, Queenstown Airport can be considered a regionally significant strategic resource and infrastructure.

⁹ Noting a significant portion of these domestic passengers were themselves international visitors to the region – refer QAC's Annual Report for Financial Year Ended 30 June 2015.

¹⁰ Refer Mark Edghill's evidence dated 29 February 2016.

¹¹ 'Queenstown Airport Mixed Use Zone Economic Assessment', Market Economics Limited, November 2014.

¹² Ibid.

¹³ Refer Mr Edghill's evidence.

36. Further, the ongoing operation, growth and development the Airport, absent undue constraint, is of significant importance to the social and economic wellbeing of the District's community and the wider region.

Recent Projects

37. 2015 saw QAC complete a raft of airport development projects, including:
- (a) a significant terminal expansion;
 - (b) commencement of significant works to enable evening flights, which are due to commence in winter 2016;
 - (c) continued with giving effect to its obligations under Designation 2, in respect of the mitigation of effect of aircraft noise on existing properties located within the Airport's ANB and OCB¹⁴; and
 - (d) commenced a master planning process to cater for the next 30 years of Airport growth.
38. These projects are detailed further in Mr Edghill's evidence. They serve to emphasise the continual and dynamic growth and development of the Airport, along with its commitment to being socially and environmentally responsible,¹⁵ and an outstanding corporate citizen in the local community.¹⁶

Wanaka Airport

39. Wanaka Airport accommodates aircraft movements associated with scheduled general aviation and helicopter operations, and is a major facilitator of commercial helicopter operations within the District. It provides a complementary and supplementary facility to Queenstown Airport.

¹⁴ As updated by PC35.

¹⁵ As required by section 59, LGA

¹⁶ 2016 – 2018 Sol, Objective 5.

40. Wanaka Airport is the subject of two designations in the Operative District Plan,¹⁷ for which QLDC is the requiring authority. QAC manages the airport on QLDC's behalf.
41. While not an identified lifeline utility under the CDEM, Wanaka Airport will likely provide important air access to the District in the event that road access is compromised during an emergency event.¹⁸ Consequently, Wanaka Airport can also be considered regionally significant infrastructure, which plays an important role in providing for the community's safety and well being.

QAC's Submissions on Proposed Plan

42. QAC's submissions and further submissions on the Proposed Plan can be broadly summarised as concerning the following:
- (a) The policy framework provided for regionally significant infrastructure (Chapter 3);
 - (b) The integration of Plan Change 35 (PC35) into the Proposed Plan (Chapter 4);
 - (c) The recognition of functional and locational constraints of infrastructure (Chapter 6).
43. QAC has also made submissions relating to the planning maps (in particular the incorporation of the PC35 noise boundaries); the Proposed Queenstown Airport Mixed Use zone (which it generally supports); a number of designations/notices of requirements (including those relating to Queenstown and Wanaka Airports); natural hazards (in particular the wording used in the proposed provisions) and further submissions on rezoning requests in proximity to Queenstown and Wanaka Airports (which it generally opposes in the absence of adequate information to assess the potential effects). QAC's submissions on these issues will be addressed at subsequent hearings.

¹⁷ Aerodrome Purposes" (Designation 64) and "Approach and Land Use Control" purposes (Designation 65).

¹⁸ Refer John Kyle's evidence.

44. When considering QAC's and other submissions, and the section 42A Reports, the Panel must do so within the framework of the Act, as detailed below.

Statutory Framework

45. The purpose of the preparation, implementation, and administration of district plans is to assist councils to carry out their functions *in order to achieve the purpose of the Act*.¹⁹

Act's Purpose

46. The purpose of the RMA is, under section 5 of the Act, to promote the sustainable management²⁰ of natural and physical resources. Under section 6, identified matters of national importance²¹ must be recognised and provided and, under section 7, particular regard is to be had to the 'other matters' listed there which include kaitiakitanga, efficiency, amenity values and ecosystems. Under section 8, the principles of the Treaty of Waitangi are to be taken into account.
47. Section 5 is a guiding principle which is intended to be followed by those performing functions under the RMA, rather than a prescriptive provision subject to literal interpretation.²²
48. In the sequence of '*avoiding, remedying or mitigating*' under section 5(2)(c):²³
- (a) '*avoiding*' means '*not allowing*' or '*preventing the occurrence of*';
 - (b) '*remedying*' and '*mitigating*' indicate that developments which might have adverse effects on particular sites can nonetheless be permitted if those effects are mitigated and/or remedied.

¹⁹ Section 72 of the Act.

²⁰ As that phrase is defined in s 5(2) of the RMA.

²¹ Relating to the natural character of the coastal environment, the protection of outstanding natural features and landscapes, significant indigenous vegetation and habitats, the maintenance and enhancement of public access to the coastal marine area, lakes and rivers, the relationship of Maori and the culture and traditions with their ancestral lands, waters, sites, waahitapu and other taonga and the protection of historic heritage and customary rights.

²² *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38 (**King Salmon**).

²³ *Ibid*.

(c) The word ‘*while*’ in section 5(2) means ‘at the same time as’.

49. Section 5 is to be read as an integrated whole. The wellbeing of people and communities is to be enabled at the same time as the matters in section 5(2) are achieved.²⁴

Section 31

50. Section 31 sets out councils’ functions for the purpose of giving effect to the RMA. Importantly, these include (*inter alia*):

- (a) “*the establishment, implementation, and review of objectives, policies and methods, to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district*”²⁵; and
- (b) “*the control of any actual or potential effects of the use, development, or protection of land*”²⁶; and
- (c) “*the control of the emission of noise and the mitigation of the effects of noise.*”²⁷”

Sections 32 and 32AA

51. Section 32 sets out the legal framework within which a council (and thus the Hearings Panel) must consider the submissions, evidence and reports before it in relation to a proposed plan, in conjunction with the matters specified in section 74.
52. Under section 32, an evaluation report on a proposed plan must examine whether proposed objectives are the most appropriate way to achieve the purpose of the Act, and whether the provisions are the most appropriate way of achieving the objectives. To do that, a council must identify other reasonably practicable options to and assess the efficiency and effectiveness of the proposed provisions through identifying the benefits and costs of the environmental, economic, social and cultural effects, including opportunities for economic growth and employment.

²⁴ Ibid.

²⁵ Section 31(1)(a).

²⁶ Section 31(1)(b).

²⁷ Section 31(1)(d).

53. Section 32AA requires a further evaluation to be undertaken for any changes made or proposed to a proposed plan since the section 32 evaluation was completed. This further evaluation must either be published as a separate report, or referred to in the decision making record in sufficient detail to demonstrate it was carried out.

District Plan Preparation (Sections 74 and 75)

54. A council's (and the Hearing Panel's) decision on a proposed plan must be in accordance with (relevantly):²⁸
- (a) the council's functions under section 31; and
 - (b) the provisions of Part 2; and
 - (c) its obligation to prepare and have regard to an evaluation report prepared in accordance with section 32; and
 - (d) any regulations.
55. Additionally, when preparing or changing a district plan a council *shall have regard*²⁹ to the instruments listed in section 74, which include any proposed regional policy statement, proposed regional plan and any management plans and strategies prepared under other Acts. It *must take into account*³⁰ any relevant planning document recognised by an iwi authority. It must also *have particular regard*³¹ to an evaluation report prepared under section 32.

