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 37 (Designations)

Legal Submissions for Queenstown Airport Corporation Limited (Requiring Authority for Designations 2 and 4, and Submitter 433 and Further Submitter 1340 for Designations 29, 64, 65, 230 and 576)

Dated: 14 October 2016

lane neave.
Level 1, 2 Memorial Street
PO Box 701
Queenstown
Solicitor Acting: Rebecca Wolt
Phone: 03 409 0321
Fax: 03 409 0322
Email:
rebecca.wolt@laneneave.co.nz
QUE912172 5281788.1

Introduction

1. These legal submissions address:

   (a) Queenstown Airport Corporation Limited's (**QAC**) Notices of Requirements (**NORs**) to modify Designation 2 (Aerodrome Purposes) and Designation 4 (Airport Approach and Land Use Controls); and

   (b) QAC's submissions on Chapter 37 (Designations) of the Proposed Queenstown Lakes District Plan (**Proposed Plan**), in respect of:

      (i) QLDC's Designation 29 (Queenstown Events Centre),

      (ii) QLDC's Designation 64 (Aerodrome Purposes – Wanaka Airport),

      (iii) QLDC's Designation 65 (Airport Approach and Land Use Controls – Wanaka Airport), and

      (iv) Meteorological Service of NZ Limited's Designations 230 and 576 (Meteorological Purposes).

Queenstown Airport – An Overview

2. 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.

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

4. The Airport is one of Australasia's fastest growing airports and as the gateway to southern New Zealand, is a vital part of regional and national tourism industries.

5. 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.

6. 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.

7. Accordingly, QAC is concerned to ensure that the Proposed Plan, including through QAC's designations and its submission on Chapter 37, appropriately recognises and provides for the ongoing operation and growth of the Airport, in a safe an efficient manner, whilst ensuring that potential reverse sensitivity effects are avoided.

8. QAC is also concerned to ensure that potential growth and development at Wanaka Airport is appropriately provided for via that airport's designations, given its management of the airport on behalf of QLDC.

QAC's Statutory Framework

9. QAC was formed in 1988 under section 3(1) of the Airport Authorities Act 1966 to manage Queenstown Airport.

10. Queenstown Airport is presently owned by QLDC (75.1%) and the Auckland International Airport Limited (**AIAL**) (24.9%).

11. QAC also manages Wanaka Airport, and has an informal caretaker role for Glenorchy Aerodrome, on behalf of QLDC.

12. 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.

13. 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."

14. As an Airport Authority, QAC must operate or manage the Airport as a commercial undertaking (section 4(3) Airport Authorities Act).

15. As an Airport Authority, QAC is also a network utility operator under section 166(g) of the Resource Management Act (**RMA** or **Act**).

16. Additionally, QAC is an approved reacquiring 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).

17. QAC is currently the requiring authority for three designations in the Operative District Plan:[1]

(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 address the activities permitted by the Designation; building height and setback controls; hours of

[1] Refer Schedule of Designations on page A1-2 of the Operative District Plan.

operation; QAC's obligations in terms of noise management and analysis; the construction of RESA, among other matters.

(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 withdrawn.

(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.

18. Excepting Designation 3, QAC seeks these designations be 'rolled over,' with modifications, in the Proposed Plan. The modifications will be addressed in detail shortly.

19. 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.

QAC's Current and Future Landholdings

20. 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 (to be addressed at a later hearing), which is essentially a new zone[2] and is supported by QAC.

(b) 8 ha of terminal, carparking, road network and commercial land leased to airport related business. This land is currently a mix of

---

[2] The zone exists in the Operative Plan but is significantly amended and extended in spatial extent, in the Proposed Plan.

zonings under the Operative Plan, however in the Proposed Plan it 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 relocated from its current location to free it up for other Airport related uses.[3]

(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.

21. A plan showing these and other landholdings is **attached** as **Attachment A**, for the Commission's reference.

Lot 6

22. In addition to the above landholdings, QAC is currently seeking to designate part (approximately 16 ha) of Lot 6 DP 304345 (**Lot 6**) for Aerodrome Purposes (**Lot 6 NOR**). 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**).

23. 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.

24. 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 Lot 6

[3] Via the Lot 6 NOR, which is addressed further shorty.

NOR is expected to be issued by the Environment Court later this year (having been referred back by the High Court to the Environment Court for reconsideration).

25. An interim decision was issued in December 2015[4] 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 Lot 6 NOR.

26. If QAC is ultimately successful with the designation of Lot 6, its Aerodrome Purposes Designation will be expanded by approximately 16 ha.

27. The matter of Lot 6 is traversed in these submissions as the section 42A report on Chapter 37[5] raises it. Specifically, the section 42A report writer states, at paragraph 6.2, that QAC withdrew the Lot 6 NOR prior to notification of the Proposed Plan.

28. To clarify, the Lot 6 NOR has not been withdrawn. The Lot 6 NOR was initiated in 2011 under Part 6AA (Proposals of National Significance), specifically under section 145, and referred directly to the Environment Court under section 149(T) of the Act. Separately, and much later, QAC gave two NORs to QLDC under clause 4 of the First Schedule to the Act, prior to the notification of the Proposed Plan: one which included Lot 6 within the Aerodrome Purposes Designation's boundaries (i.e. largely replicated the Lot 6 NOR), and one which did not include Lot 6, and both of which sought the further modifications discussed by Mr Kyle.[6]

29. The NOR given under clause 4 which included Lot 6 has since been withdrawn, as the Court proceedings relating to this land (described above) remain extant and will determine whether or not the Lot 6 land is to be designated. Should the Court's decision be to confirm the Lot 6 NOR, this designation must be included in the Proposed Plan (refer section 175(2)),

---

[4] [2015] NZEnvC 222.
[5] Report relating to Queenstown and Wanaka Airports.
[6] Evidence of John Kyle dated 7 October 2016.

thereby rendering the NOR given under clause 4 of the First Schedule, which included Lot 6, unnecessary.

Airport Growth and Recent Projects

Recent Growth

30. 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 comprising just under 450,000 international passengers and over 1,050,000 domestic[7] passengers. There were also significant increases in private jet and commercial general aviation operations. [8]

31. An economic analysis[9] 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, at the time of the report, was between 26% and 28% of the total tourist spend.[10]

32. Given the above, it is clear the Airport provides significant direct and indirect benefits to the local and regional economies.

33. Consequently, Queenstown Airport can be considered a significant regional and strategic resource and infrastructure.

34. 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

35. 2015 saw QAC complete a raft of airport development projects, including:

    (a) a significant terminal expansion;

---

[7] 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.
[8] Refer Mark Edghill's evidence dated 29 February 2016.
[9] 'Queenstown Airport Mixed Use Zone Economic Assessment', Market Economics Limited, November 2014.
[10] Ibid.

(b) commencement of significant works to enable evening flights, which commenced this winter;

(c) continued with giving effect to its obligations under Designation 2 in respect of the mitigation of the effects of aircraft noise on existing properties located within the Airport's Air Noise Boundary and Outer Control Boundary[11]; and

(d) commenced a master planning process to cater for the next 30 years of Airport growth.

36. These projects serve to emphasise the continual and dynamic growth and development of the Airport, along with its commitment to being socially and environmentally responsible, and an outstanding corporate citizen in the local community.[12]

Wanaka Airport

37. 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.

38. Wanaka Airport is the subject of two designations in the Operative District Plan[13], for which QLDC is the requiring authority. QAC manages the airport on QLDC's behalf.

39. Wanaka Airport can also be considered regionally significant infrastructure, which plays an important role in providing for the community's health, safety and well being.

Designations - The Law

40. This hearing relates to various designations in the Proposed Plan. It is therefore appropriate, at this juncture, to set out the legal framework within

---

[11] As updated by PC35.
[12] 2016 – 2018 SoI, Objective 5.
[13] Aerodrome Purposes" (Designation 64) and "Approach and Land Use Control" purposes (Designation 65).

which QLDC's recommendations (as territorial authority) on the various NORs to the various requiring authorities must be made.

Overview

41. A designation is a type of consent mechanism (as opposed to a resource consent) for utility operations affecting the public interest.[14] A designation is a powerful planning tool because land under a designation is, in effect, given its own planning regime within the District Plan. (Section 9(3) RMA does not apply to a public work or project or work undertaken by a requiring authority under a designation.)

42. A designation serves two separate but related purposes:

    (a) It *protects the opportunity* of using the designated land for a public work, project or work, in that no one can undertake an activity that would prevent or hinder the designated work, without the prior written consent of the requiring authority that holds the designation; and

    (b) It *provides authority* for a public work or project or work in place of any rules in the district plan and removes any need for land use consents.

43. That is, a designation both protects a site or route for some future work, and also authorises the use of the site or route for that activity.

44. Designations can be quite specific, identifying particular works on a particular site and containing detailed conditions, whereas others may be more general, simply identifying a site as being for a "school" or a "hospital" for example.

45. An NOR may be in general terms, with the details left to be addressed by an outline plan submitted to the territorial authority prior to construction.

46. The provisions of the district plan (i.e. the underlying zoning and related rules) only apply to the use of the land other than for the designated purpose, or by any person other than the requiring authority.

---

[14] *Porirua City Council v Transit New Zealand* (W52/01).

47. A designation has two distinct methods under the Act via which it may come into being:[15]

    (a) The procedures under Part 6AA (Proposals of National Significance) and Part 8 of the Act (which pertains to designations created by a requiring authority outside the plan review process); or

    (b) The proposed plan/First Schedule process.

48. The latter is relevant presently.[16]

Statutory Framework

49. The statutory framework for designations under the First Schedule of the Act is as follows:

    (a) Schedule 1, clause 4, which sets out the matters to be included in the notice of requirement;

    (b) Clause 5, which sets out the territorial authority's notification requirements;

    (c) Clauses 6 and 8 which provide for the making of submissions and further submissions;

    (d) Clause 8B which sets out the hearing requirements;

    (e) Clause 9 which sets out the territorial authority's ability to and process for making a recommendation on a notice of requirement or a designation included in a proposed plan;

    (f) Section 171(1) which sets out the matters to which regard and particular regard should be had by the territorial authority when

---

[15] *Wellington International Airport Limited v Bridge Street/Coutts Street Subcommittee* (1999) 5 ELRNZ 381.