²⁸ Section 74(1) of the Act.

²⁹ "Have regard to" means to give genuine attention and thought to the matter, see: *NZ Fishing Industry Assn Inc v Ministry of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at pp 17, 24, 30 and also the Environment Court decision in *Marlborough Ridge Ltd v Marlborough District Council* (1997) 3 ELRNZ 483 and *Unison Networks Ltd v Hastings District Council* [2011] NZRMA 394, at [70] (albeit a resource consent decision, as to s104).

³⁰ "Must take into account" means the decision maker must address the matter and record it has have done so in its decision; but the weight to be given it is a matter for its judgment in light of the evidence, see: *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC) at [42].

³¹ "Have particular regard to" means to give genuine attention and thought to the matter, on a footing that the legislation has specified it as something important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion, see: *Marlborough District v Southern Ocean Seafoods Ltd* [1995] NZRMA, which concerned a resource consent, however in its decision on the Strategic Directions Chapter of Proposed Christchurch Replacement Plan (dated 26 February 2015) the Independent Hearings Panel accepted as valid the application of the principle to district plan formulation (at paragraph [43]).

56. Under s 75, a council *must give effect to*³² any national policy statement, any New Zealand coastal policy statement and any regional policy statement, and *must not be inconsistent with*³³ a water conservation order or a regional plan (for any matter specified in subsection 30(1)).
57. Finally, under section 75(1), district plan policies must state the objectives for the district plan; the policies to *implement* the objectives, and the rules (if any) to *implement* the policies.

Case Law

58. The Environment Court gave a comprehensive summary of the mandatory requirements for the preparation of district plans in *Long Bay-Okura v North Shore City Council*³⁴. Subsequent cases have updated the *Long Bay* summary following amendments to the RMA in 2005 and 2009, one of the more recent and comprehensive being the decision in *Colonial Vineyard Ltd v Marlborough District Council*³⁵. However, since that decision section 32 has been materially amended again³⁶. The 2013 Amendment changed the requirements for and implications of section 32 evaluations, but did not change the statutory relationship between the relevant higher order documents (discussed in the preceding paragraphs).
59. An updated version of the *Long Bay/Colonial Vineyard* test, incorporating the 2013 Amendments, is set out in **Appendix A**.
60. Further principles relevant to the implementation of section 32 as set out in the Act and derived from the case law include the following:

³² “Give effect to” means to implement according to the applicable policy statement’s intentions, see: *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, at [80], and at [152]-[154]. This is a strong directive creating a firm obligation on those subject to it.

³³ This is usefully tested by asking:

- Are the provisions of the Proposed Plan compatible with the provisions of these higher order documents?
- Do the provisions alter the essential nature or character of what the higher order documents allow or provide for?

See *Re Canterbury Cricket Association* [2013] NZEnvC 184, [51]–[52] for the first of the above questions, and *Norwest Community Action Group Inc v Transpower New Zealand EnvC A113/01* for the second, as applied by the Independent Hearings Panel in its decision on the Strategic Directions Chapter of Proposed Christchurch Replacement Plan (dated 26 February 2015) at paragraph [42].

³⁴ A078/08.

³⁵ [2014] NZEnvC 55.

³⁶ By section 70 of the Resource Management Amendment Act 2013, which came into force in December 2013.

- (a) The proposed plan should achieve integrated management of the effects of the use, development and protection of land and associated natural and physical resources of the district.³⁷
- (b) The decision maker does not start with any particular presumption as to the appropriate zone, rule, policy or objective.³⁸
- (c) No onus lies with a submitter to establish that the subject provisions should be deleted, nor is there a presumption that the provisions of a proposed plan are correct or appropriate. The proceedings are more in the nature of an inquiry into the merits in accordance with the statutory objectives and existing provisions of policy statements and plans.³⁹
- (d) The decision maker's task is to seek to obtain the optimum planning solution within the scope of the matters before it based on an evaluation of the totality of the evidence given at the hearing, without imposing a burden of proof on any party.⁴⁰
- (e) The provisions in all plans do not always fit neatly together and where that is the case consideration should be had through the filter of Part 2 of the Act.⁴¹
- (f) Section 32 requires a value judgment as to what, on balance, is the 'most appropriate' when measured against the relevant objectives. 'Appropriate' means 'suitable'; there is no need to place any gloss upon that word by incorporating that is to be superior.⁴²
- (g) The words 'most appropriate' in section 32 allow ample room for the Council (or its officers) to report that it considers one approach 'appropriate' and for the decision maker to take an entirely different

³⁷ Section 31(1)(a).

³⁸ *Eldamos Investments Limited v Gisborne District Council* W47/05, affirmed by the High Court in *Gisborne District Council v Eldamos Investments Ltd*, CIV-2005-548-1241, Harrison J, High Court, Gisborne, 26/10/2005. See also *Sloan and Ors v Christchurch City Council* C3/2008; *Briggs v Christchurch City Council* C45/08, and *Land Equity Group v Napier City Council* W25/08.

³⁹ *Hibbit v Auckland City Council* 39/96, [1996] NZRMA 529 at 533.

⁴⁰ *Eldamos* paragraph [129];

⁴¹ *Ibid*, paragraph [30]. This is not inconsistent with *King Salmon*.

⁴² *Rational Transport Society Inc v NZTA* [2012] NZRMW 298 (HC) at [45].

view, on the basis of the accepted evidence and other information it has received.⁴³

- (h) Section 32 is there primarily to ensure that any restrictions on the complete freedom to develop are justified rather than the converse. To put it more succinctly, it is the 'noes' in the plan which must be justified, not the 'ayes'.⁴⁴

61. More generally, the Supreme Court's decision in *King Salmon*⁴⁵ reinforces the following general principles in relation to the preparation and change of district plans:

- (a) The hierarchy of planning documents required under the RMA and the importance of the higher level documents in directing those that must follow them;
- (b) That planning documents are intentional documents and mean what they say;
- (c) That language is important, and wording (and differences in wording) does matter;
- (d) The need to be precise and careful with words, to create certainty of meaning;
- (e) That policies, even in higher level documents, can be strong and directive, and then need to be implemented as such;
- (f) That reconciling the potential for conflicts between different provisions of a planning document is important.

62. In respect of Part 2 of the Act, the *King Salmon* case has clarified:

- (a) While environmental protection is a core element of sustainable management, no one factor of the '*use development and protection*'

⁴³ See the Independent Hearings Panel's decision on the Strategic Directions Chapter of Proposed Christchurch Replacement Plan (dated 26 February 2015) at paragraph [67].

⁴⁴ *Hodge v CCC C1A/96*, at page 22.

⁴⁵ *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38.

of natural and physical resources in section 5 creates a general veto;

- (b) While environmental bottom lines may be set to protect particular environments from adverse effects, that will depend on a case by case assessment as to what achieves the sustainable management purpose of the Act;
- (c) Sections 6, 7 and 8 'supplement' section 5 by further elaborating on particular obligations on those administering the Act;
- (d) 'Inappropriateness' in sections 6(a) and (b) should be assessed by reference to what it is that is sought to be protected or preserved.