[16] The relationship between requirements and designations utilising Schedule 1 procedures, and those made under the Part 8 procedure, was discussed in both *Wellington International Airport Ltd v Bridge St/Coutts St Subcommittee (1999) 5 ELRNZ 381 (EnvC), and Queenstown Airport Corp Ltd v Skipworth* 8/11/99, Chisholm J, HC Dunedin AP19/99. Because the Schedule 1 and Part 8 procedures are not cross-referenced to each other they can be regarded as separate processes. However, they are not so distinct that the provisions of Part 8 do not apply to a requirement made under Schedule 1. Thus the requirement in *Queenstown Airport* made under Schedule 1 was not immune from an application for relief under s 185, for example.

considering and making a recommendation to the requiring authority on a notice of requirement, including Part 2, which section 171(1) is subject to;

(g) Section 171(2) which sets out the scope of the territorial authority's recommendation on a requirement;

(h) Schedule 1, clause 13, which sets the scope of and process for the requiring authority's decision on the requirement, and the territorial authority's notification requirements in respect of that decision;

(i) Clause 14, which sets out the appeal process;

(j) Sections 176 and 176A which set out the legal effect of a designation and outline the plan procedure;

(k) Schedule 1, Clause 4(10) and section 168 which set out how a designation can be withdrawn.

Effect of a Designation

50. Once in place, a designation has the following effects, pursuant to section 176(1):

(a) it removes any requirement for the requiring authority to obtain resource consents otherwise required under the district plan;

(b) it gives the requiring authority consent to do anything in accordance with the designation (but subject to Part 2 and the outline plan requirements of section 176A);

(c) it prevents any use of the land subject to the designation which would prevent or hinder the work without written permission of the requiring authority.

Outline Plans (Section 176A)

51. Outline plans relate to the implementation of the project or work.

52. Section 176A requires a requiring authority to submit to the relevant territorial authority an outline plan of the work to be constructed on designated land before construction commences, unless certain criteria are

met. This maintains a degree of control in the hands of the territorial authority over what in fact occurs pursuant to a designation by conferring a power to review the outline plan and recommend conditions.

53. The outline plan must show the bulk and location of the work, finished contours of the site, access, landscaping, and any other matters to avoid, remedy or mitigate any adverse effects on the environment arising from the work.

Section 171

54. Under clause 9 of the First Schedule, the territorial authority must make its recommendation to the relevant requiring authority in accordance with section 171.

55. Section 171 provides, in summary, that the NORs be assessed as follows:

    (a) subject to Part 2 (section 171(1));

    (b) having regard to the matters set out in the NOR (section 171(1));

    (c) having particular regard to:

        (i) all relevant provisions of the relevant statutory instruments (section 171(a));

        (ii) whether adequate consideration has been given to alternative sites, routes or methods if the requiring authority does not have an interest in the land sufficient for undertaking the work, or if it is likely that the work will have a significant adverse effect on the environment (section 171(1)(b));

        (iii) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought (section 171(1)(c)); and

        (iv) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the NOR (section 171(1)(d));

56. Section 171 is set out in full in **Attachment B**.

57. After considering the above, the territorial authority may recommend to the requiring authority that it confirm or modify the NOR; impose conditions on the NOR, or withdraw the NOR, and give reasons (section 171(2)).

58. The requirements of section 171 are now considered in some detail.

Subject to Part 2

59. The words “subject to Part 2” is the same form of reference to Part 2 as in section 104(1). The words "subject to" indicate that the provisions in Part 2 are to prevail in the event of a conflict and the matters referred to are to be given greater weight or primacy than other relevant considerations.[17]

60. The purpose of the Act is best achieved by using Part 2 as an aid to construing section 104 (or section 171), as opposed to a separate test.[18] What is required is a careful assessment of the proposal in and of itself, to determine whether it achieves the Act’s purpose.[19]

61. It does not matter whether Part 2 or other section 171 matters are considered first, as long as both are fairly considered and given their proper statutory importance and priority.[20]

Assessment of Effects on the Environment

62. Form 18 Resource Management (Forms, Fees, and Procedure) Regulations 2003 prescribes the content of an NOR , which must include an assessment of environmental effects. The assessment required is similar to the assessment of effects under Schedule 4 for resource consents.

63. The primary consideration is that of the effects on the environment. This is not limited to adverse effects, and so must include positive effects.

64. Environment is broadly defined in section 2 of the Act and includes people and communities, all natural and physical resources, amenity values, and social, economic, aesthetic and cultural conditions which affect these matters.

---

[17] See *Minister of Conservation v Kapiti Coast DC* (1994) 1B ELRNZ 234.
[18] See *Glentanner Park (Mt Cook) Ltd v Mackenzie DC* W050/94.
[19] *Beda Family Trust* v *Transit NZ* A139104, at paragraph [58].
[20] *Te Runanga o Ati Awa ki Whakarongotai Inc v Kapiti Coast DC* (2002) 8 ELRNZ 265

Particular Regard To

65. Under section 171 there is a list of matters to which the territorial authority must have "particular regard" (section 171(1) (a) - (d)).

66. These are not criteria that have to be fulfilled.[21] Rather, they are matters to which the territorial authority must "*give genuine attention and thought to, but they must not necessarily be accepted*".[22]

67. The *Foodstuffs* decision concerned the interpretation of the phrase "shall have regard to". It is submitted that the addition of the word "particular" in section 171(1) draws attention to the specific considerations set out, but does not alter the ratio of the decision.

Statutory Planning Documents

68. An assessment of the relevant statutory planning documents is required. There is however, no particular requirement for a designation to conform with all of the relevant planning documents, and the statutory purpose of the designation process will mean that often it will not.

69. It is submitted that the degree of relevance of any particular statements in the planning documents must be tempered by the nature of a requirement for a designation.

70. By its nature, a designation is a planning mechanism used for certain types of activity which are not ordinarily provided for by the usual district plan methods. That is why designations have a separate and distinct Part of the Act with a different process.

71. In this context, it would render the designations statutory framework superfluous to assess notices of requirements against plan provisions as if they were applications for resource consent.

Consideration of Alternative Sites, Routes, Methods

72. A consideration of alternatives is obligatory under section 171(1)(b) only if:

---

[21] *Babington v Invercargill City Council* (1993) 2 NZRMA 480
[22] *Foodstuffs (South Island) Ltd v CCC* (1998) 5 ELRNZ 308 (HC)

(a) the requiring authority does not have an interest in the land sufficient for undertaking the work; or

(b) it is likely that the work will have a significant adverse affect on the environment.

73. The role of the territorial authority in terms of this subsection is to consider whether adequate consideration has been given by the requiring authority to alternatives rather than whether there are alternatives which the territorial authority or any other person might prefer. The policy of the requiring authority is entitled to guide this assessment, and it is not for the territorial authority to substitute its own policy (or that of another person) for any policy consideration of the requiring authority.[23]

74. The consideration required under section 171(1)(b) concerns the adequacy of the process, not the decisions of the requiring authority to discard or advance particular sites, routes or methods.[24]

75. The territorial authority is not itself required to determine whether the site, route or method is the most suitable of the available alternatives, but rather to ensure that the requiring authority has carefully considered the possibilities, taken into account relevant matters and come to a reasoned decision.[25]

Reasonably Necessary

76. The consideration of whether the work and designation are reasonably necessary is separate and distinct from a consideration of alternative sites under section 171(1)(b). The two considerations should not be combined, as that conflates the distinct considerations of whether the requiring authority has properly considered its options and whether it needs the designation at all.

---

[23] See *Minhinnick v Minister of Corrections* Decision A043/04 at paras [234 - 235] and the cases cited there.
[24] Ibid, at [237].
[25] *Kett v The Minister for Land Information* (HC, Auckland, AP404/151/00, 28 June 2001, Paterson J),at [32], where the Court was required to consider the very similar wording of section 24(2) of the Public Works Act, and enquire into "the adequacy of the consideration given to alternative sites, routes or methods of achieving those objectives".

77. The statutory consideration is in terms of achieving the requiring authority's objective(s). It does not involve what may be reasonable in a broader or popular sense, or in terms of any other persons or goals or theory, because the relevant perspective is one that is based on the requiring authority's objective.

78. The Court has held that "necessary" falls between expedient or desirable on the one hand, and essential on the other, and the epithet "reasonably" qualifies it to allow some tolerance.[26]

Evidence

79. Expert planning evidence has been pre-lodged for QAC (refer Statement of Evidence of John Kyle dated 7 October 2016). Mr Kyle's evidence addresses both QAC's NORs, and its submissions on Designations 29, 230 and 576.

QACs NORs – Designations 2 and 4

80. In accordance with clause 4 of the First Schedule to the Act, QAC gave notice to QLDC of its requirement for Designations 2 (Aerodrome Purposes) and 4 (Airport Approach and Land Use Controls) to be included in the Proposed Plan, with modifications.

Modifications Sought by the NOR

81. The modifications relate to:

Designation 2 – Aerodrome Purposes:

(a) The list of activities provided for by the Designation. Through the NOR QAC seeks to amend the list of permitted activities to better describe and provide for existing activities, and to provide for additional and future activities common place and expected at modern airports;

(b) The conditions attaching to the Designation. Through the NOR QAC seeks to amend conditions relating to building height and

[26] *Bungalo Holdings v North Shore City Council* A052/01, para [94], following the approach taken by the High Court in *Fugle v Cowie* [1997] NZRMA 395.

setbacks; remove superfluous conditions; and address the RESA; and

(c) Update legal descriptions of land to which the Designation relates.

Designation 4 – Airport Approach and Land Use Controls:

(d) The text of the Designation. Through the NOR QAC seeks to amend the text to improve clarity in terms of the purpose, location, and effect of the obstacle limitation surfaces provided for by the Designation, and to correct an error in the text of the Designation which is inconsistent with the interpretative Figures for the Designation.

82. In accordance with the requirements of Schedule 1, clause 4 and Form 18, QAC's NORs included a detailed description of the modifications sought, proposed conditions, contained an assessment of potential environmental effects, and an assessment of whether the modifications are reasonably necessary for achieving QAC's objectives. These matters are addressed further detail by QAC's planning witness, Mr Kyle.

83. The NORs did not include an assessment of alternative sites, routes or methods to the NORs, because QAC owns the land to which they relate, and/or no significant adverse effects have been identified.