63. The more particular implications of the *King Salmon* case for district plan formulation include:

- (a) More directive objectives and polices carry greater weight than those expressed in less direct terms;
- (b) Directive objectives and policies to avoid adverse effects should usually be accompanied by restrictive activity status, such as non-complying or prohibited, (although minor or transitory effects may be permissible);
- (c) When considering higher order documents (such as an RPS) do not refer to Part 2 or undertake a 'balancing' or 'in the round' interpretation of its provisions unless the policy statement does not 'cover the field' in relation to the issues being addressed, or its wording is uncertain or conflicting. Put another way, to the extent the policies of a higher order document (e.g. an RPS) are directive they must be given effect to by a district plan, unless there is a conflict in the higher order document, and only then can the decision maker refer to Part 2.

64. Applying the approach in sub-paragraph (c) above presently, the starting point when considering the appropriateness of the Proposed Plan's provisions is the higher order statutory documents (e.g. the RPS) it must implement. Part 2 must be considered only if these higher order

documents contain internal conflicts, or do not cover the field in terms of resource management issues the Proposed Plan must address.

65. Acknowledging that the Operative Otago Regional Policy Statement uses more general, as opposed to directive wording, and addresses resource management issues for the Region at a fairly high level, *King Salmon* makes clear that a careful consideration of its provisions is nonetheless required, which includes the provisions pertaining to infrastructure, as discussed by Mr Kyle. These provisions must be implemented by the Proposed Plan. This is discussed further shortly.

Application of Legal Principles to QAC's Submissions

Chapter 3 - Designated Airports as Regionally Significant Infrastructure

66. The Strategic Directions chapter of the Proposed Plan introduces goals, objectives and policies with the purpose of setting an appropriate resource management direction for the District.⁴⁶ It '*sets the scene*' for the whole Proposed Plan and seeks to provide a high level policy framework that responds to all the major resource management issues of the District⁴⁷. It is intended to sit over Chapters 4 and 6, and over the Proposed Plan as a whole,⁴⁸ and to provide the strategic basis for subsequent chapters and rules.⁴⁹ It is intended to distil the key resource management issues for the District, and provide a strong policy direction as to how those issues should be managed.⁵⁰ Its objectives and policies will be utilised in assessing resource consent applications.⁵¹
67. QAC's submission on this chapter seeks to ensure that the Proposed Plan adequately recognises and provides for regionally significant infrastructure, including airports, at this fundamental level.
68. QAC has sought a suite of policies to support Proposed Objective 3.2.1.5, noting the Proposed Plan contained no supporting policies for this objective when notified. QAC has also sought the inclusion of a new goal, objective and policies that recognise, *inter alia*, that the functional or operational

⁴⁶ Section 32 Evaluation report, Strategic Direction, page 3.

⁴⁷ Section 42A Officer's Report, Chapter 3 and 4, 19 February 2015, paragraph 1.1

⁴⁸ Ibid, para 8.4.

⁴⁹ Ibid, para 8.5.

⁵⁰ Ibid, para 8.6.

⁵¹ Ibid.

requirements of regionally significant infrastructure can necessitate a particular location, and where it is within an ONL or ONF, the impacts of the infrastructure on that landscape are to be mitigated. Ms O'Sullivan's evidence discusses QAC's proposed approach in more detail.

69. QAC's submission is supported by:
- (a) Section 7(b) of the Act which requires particular regard to be had to the efficient use and development of natural and physical resources. Airport infrastructure is an existing physical resource.
 - (b) The Operative and Proposed Regional Policy Statements (**RPS**) for Otago which provide specific policy recognition of infrastructure and acknowledge its importance in providing for the social, economic and cultural wellbeing of people and communities. The Proposed Plan must respectively implement and have regard to these policy statements, not only generally but in terms of their specific objectives and policies. Mr Kyle outlines these provisions in more detail.
70. As stated by Ms O'Sullivan, it is of utmost importance that the policy framework adopted in Chapter 3 is robust, sound, and properly addresses the key resource management issues of the District, of which provision for infrastructure is one, given it provides the strategic basis for the subsequent (lower order) chapters and rules.
71. Although acknowledging⁵² there is merit in QAC's and similar submissions, the Reporting Officer's stated view is that rather than provide exceptions at the strategic level (i.e. in Chapter 3) any exceptions should instead be addressed in the lower order chapters and/or provisions, or on a case by case basis through resource consent applications.
72. This reasoning is flawed for the following reasons:
- (a) It overlooks the fact that the strategic directions chapter '*sets the scene*' for the entire Proposed Plan and sits over Chapters 4 and 6, and the remainder of the Plan as a whole, and provides the strategic basis for subsequent chapters and rules;

⁵² At paragraph 12.109

- (b) It overlooks the fact that the chapter is intended to distil the key resource management issues for the District, and provide a strong policy direction as to how those issues should be managed.
 - (c) It overlooks the fact that its objectives and policies will be utilised in assessing resource consent applications.
 - (d) It elevates the 'protection' of landscapes so as to create a general 'veto' on development, even when development (i.e. of regionally significant infrastructure) may be enabling of economic wellbeing and health and safety, and absent any proper consideration of the suggested alternative approach.
73. Accordingly, if exceptions that enable regionally significant infrastructure to locate within specified landscapes are not provided in Chapter 3, it will be very difficult, if not impossible to justify them in the 'lower order' chapters, when those chapters are required to 'fall into line' with Chapter 3.
74. Similarly, it will be very difficult, if not impossible to obtain resource consent for such infrastructure when the policy direction of the strategic chapter is very clearly and quite absolutely directed at protecting specified landscapes (in particular ONFs and ONLs) from *all* development (refer Objective 3.2.5.1).
75. The Officer's recommended approach is therefore disabling, and does not recognise and provide for regionally significant infrastructure as directed by Objective 3.2.1.5 (as recommended to be amended in the section 42A Report), the Operative and Proposed Regional Policy Statements, and section 7(b) of the Act.

Chapter 4 - Incorporation of PC35 Provisions in Proposed Plan

76. As noted at the outset of these legal submissions, QAC's submissions in respect of the incorporation of the PC35 Provisions in the Proposed Plan will be addressed in some detail, even though it involves traversing provisions that are not the subject of this hearing. It is necessary to do so in order to properly understand and consider QAC's submission on Chapter 4.

QAC's Submission

77. QAC's submission seeks the PC35 provisions be incorporated into the Proposed Plan, including important higher order objectives and policies in Chapter 4, without substantive amendment.
78. The Proposed Plan as notified included many but not all of the PC35 provisions. Of those provisions that have been included, some have been altered substantively, with significant, but possibly unintended consequences for the overall land use management regime introduced by the Plan Change. In recommending that QAC's submission on Chapter 4 in respect of the PC35 provisions be rejected, it appears the Reporting Officer does not properly appreciate or understand this.
79. Given the complex and technical nature of the provisions, and the complicated litigation history of PC35, it may be of assistance to the Panel to first understand the background to the Plan Change, before considering QAC's submission on Chapter 4.