Outstanding Issues

84. The section 42A reporting officer generally supports the modifications sought by QAC via the NORs.

85. The outstanding issues in respect of the NORs arise primarily via submissions and are, in summary:

Designation 2 – Aerodrome Purposes:

(a) The proposed broadening of the list of permitted activities, and specifically, the proposed inclusion of retail, food and beverage, commercial and industrial activities (condition 1(f) of the NOR),

which submitter 807, Remarkables Park Limited (**RPL**),[27] opposes;

(b) The proposed increased building height and reduced building setback requirements, which RPL opposes;

(c) The proposed deletion of the prohibition on "non-airport related activities", which RPL opposes. The section 42A reporting officer recommends RPL's submission be accepted;

(d) The continued inclusion of Lot 1 DP 472825 within the boundaries of Designation 2, as raised by RPL in its submission on the Designation;

(e) Mechanical ventilation requirements for buildings which, under the Designation, QAC is required to offer, fund and install mechanical ventilation in to mitigate the effects of aircraft noise, as raised by submitter 789, David Jerram. The section 42A reporting officer recommends Mr Jerram's submission be accepted and defers to and supports QLDC's evidence on this issue given in the course of Hearing Stream 5 (Chapter 36 – Noise).

Designation 4 – Airport Approach and Land Use Controls

(f) The proposed amendment to the text of the Designation to clarify that the obstacle limitation surfaces (specifically, the inner edge) starts at a point 150 metres either side of the centreline of the main runway, which RPL opposes.

86. The issues are now addressed.

Designation 2 - Broadening of List of Permitted Activities

87. The broadening of the list of activities permitted under Designation 2 is required to more accurately describe the range of activities currently undertaken at the Airport, and likely to be undertaken in the future.

---

[27] It is noted that Queenstown Park Limited's submission is very similar to that of Remarkables Park Limited, and that legal submissions have been presented jointly for these submitters. For ease of reference, both submitters are referred to as "RPL" in these legal submissions.

88. The broadened list of activities is consistent with activities commonly found and expected at a modern airport. The Court has confirmed that the range of activities that are sought to be enabled presently are legitimate airport and airport related activities. The relevant case law is now addressed in some detail.

89. *McElroy v Auckland International Airport Ltd*[28] concerned an application for a declaration that Auckland International Airport Limited (**AIAL**) was under an obligation, pursuant to section 40 of the Public Works Act 1981 (**PWA**), to offer land back to the Craigie Trust (**Trust**) because it was no longer required for the public work purpose of an "aerodrome," for which it was originally taken and held.

90. The Trust's land had, over time, been used by AIAL for a number of commercial operations (including service stations, banking facilities, car parking and rental, food and retail outlets and a supermarket), as well as development more directly associated with airside activity (including access routes with major and secondary roads running through the land, and possible rail access).

91. The High Court case centred on the meaning of "aerodrome", and specifically, whether the commercial activities amounted to the public work of an "aerodrome".

92. In determining this issue, the Court preferred the expert evidence of AIAL's witness, whose evidence was that a modern day aerodrome is more commonly known as an airport, and the term "airport" embraces the entire site and facilities of an integrated operation, and is a sophisticated and diverse business providing a wide range of supporting facilities and services.[29]

93. The Court accepted AIAL's witness' evidence that airports around the world now consistently including a wide range of facilities, some not obviously connected directly to the arrival and departure of aircraft, their passengers, crew and freight and those involved in that activity, but with all such activity being focused on providing revenue to the airport operator to

---

[28] [2008] 3 NZLR 262, per Williams J.
[29] At paragraphs [136] and [195].

offset the losses inevitably derived from aircraft operations strictly so-called.[30]

94. The Court held that all facilities connected with the operation of airports and meeting the expectations of airport users, being travellers, staff, security and border agents, travellers' services, "meeters and greeters" and general airport users, should be regarded as included in the phrase "wholly or partly…used in connection with the aerodrome or its administration," as per the definition of "aerodrome" in the Civil Aviation Act 1990 and the 1994 Convention on International Civil Aviation, the definition of "airport" in the Airport Authorities Act 1966.[31]

95. Examples of the use or projected use of the Trust's land which the Court considered "wholly or partly… used in connection with the aerodrome or its administration" included the provision of banking facilities, rental car and campervan parking, the supermarket servicing airport users and inbound tourists, food outlets and even Butterfly Creek - a primarily recreational facility offering convention facilities, which the Court noted was now an important facility at airports.[32]

96. The Court of Appeal[33] took a different approach to determining the issue the subject of the proceeding, finding that the High Court's focus on the use of the word "aerodrome" was misplaced in the particular circumstances of the case. The Court of Appeal did not state the High Court's analysis was wrong however, and ultimately reached the same decision - finding that the Trust's land was still required for a public work, namely being the Auckland International Airport.[34]

97. The Court of Appeal accepted AIAL's submission that airport development planning is a dynamic and long term exercise.[35] It accepted, as the High Court had, that an ambulatory approach to the word "aerodrome" should be adopted,[36] and that "*the word "aerodrome" can therefore properly be held*

---

[30] At paragraphs [193] and [195].
[31] At paragraph [196].
[32] At paragraph [202].
[33] *McElroy v Auckland International Airport Ltd* [2009] NZCA 621.

[34] At paragraph [89].
[35] At paragraph [54].
[36] At paragraph [59]

to encompass the facilities commonly found at airports – Auckland Airport in particular – and changing over time to what is now available."[37]

98. In response to an argument by the Trust that some of its land was used for activities that were purely commercial, rather than strictly necessary for the function of the airport[38] the Court of Appeal stated:

"[71] Since AIAL's incorporation, ***there has been an increase in commercial activity on land which has otherwise not been utilised. All of this has been done on the basis of short-term development. AIAL has always been able to ensure that, in the medium to long-term, any direct aviation functions would not be compromised by other activity.***

[72] It is instructive to note that, at one point, a second runway would have included the trust land and other taxiways and land-side aviation support, as well as an access road. In a further development plan, there was a possibility of the land being used as part of a passenger terminal and commercial support services. None of these projects are in and of themselves decisive of the issue before us, but ***they demonstrate the flexibility which is essential in a public work such as a modern airport****.* ***Assessing the nature of the airport as a whole, regard must be had to the needs for parking, shopping, and ancillary service requirements. Such services are necessary when there is not only an ever-increasing number of tourists using the airport, but an ever-increasing number of staff permanently supporting its operation,*** *and who work in a somewhat isolated area where there is a need for everyday commerce."*

[73] Mr Carruthers [for the trust] relied heavily on publications issued by AIAL which show a distinction between aeronautical and non-aeronautical activities. Particular emphasis was placed on Board papers and development plans throughout the last decade, which demonstrated that there was concentrated attention to the commercial property portfolio and the possibility of exploiting more effectively the value of the land by undertaking commercial activities, which were not necessarily an adjunct to the core activity of running an international airport.

---

[37] At paragraph [60].

[38] Including NZ Post; service stations; Flyways; retail banking services; a car rental facility; offices leased to companies unrelated to the operation of Auckland Airport and marketed accordingly; a Toyota car dealership; fast food restaurants; Warehouse Stationary – providing low priced office and stationary products; Foodtown – a large scale supermarket, Fedex; Priority Fresh; Butterfly Creek – offering a playground with a train circulating the wetlands with a crocodile attraction, a petting zoo, a bar and café and wedding facilities marketed across the city; and mini golf.

[74] ***We are satisfied that the entire area of land described in the Auckland Airport Act continues to be held by AIAL for airport purposes.***

[75] The evidence does not demonstrate that there are, on a realistically discrete basis, segments of land within that whole which are no longer held for that airport purpose. ***We accept that some segments may be being used for other purposes in the meantime and some areas have not been developed. However, that is the very nature of a modern international airport precinct.*** *To hold that those segments ought to be cleaved off from the whole and offered back, would be quite unworkable.*

[76] The contention that the appellants' land could be carved out so that one was left with a patchwork of land held by the respondent interspersed with, and splintered by, land belonging to private owners, is unrealistic. If the appellants' former land could be treated in this fractured way just because parts of it are not currently in use, the same standard would have to apply to the land of other former owners. ***Such an outcome would wholly frustrate the flexibility that is necessary for planning, coordination, development and responding to changing demands for a modern international airport.****"*

[emphasis added]

99. Although the AIAL case concerned declaration proceedings and section 40 of the PWA, it is submitted that the discussion as to what legitimately comprises a modern aerodrome/airport is of direct relevance presently, and confirms that the activities sought to be enabled at Queenstown Airport via the NOR can properly be considered as legitimate airport and airport related activities. Further, it confirms that providing for commercial and other uses is a legitimate way to future proof for potential future aviation uses, while increasing airport revenue in the meantime.

Designation 2 - Increased Building Height and Reduced Setback Requirements

100. RPL opposes the proposed modifications in respect of increased building height and reduced set back requirements for the purported reasons that the proposed modifications enable a significant increase to the density and scale of development, anywhere within the Designation, and for which no conditions are proposed to address potential effects. It is submitted RPL's concerns are without foundation.

Development in Adjoining Zones

101. RPL disputes the NOR and QAC's evidence that the increased building height is consistent with commercial development in surrounding zones, which it says in irrelevant in any case given the development rights are being sought under a designation and not a zoning.

102. As Mr Kyle's evidence will show, the proposal to increase building height and reduce building set backs under the Designation *is entirely consistent* with development within surrounding zones.

103. Although the specific building heights and setbacks requirements proposed do not exactly match the requirements of the commercial zones surrounding the Airport on Frankton Flats, they fall within the range of development outcomes anticipated within these zones.

104. For example, within Activity Area 8 of the Remarkables Park Zone (**RPZ**), which is located immediately adjacent to the Airport (south), buildings up to 9 metres are controlled activities and between 9 and 18 metres are restricted discretionary activities, and within Activity Area 3, buildings up to 21 metres can be established as restricted discretionary activities. Within the Frankton Flats B zone, which is also immediately adjacent to the Airport (north), buildings between 6.5 – 18.5 metres are anticipated, depending on where within the zone they are located.

105. Accordingly, the Table appended to counsel for RPL's legal submissions[39] is incomplete and misleading. Mr Kyle will provide the Commission with a more accurate assessment of the building height and setback requirements in adjoining zones, which underpins his assessment of the effects of the proposed modifications.