Background

80. PC35 was initiated by QAC and adopted by QLDC in or around 2008. In conjunction with a related notice of requirement (**NOR**) to alter the Aerodrome Purposes designation (Designation 2)⁵³, PC35 sought to rationalise and update the noise management regime that applies to the Airport, while providing for the predicted ongoing growth in aircraft operations and protecting it (to the extent possible giving existing development around the Airport) from reverse sensitivity effects. (The concept of reverse sensitivity is summarised in **Appendix B**).
81. Accordingly, Plan Change 35 updated the Airport's noise boundaries (Air Noise Boundary (**ANB**) and Outer Control Boundary (**OCB**)) to provide for predicted growth in aircraft operations to 2037, and made numerous changes across a number of zones and to other parts of the District Plan,

⁵³ In conjunction with PC35 QAC gave notice of a requirement to modify Designation 2 to update its aircraft noise monitoring obligations and introduce new obligations relating to the management and mitigation of aircraft and engine testing noise, including a requirement that QAC prepare a Noise Management Plan and establish a Noise Liaison Committee. Additionally, the NOR required QAC to operate within the noise limits set by the updated (PC35) noise boundaries. The NOR was confirmed by the Environment Court in Decision [2013] NZEnvC 28. The obligations it contains have and continue to be given effect to (as explained QAC's Acting CEO, Mark Edghill's evidence), and QAC seeks the obligations be rolled over in the Proposed Plan.

including changes to various objectives, policies, rules, statements, implementation methods, definitions and planning maps, relating to land use within the updated noise boundaries likely to be affected by increased aircraft noise. Mr Kyle's evidence explains the rationale and effect of PC35 in further detail.

82. PC35 was largely confirmed by QLDC, but was the subject of a number of Environment Court appeals. The appeals were largely resolved by agreement in early 2012, which was jointly presented to the Court during the course of two hearings and the filing of subsequent memoranda.
83. During the course of the Court proceedings the provisions were, at the Court's direction, significantly redrafted by the parties to correct errors, ambiguities and inconsistencies contained in QLDC's decision. A final set of provisions, giving effect to the Court's directions, was filed jointly by the parties in May 2013.
84. The Court issued three interim decisions that together, confirmed the Plan Change, as agreed by the parties: *Air New Zealand Ltd v Queenstown Lakes District Council* [2013] NZEnvC 28, [2012] NZEnvC 195, [2013] NZEnvC 93.
85. The Court's decisions were framed as 'interim' because they did not make a final decision on the planning map (District Plan Map 31a) which is to show the location of the updated ANB and OCB, or more particularly, final a decision on the location of these boundaries in the vicinity of Lot 6 (i.e. within the Remarkables Park Zone).
86. As explained earlier in these submissions, part of Lot 6 is subject to an NOR by QAC for Aerodrome Purposes, which is opposed the Lot 6 landowner, RPL, and is currently before the Environment Court, unresolved.
87. The outcome of the Lot 6 NOR proceeding will affect the location of the updated (i.e. PC35) ANB and, to a much lesser extent, the OCB.⁵⁴ The extent of the effect is known to the Court and to the parties to the PC35 proceedings. That is because during the PC35 proceedings the parties

⁵⁴ Because the Airport's noise 'footprint' will alter depending on where GA and helicopter activities are located. It will only alter in the vicinity of Lot 6 however.

jointly presented the Court with two different versions of Planning Map 31a – one that provides for the designation of part of Lot 6 (i.e. assumes the Lot 6 NOR is confirmed) and one that does not. Copies of these two planning maps are **attached** to these submissions.

88. The ‘With Lot 6’ map shows the location of the updated (PC35) noise boundaries if the Lot 6 NOR is confirmed. It is very similar to or the same as QLDC’s first instance decision (**Council Decision Version**) on the location of the boundaries as shown in that planning map.
89. The ‘Without Lot 6’ map shows the location of the updated noise boundaries if the Lot 6 NOR is not confirmed. A comparison of the two maps shows the boundaries only differ in the vicinity of Lot 6.
90. Excepting the decision on Planning Map 31a, the PC35 appeals have been resolved. There is no opportunity for any further debate as to the content of the District Plan provisions and the Court is *functus officio*⁵⁵ in respect of them.
91. Specifically, and for the avoidance of doubt, the provisions filed jointly by the parties in May 2013 (at the direction of the Court – the **Court Confirmed Provisions**) are the final provisions which give effect to the Court’s interim decisions.
92. Accordingly, other than Planning Map 31a, which is addressed further shortly, these provisions (the Court Confirmed Provisions) can be treated as operative under section 86F.
93. It is understood that this interpretation is not at issue, noting that many (but not all) of the Court Confirmed PC35 Provisions are included in the Proposed Plan. A full set of the Court Confirmed PC35 Provisions is attached to Mr Kyle’s evidence.

Proposed Plan

94. The Proposed Plan rewrites in their entirety a number of chapters of the Operative Plan which are addressed by PC35.

⁵⁵ That is, the appeals can not be reopened and the Court can not revisit its Decision.

95. The proposed new chapters are very different in form and structure to the Operative chapters they replace, and incorporating the PC35 Court Confirmed Provisions into these new chapters is not a straightforward exercise.
96. As noted, the Proposed Plan includes many, but not all the Court Confirmed PC35 Provisions. QLDC appears to have made substantive decisions about which of provisions to include and which to omit, presumably to achieve a better 'fit' with the new structure and format of the Proposed Plan. QAC does not agree with all of these decisions.
97. For example, important PC35 higher order objectives and policies⁵⁶ are omitted from Chapter 4 of the Proposed Plan, meaning there may be insufficient policy justification or foundation, in section 32 terms, for some of the important rules and other lower order provisions.
98. Some of the important rules, the purpose of which is to protect the Airport from reverse sensitivity effects, are excluded entirely, as are a number of important definitions, rendering some of the rules uncertain and/or ambiguous.
99. The errors, ambiguities and omissions in the Proposed Plan in respect of the incorporation of the PC35 Court Confirmed Provisions, and the changes sought by QAC to address those are detailed in Ms O'Sullivan's evidence.
100. In summary, QAC seeks the PC35 Court Confirmed Provisions be included in the Proposed Plan in their entirety and without substantive amendment.⁵⁷ QAC considers this is appropriate because:
- (a) The PC35 Court Confirmed Provisions have been the subject of considerable and detailed scrutiny. They have been through two public hearing processes (Council and Environment Court).
 - (b) They have been agreed by the most affected parties (i.e. those original submitters who chose to be joined to the Environment Court proceedings as section 274 parties).

⁵⁶ Contained in the District Wide Chapter of the Operative Plan, as amended by PC35.

⁵⁷ Other than very minor amendments as may be appropriate to better fit with the style and form of the Proposed Plan.

- (c) The wording of each and every provision has been carefully and thoroughly considered by the Court and evaluated under section 32, and the objective, policy and rules package has been considered and evaluated as an integrated whole.
- (d) This detailed scrutiny has been undertaken recently; the Environment Court's final (interim) decision was only issued in May 2013.⁵⁸
- (e) Given (c) and (d) above it would be inefficient and may lead to unintended consequences and inconsistencies if the Court Confirmed Provisions are substantively altered or otherwise 'tinkered' with in the Proposed Plan.
- (f) The Court Confirmed Provisions are the most appropriate to ensure Queenstown Airport is adequately protected against reverse sensitivity effects, and in terms of section 32.
- (g) QAC has commenced noise mitigation works on those properties likely to be affected by increased aircraft noise,⁵⁹ as required by Designation 2,⁶⁰ in reliance on PC35 and the updated noise boundaries being confirmed. It is therefore only fair and reasonable that these provisions be included in the Proposed Plan.

PC35 Provisions Operative for Less Than 10 Years

- 101. The Proposed Plan generally excludes from review – so as not to alter - those provisions of the Operative Plan that became operative within the last 5 - 7 years, or where the provisions relate to a discrete topic or zone.⁶¹ On this approach the PC35 provisions should have been excluded from the review.
- 102. It is acknowledged that QLDC only included the PC35 provisions in the Proposed Plan (albeit in a modified form) at QAC's request. QAC was concerned that if the provisions were excluded from Stage 1 of the Proposed Plan, the only way they could be incorporated into the Plan at a

⁵⁸ *Air New Zealand Ltd v Queenstown Lakes District Council* [2013] NZEnvC 28.

⁵⁹ Refer Mr Edghill's evidence.

⁶⁰ As modified by the NOR associated with PC35.

⁶¹ Section 42A Report, Chapters 3 and 4 of the Proposed Plan, para 6.3.

later date would be by way of a variation, which would be a further public process. The provisions could not be excluded altogether given they relate to a large number of zones, including those addressed in Stage 1 of the review (for example, the Rural and Residential zones).

103. Accordingly QAC requested that QLDC include the PC35 provisions in Stage 1 of the Proposed Plan without amendment. However, as previously explained, many, but not all the PC35 provisions have been included, and some have been substantively amended.
104. That amendments have been made to the provisions (notwithstanding QAC's request that they be included unaltered) is inconsistent with the general approach to exclude from the Proposed Plan - so as not to alter - those chapters or provisions that have become operative in the last 5 – 7 years. While for the reasons just stated, the PC35 provisions could not be excluded entirely, it would be generally consistent with the approach taken to the other recently operative provisions, to refrain from substantively altering them.
105. To illustrate why the provisions should not be substantively altered, consider Proposed Policy 4.2.4.3. That policy seeks to:
- “Protect the Queenstown airport from reverse sensitivity effects, and maintain residential amenity, through managing the effects of aircraft noise within critical listening environments of new or altered buildings within the Air Noise Boundary or Outer Control Boundary.”*
106. The Proposed Policy is not a PC35 provision, but is rather a rewrite and conflation of ten PC35 Court Confirmed District Wide objectives and policies (refer Ms O'Sullivan's evidence, specifically Appendix B).
107. In rewriting the policy, the purpose and intent of the PC35 provisions is misconstrued. The purpose of the ten PC35 objectives and policies is varied but primarily includes protecting the Airport from reverse sensitivity effects, and providing a policy foundation and justification for lower order rules and other provisions that prohibit noise sensitive activities in certain parts of certain zones, and require noise insulation and/or mechanical ventilation in others, both of which are integral to the PC35 land use management regime. Proposed Policy 4.2.4.3 does not provide a policy

justification of either of these land management approaches however. In fact, it provides no protection for the Airport at all.

108. Instead, the first part of Policy 4.2.4.3, which contains its intention, being to “*protect Queenstown Airport from reverse sensitivity effects*” is negated by the second part which seeks to “*manage the effects of aircraft noise*”. When read literally, the policy requires QAC to manage its own effects in order to protect itself from reverse sensitivity. That is nonsensical.
109. The fundamental principle of reverse sensitivity is that the effects of new sensitive activities (in this case ASAN/residential activities) on lawfully established “emitters” (in this case the Airport).⁶² The current wording of the policy requires QAC to manage its own emitted effects in order to avoid a reverse sensitivity effect, and in so doing it perpetuates a reverse sensitivity (to some extent)⁶³. It certainly does not protect the Airport from new sensitive land uses, or provide a policy foundation for lower order provisions that will ensure that protection. Ms O’Sullivan addresses this in further detail.
110. Suffice to say, given the complex and technical nature of the PC35 Provisions, and reiterating that they have recently been thoroughly tested and assessed by the Court, it is appropriate they be included in the Proposed Plan without substantive amendment.
111. Finally, the PC35 provisions QAC seeks be included in Chapter 4 of the Proposed Plan include provisions that address zones that are not included in Stage 1 of the Proposed Plan (in particular the Industrial, Remarkables Park, and Frankton Flats (A) Zones). As noted, these provisions have been previously agreed by the parties to the PC35 proceedings, which included Remarkables Parks Limited and the Frankton Flats (A) zone developer. QAC seeks these provisions be included in Chapter 4 now as it is difficult to conceive of how they will otherwise be included at a later date. Notably, no person has submitted in opposition to this approach.

⁶² Refer Appendix B.

⁶³ Acknowledging that an ‘effect’ would only arise if complaints lead to the need for QAC to curtail its activities, which would not eventuate in this case.

Inclusion of PC35 Noise Boundaries in Proposed Plan – Planning Map 31a

112. The notified Proposed Plan includes the ‘Without Lot 6’ PC35 noise boundaries (ANB and OCB), which is of significant concern to QAC for reasons to be explained at the later hearing addressing the Planning Maps. Through its submission QAC’s seeks the ‘With Lot 6’ noise boundaries be included in the Proposed Plan instead.
113. The final location of the noise boundaries is not critical to the Panel’s analysis of QAC’s submissions on Chapter 4 however, as whatever the outcome of the Lot 6 NOR, the Operative and Proposed Plan will contain noise boundaries; i.e. the issue is where they are to be located, not whether they should be contained in the Proposed Plan at all.
114. The appropriate location of the noise boundaries will be addressed in detail at later hearings.⁶⁴

Chapter 6 – Recognition of the Functional and Locational Constraints of Infrastructure

115. QAC has sought the inclusion of four new provisions in Chapter 6 which recognise there are sometimes operational, technical or safety related requirements for infrastructure to be located within an ONL, ONF or rural landscape. This relief correspondends with the relief sought in relation to Chapter 3, with the changes sought to that chapter intended to provide the strategic foundation for the changes to Chapter 6. QAC’s submission is supported by other infrastructure providers.
116. The section 42A report writer recommends QAC submission be accepted in part, in that he recommends a new policy be included in the Chapter: Policy 6.3.1.12 which requires regionally significant infrastructure to be located so as to ‘*avoid degradation of the landscape, while acknowledging locational constraints*’.⁶⁵
117. In recommending this new policy the Officer acknowledges the importance of the contribution that regionally significant infrastructure makes to the social and economic wellbeing and the health and safety of the District,

⁶⁴ In particular, the hearing of submissions on the Planning Maps.