106. QAC agrees with RPL that a comparison with surrounding zones is not necessary given this is a designation (the purpose of which is to provide for development not otherwise anticipated by the District Plan), however submits that such comparison usefully assists the assessment of effects, in that it demonstrates that the modifications sought by QAC are entirely consistent with the environmental/built form outcomes anticipated in the surrounding zones.

---

[39] Table attached as "A".

Adequacy of Conditions

107. RPL purports that the NOR is inadequate because, other than a height limit and building setback requirements, no conditions on built form location, landscaping requirements, traffic and access etc are proposed.

108. RPL cites the findings of the Environment Court in the Lot 6 NOR proceeding as an example of where detailed conditions were considered necessary. RPL similarly cites the provisions of the Frankton Flats B zone.

109. It is submitted these comparison are irrelevant and unhelpful.

110. The Lot 6 NOR currently remains unsettled, as it was challenged in its entirety by RPL. The conditions imposed by the Environment Court (which decision was appealed by RPL) were an outcome of the particular facts of the case, which concerned an entirely different NOR, with different objectives, and where there was a concept plan for the layout of the work. The conditions were offered by QAC (in consultation with the parties), with a view to resolving some of the outstanding issues between the parties.

111. In the present case, QAC is seeking, via its designation, to enable the opportunity to establish a range of activities commonly found at airports, so to achieve its objectives for this designation.[40] It has no concept development plans in place.

112. It is submitted that the type of conditions RPL appears to be seeking be included in the Designation have the potential to "frustrate the flexibility that is necessary for planning, coordination, development and responding to changing demands for a modern international airport" as expressed by the Court of Appeal in the AIAL case.

113. It is submitted that the matters of purported concern to RPL are ones which can be properly addressed via the section 176A outline plan process, which, it is submitted, is its very purpose.

114. Under section 176A, an outline plan of the proposed work must be submitted to the territorial authority, to allow the territorial authority to request changes before constructions commences, to address:

---

[40] As stated in its Statement of Intent for the years 2015 – 2017, and summarised by Mr Kyle at paragraph 4.45 of his evidence dated 7 October 2016.

(a) The height, shape, and bulk of the work; and

(b) The location on the work; and

(c) The likely finished contour of the site; and

(d) The vehicular access, circulation, and the provision for parking; and

(e) The landscaping proposed; and

(f) Any other matters to avoid, remedy, or mitigate any adverse effects on the environment.

115. As for RPL's reference to the Frankton Flats B zone provisions, it is submitted that is entirely unhelpful and irrelevant given the zone was established by a plan change (PC19), meaning a substantively different legal framework and considerations apply. It also noted that RPL's argument that this zone is somehow relevant to QAC's NOR is inconsistent with and undermined by its earlier argument in respect of building height comparisons.[41]

Designation 2 - Prohibition on "Non-Airport Related Activities"

116. RPL and the section 42A writer oppose the proposed deletion of a condition of operative Designation 2 which states that "*non airport related activities are prohibited within the Aerodrome Purposes Designation.*"

117. It is submitted that deletion of this condition is appropriate because it is superfluous. The condition states what is implicit in the Designation in any case: a designation can only ever authorise the activities it expressly permits, which accord with its purpose, and which are undertaken by the requiring authority (as opposed to any other person). All other activities undertaken by the requiring authority, and any activities undertaken by any other person, must comply with the underlying zoning.

118. It is submitted it would be unusual, unnecessary and inappropriate for a designation to purport to prescribe an "activity class" under section 87A of the Act for certain activities, when the purpose and effect of a designation,

[41] Refer paragraph 2.1(c)(vii) of QPL/RPL's Legal Submissions dated 6 October 2016.

as stated in section 176(1)(a), is that section 9(3) of the Act does not apply to work undertaken by a requiring authority under a designation.

119. Put another way, under Part 6 of the Act section 87A(6) states that if an activity is described in a plan as a prohibited activity, no application for a resource consent can be made or granted for that activity. This contrasts with the statutory purpose of a designation under Part 8, which is to obviate the need to obtain resource consent for activities authorised by the designation.

120. The comparison between Parts 6 and 8 of the Act highlight why retention of the condition is inappropriate.

121. Further, it is submitted that retention of the condition would give rise to an undesirable anomaly in Chapter 37 of the Proposed Plan, in that no other designations within the District are subject to such a condition.

122. Mr Kyle addresses the proposed deletion of this condition further in his evidence.

Designation 2 - Lot 1 DP 472825

123. RPL requests that Designation 2 be uplifted from Lot 1 DP 472825. QAC confirms that the designation of this land is no longer required and that Designation 2 can be uplifted as requested.

Designation 2 - Other Matters Raised by RPL in Legal Submissions

124. RPL refers to[42] a submission made by QAC over 5 years ago opposing a proposal by RPL to increase height limits on its land (PC34). The purported relevance of this historical submission is not made clear by RPL. It is submitted it is of no relevance to the issues before this Commission.

125. It is also noted that, subsequent to QAC making a submission on PC34, RPL and QAC reached a private agreement as to building height within Activity Area 8 of the RPZ, such that QAC did not pursue its opposition. This makes the current relevance of the historical submission even less clear.

---

[42] QPL/RPL Legal Submissions dated 6 October 2016, paragraph 2.2.