⁶⁵ Refer paras 9.24 – 9.30 of the S42A report for Chapter 6.

and its locational constraints.⁶⁶ Notwithstanding, there are several significant flaws with the Officer's recommended new policy:

- (a) The meaning of the word '*degrade*' in the policy is uncertain and unclear. The Officer refers to its ordinary meaning, namely to '*lower the character or quality of*', however this too is of little assistance. Conceivably any development proposal could be considered to lower the character or quality of the landscape, particularly infrastructure development where the options for sensitive design and mitigation may be constrained by functional, technical and/or safety requirements.
- (b) The word '*avoid*' (i.e. '*avoid degradation*') means prohibit or not allow.⁶⁷ When read together with '*degradation*' the first part of the policy is very absolute: any lowering of the character or quality of the landscape is not allowed.
- (c) The intention of the words '*while acknowledging locational constraints*' is assumed to be to provide for some exceptions to absolute avoidance, as is potentially otherwise required by the first part of the policy. However these words are vague and their application and effect is unclear and uncertain. To what end and extent are locational constraints to be acknowledged, particularly when the first part of the policy is stated in such absolute terms?
- (d) The policy conflicts with Chapter 3, Objective 3.2.1.5 (as recommended to be amended by the Reporting Officer in response to QAC's submission on that Chapter). Objective 3.2.1.5 (as amended) seeks to "*Maintain and promote the efficient and effective operation, maintenance, development and upgrading of the District's regionally significant infrastructure, including designated airports...*". In light of the *King Salmon* case, the use of the word '*avoid*' in proposed new policy 6.3.1.12 necessitates a corresponding activity status of prohibited or non-complying, neither of which would be enabling of infrastructure, as directed by Objective 3.2.1.5.

⁶⁶ Ibid, para 9.28.

⁶⁷ *King Salmon*.

118. In generally addressing⁶⁸ various recommended amendments to the wording of provisions, the Officer discusses the use of RMA language and states that in the Landscape Chapter RMA language has been used sparingly and that “*the RMA and its ‘tests’ are the legislative framework that need to be given local expression in a way that is appropriate to local issues*”⁶⁹.
119. RMA language is understood by a wide range of professionals and members of the public, and has been tested and interpreted by the Courts. Introducing new and vague terms, (such as ‘degrade’) will inevitably lead to uncertainty as to meaning and application, and ultimately to litigation to clarify that.
120. In light of the Supreme Court’s decision in *King Salmon*, the words of District Plans, particularly directive high level objectives and policies, must be carefully chosen as they mean what they say. This is particularly important for the Landscape Chapter, given the typically subjective nature of landscape assessments.
121. Accordingly, the Officer’s recommended new Policy 3.3.1.12 is not appropriate because:
- (a) it does not achieve the strategic objectives of the Proposed Plan, in particular proposed Objective 3.2.1.5;
 - (b) it is not efficient or effective, noting the language used in the policy is vague and uncertain, and the two component parts of the parts of the policy conflict; and
 - (c) it comes at significant cost, in that it will necessitate (at best) non-complying resource consent applications for infrastructure seeking to locate in landscapes. Applicants may find it difficult to obtain consent given the absolute language used in the policy against which their applications will be assessed.
122. Conversely, the amendments sought in QAC’s submission, and addressed in Ms O’Sullivan’s evidence, are appropriate as they recognise and provide

⁶⁸ Section 42A Report, paragraphs 9.31 – 9.37

⁶⁹ *Ibid*, paragraph 9.34

for the need for regionally significant infrastructure to sometimes locate in specified landscapes, but require it to be located so as to minimise adverse effects on the quality of the landscape as far as practicable.

Proposed Policy 6.3.1.8

123. As notified, Proposed Policy 6.3.1.8 seeks to “*ensure that the location and direction of lights does not cause glare to other properties, roads, and public places or the night sky.*”

124. Having considered submissions on the policy, the Reporting Officer has recommended the following changes, purportedly in response to submissions 761 and 806.

“Ensure that the location and direction of lights ~~does not cause glare to other properties, roads, and public places or~~ avoids degradation of the night sky, landscape character and sense of remoteness where it is an important part of that character.”

125. The recommended amendments significantly and substantively alter the focus, purpose, intent and application of the policy. They introduce a focus on landscape character and remoteness, and degradation of the night sky, where previously none existed. They remove the protection from glare afforded to other properties, roads and public places.

126. QAC did not submit on Policy 6.3.1.8, but is concerned by the Officer’s recommended amendments, particularly given their potentially broad application and effect. QAC would have submitted on the policy had it been notified in its amended form, and accordingly considers it is prejudiced by the amendments.

127. The legal principles relating to the scope of changes able to be made to a Proposed Plan, or more particularly, the scope of decisions able to be made on submissions, are well established and settled. The scope of changes to and any decision able to be made on a Proposed Plan is founded in the Proposed Plan as notified, submissions received, and anything in between.⁷⁰

⁷⁰ See for example *Countdown Properties (Northland) Ltd v Dunedin CC* 1994] NZRMA 145

128. For Proposed Policy 6.3.1.8, the Reporting Officer identifies and relies on submissions 761 and 806 for the recommended amendments. These submissions are stated in the following terms:

Submitter 761

Position on Policy 6.3.1.8 :Oppose

Reasons: *“Whilst the policy is appropriate to manage the effects of glare, the policy is not intended to manage effects on landscape values, and therefore would more appropriately sit elsewhere in the plan.”*

Relief: *Delete Policy*

Submitter 806

Position on Policy 6.3.1.8: Oppose

Reasons: *“Policies 6.3.1.8 and 6.3.1.9 are accepted. However they are fairly specific and would be better located within the rural zone itself.”*

Relief: *Delete policies 6.3.1.8 and 6.3.1.9 and provide for them in the rural chapter.*

129. Neither submission sought changes to the text of the policy, only that it be relocated to the Rural Chapter. Accordingly, the scope of decisions open to the Panel are: retain the policy as notified, or relocate it to the rural chapter, or anything (if anything) in between.
130. The substantive changes recommended by the Council Officer to the text of Policy 6.3.1.8 (renumbered 6.3.1.7) do not fall anywhere on or within this ‘spectrum’. They are, to coin a judicial phrase *‘out of left field’*. They are not founded on the policy as notified, or any submission received on it. They are therefore beyond the scope of decisions available to the Panel.
131. For the avoidance of doubt, given what was notified and the submissions received, there is no scope for the Panel to alter the text of Policy 6.3.1.8.

Conclusion

132. Queenstown and Wanaka Airports are regionally significant infrastructure and make an important and significant contribution to the District’s social and economic wellbeing, and its health and safety.
133. Queenstown Airport in particular facilitates a significant proportion of tourist spending in the District, is a significant employer, and a significant facilitator of people and freight to and through the District. In addition, Queenstown Airport is the gateway to the Lakes District and the Lower South Island.
134. Given the significant contribution designated airports make to the District, including to its economic wellbeing, and its health and safety, it is

imperative their ongoing operation, growth and development is appropriately provided for in the higher order strategic provisions of the Proposed Plan, and for Queenstown Airport, that it is adequately protected from potential reverse sensitivity effects.

135. The Strategic Directions, Urban Development and Landscape Chapters are of fundamental importance in providing the policy framework for the subsequent 'lower order' chapters of the Proposed Plan. It is therefore necessary and wholly appropriate for these strategic chapters to recognise and provide for, and in some instances protect, significant infrastructure, particularly where it is of regional importance, and provide sufficient foundation, in terms of section 32, for the lower order policies and methods that will follow.
136. The amendments sought by QAC to these chapters are the most appropriately way of achieving this. They are consistent with and give effect to the higher order statutory documents (in particular the Operative and Proposed RPS) and achieve Part 2 of the Act. They have been thoroughly assessed, and in the case of the PC35 provisions, rigorously scrutinised and tested, and found to be appropriate in terms of section 32.
137. Accordingly, QAC's submissions on these chapters should be accepted.

List of witnesses

138. QAC will call the following witnesses:
 - (a) Mark Edghill - Acting CEO of QAC;
 - (b) John Kyle – Planner. Mr Kyle will address QAC's submission at strategic level, including providing an overview of the background to an rationale for PC35;
 - (c) Kirsty O'Sullivan - Planner. Ms O'Sullivan will address the detailed relief sought in QAC's submission.

R Wolt
Counsel for Queenstown Airport Corporation Limited

APPENDIX A

The Long Bay/Colonial Vineyard test incorporating the amendments to Section 32 made by Section 70 of the Resource Management Amendment Act 2013

General Requirements

- A district plan should be designed in accordance with⁷¹, and assist the territorial authority to carry out – its functions⁷² so as to achieve, the purpose of the Act.⁷³
- When preparing its district plan the territorial authority must give effect to a national policy statement, New Zealand coastal policy statement or regional policy statement.⁷⁴
- When preparing its district plan the territorial authority shall have regard to any proposed regional policy statement.⁷⁵
- In relation to regional plans:
 - a. the district plan must not be inconsistent with an operative regional plan for any matter specified in s 30(1) or a water conservation order⁷⁶; and
 - b. shall have regard to any proposed regional plan on any matter of regional significance etc.⁷⁷
- When preparing its district plan the territorial authority:
 - a. shall have regard to any management plans and strategies under any other Acts, and to any relevant entry on the New Zealand Heritage List and to various fisheries regulations (to the extent that they have a

⁷¹ RMA s 74(1).

⁷² As described in s 31 RMA.

⁷³ RMA ss 72 and 74(1)(b).

⁷⁴ RMA s 75(3)(a)-(c).

⁷⁵ RMA s 74(2).

⁷⁶ RMA s 75(4).

⁷⁷ RMA s 74(2)(a).

bearing on resource management issues in the region)⁷⁸, and to consistency with plans and proposed plans of adjacent authorities;⁷⁹

- b. must take into account any relevant planning document recognised by an iwi authority;⁸⁰ and
 - c. must not have regard to trade competition.⁸¹
- The district plan must be prepared in accordance with any regulation.⁸²
 - A district plan must⁸³ also state its objectives, policies and the rules (if any) and may⁸⁴ state other matters.
 - A territorial authority has obligations to prepare an evaluation report in accordance with section 32 and have particular regard to that report.⁸⁵
 - A territorial authority also has obligations to prepare a further evaluation report under section 32AA where changes are made to the proposal since the section 32 report was completed.⁸⁶

Objectives

- The objectives in a district plan are to be evaluated by the extent to which they are the most appropriate way to achieve the purpose of the RMA.⁸⁷

Provisions⁸⁸

- The policies are to implement the objectives, and the rules (if any) are to implement the policies.⁸⁹

⁷⁸ RMA s 74(2)(b).

⁷⁹ RMA s 74(2)(b).

⁸⁰ RMA s 74(2)(b).

⁸¹ RMA s 74(3) .

⁸² RMA s 74(1)(f).

⁸³ RMA s 75(1).

⁸⁴ RMA s 75(2).

⁸⁵ RMA s 74(1)(d) and (e).

⁸⁶ RMA s 32AA

⁸⁷ RMA s 32(1)(a).

⁸⁸ Defined in s32(6), for a proposed plan or change as the policies, rules or other methods that implement or give effect to, the objectives of the proposed plan or change.

⁸⁹ RMA s75(1).

- Each provision is to be examined, as to whether it is the most appropriate method for achieving the objectives of the district plan, by:
 - a. identifying other reasonably practicable options for achieving the objectives;⁹⁰
 - b. assessing the efficiency and effectiveness of the provisions in achieving the objectives, including:⁹¹
 - identifying and assessing the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and employment that are anticipated to be provided or reduced;⁹² and
 - quantifying these benefits and costs where practicable;⁹³ and
 - assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.⁹⁴

Rules

- In making a rule the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.⁹⁵

Other Statutes

- The territorial authority may be required to comply with other statutes.

⁹⁰ RMA s32(1)(b)(i).

⁹¹ RMA s32(1)(b)(ii).

⁹² RMA s32(2)(a).

⁹³ RMA s32(2)(b).

⁹⁴ RMA s32(2)(c).

⁹⁵ RMA s76(3).

APPENDIX B

Reverse Sensitivity

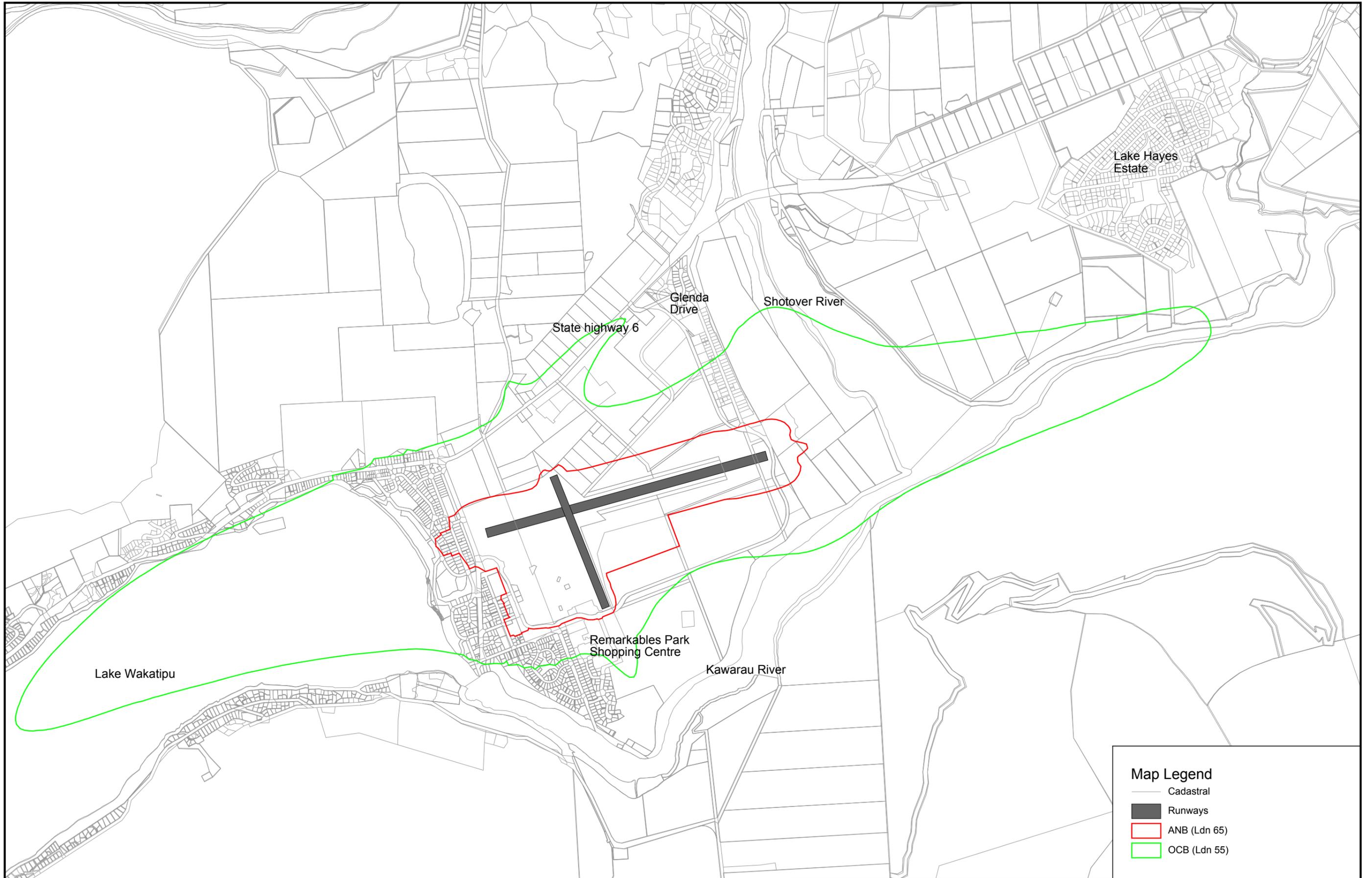
- The concept of reverse sensitivity is used to refer to the effects of new sensitive activities (such as residential activity) on other existing legitimate (i.e. lawful) activities in their vicinity, particularly if it becomes necessary to restrain those existing activities in order to accommodate the new sensitive activity.⁹⁶
- The Court has recognised reverse sensitivity as an “effect” for the purposes of the Act, and as such there is a duty, subject to other statutory directions, to avoid, remedy or mitigate it, so as to achieve the Act’s purpose of sustainable management.⁹⁷
- The Court has adopted the following of definition of the term:⁹⁸

“Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new benign activity is proposed for the land. The ‘sensitivity’ is this: if the new use is permitted the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.”

⁹⁶ See for example *Auckland Regional Council v Auckland City Council* A10/97.

⁹⁷ See for example *Winstone Aggregates v Matamata-Piako DC* W55/2004. Also refer section 76(3) (District Rules) of the Act which provides that in making a rule, a territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.

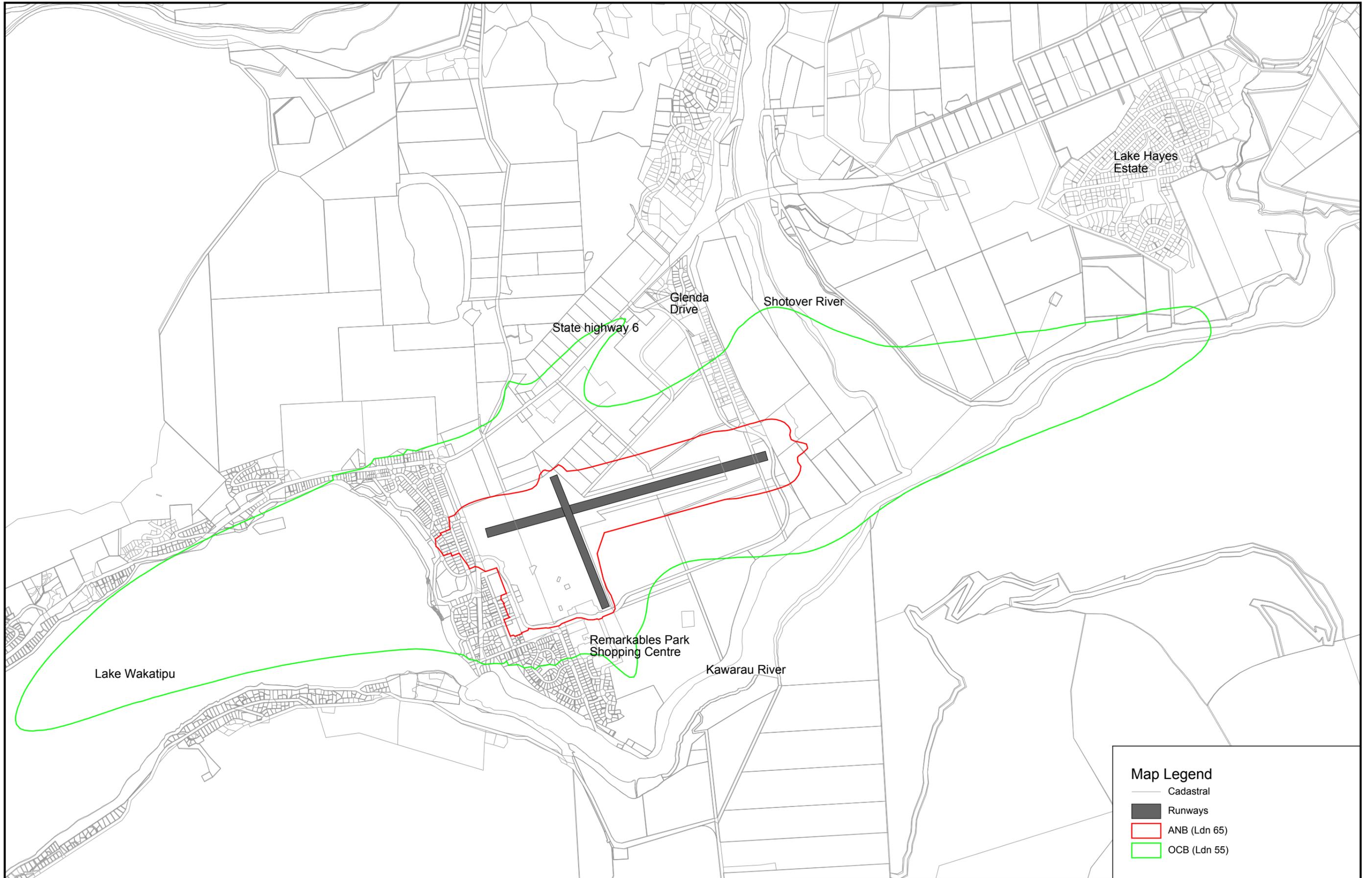
⁹⁸ See for example, *Gateway Funeral Services v Whakatane District Council* W5/08, and *Winstone Aggregates v Matamata-Piako DC* W55/2004, referring to ‘Reverse Sensitivity – the Common Law Giveth and the RMA Taketh Away’; 1999 3 NZSEL 93.



Map Legend

-  Cadastral
-  Runways
-  ANB (Ldn 65)
-  OCB (Ldn 55)





Map Legend

-  Cadastral
-  Runways
-  ANB (Ldn 65)
-  OCB (Ldn 55)