126. RPL states that the increased (15 metre) height limit sought to be provided for by the NOR will conflict with QAC's OLS, as provided for by Designation 4 (and discussed in further detail shortly).[43] This is incorrect. As explained by Mr Kyle,[44] QAC respects the OLS, and plans and builds its infrastructure in compliance with the Figures of the Designation.

127. RPL queries the relevance of the 2008/2011 Masterplan referred to (albeit incorrectly) in the NOR.[45] [46] RPL infers that QAC has been misleading as to the correct Masterplan and its relevance. That is strongly refuted by QAC.

128. Contrary to that asserted in RPL's legal submissions, the 2008 Masterplan was attached to the Lot 6 NOR, as Appendix J. It was also appended to QAC's evidence for that proceeding, as was the 2011 Update. RPL was a party to the proceeding and therefore had a copy of both the Lot 6 NOR (and its appendices) and QAC's evidence.

129. More recently, during the course of preparing for this hearing, QAC's advisors provided RPL's legal counsel with another copy of both the 2008 Masterplan and the 2011 Update, at RPL's request.

130. The 2008/2011 Masterplan is relevant to the NOR to modify Designation 2 in so far as it contains growth projections for the Airport (with significant growth expected until at least 2037), and shows the location of terminal and other airside infrastructure.

131. RPL queries, through its legal submissions, whether "*lots 27, 29 and 31 on Lucas Place are proposed to be included within Designation 2*".[47] This issue was not raised by RPL in its original or further submission however, so there is no scope for RPL to pursue (or be granted) any relief in respect of it.

132. It is noted that "*lots 27, 29 and 31*" referred to by RPL's legal counsel do not exist. QAC assumes that counsel is in fact referring to the street

[43] QPL/RPL Legal Submissions dated 6 October, paragraph 3.4.
[44] John Kyle Evidence dated 7 October, at paragraph 5.9.
[45] QPL/RPL Legal Submissions dated 6 October 2016 at paragraph 2.1(d).
[46] The NOR refers to the '2037 Masterplan', whereas the 2008/2011 Masterplan contain growth predictions to 2037.
[47] QPL/RPL Legal Submissions dated 6 October 2016, at paragraph 4.4.

addresses for this land (i.e. 27, 29 and 31 Lucas Place), in which case it can confirm that the land is owned by QAC, and should be included within Designation 2.

Designation 2 - Mechanical Ventilation Requirements

133. David Jerram has made a submission seeking that mechanical ventilation requirements under Designation 2 include a requirement for cooling, as well as heating. Mr Jerram made an identical submission in respect of Chapter 36 (Noise) of the Proposed Plan.

134. The section 42A report writer defers to and supports the recommendations contained within the section 42A assessment for Chapter 36 (as revised following the hearing of evidence and legal submissions). Specifically, she supports the requirement for a cooling function.

135. QAC gave detailed expert evidence and presented legal submissions at the Chapter 36 hearing in respect of appropriate mechanical ventilation requirements. It is unclear whether the section 42A report writer for this hearing has read and considered QAC's evidence and submissions.

136. QAC's position at the Chapter 36 hearing was that it supported a requirement for a cooling function, but considered the relevant rule should be differently expressed to that proposed by QLDC's witnesses, so as to ensure that it addresses all relevant matters, is certain, and capable of enforcement.

137. QAC maintains its position in this respect, for the purposes of this hearing. A copy of QAC's evidence and legal submissions in relation to Chapter 36 is **attached** as **Attachment C**, for the Commission's information and consideration.

Designation 4 – Airport Approach hand Land Use Controls

138. The purpose of Designation 4 is to restrict the use of land, water and airspace as necessary for the safe and efficient functioning of the Airport's runways.

139. RPL opposes the proposed modification to the text of Designation 4 which seeks to align with the Figures which depict the OLS addressed by the Designation. RPL purports that the modification has implications for the

RPZ in terms of "other plans/controls within the RPZ"[48], although no further detail is given in this regard. The relief sought by RPL is to "retain the 75m strip width."

140. The relief sought by RPL is unclear as it does not relate to or arise from the modification sought.

141. The modification proposed in the NOR is to clarify - by the inclusion of additional words in the text of the Designation - the point from where the take off/climb and approach surfaces, and the transitional surfaces, start/originate.

142. Specifically, the modification QAC proposes seek to clarify that the start point, or "inner edge" of these surfaces is 150 metres from either side of the main runway centreline, (and 30 metres from either side of the crosswind runway centreline, although that modification is not challenged).

143. Currently the text of the operative Designation states that for the take off/climb approach surface, the inner edge of the surface is 75 metres either side of the main runway line, whereas for the transitional surface no start point is given.

144. Figures 1 and 2 in the Maps section of the Operative Plan, which depict the actual location of the OLS in diagrammatic form, show the inner edge at a point 150 metres either side of the main runway. No modifications are proposed to these Figures.

145. The clarifying text proposed via the NOR is consistent with the Figures and addresses what is otherwise an inconsistency (in respect of the take off and climb approach surfaces only) between the Designation text and the Figures. The inconsistency is undesirable and has potential to give rise to uncertainty as to the location of the surfaces.

146. Accordingly, contrary to the inference in RPL's submission, QAC is not seeking to modify the runway strip width, but rather to clarify the inner edge/start point of the OLS. (It is noted that any modification to the runway strip width in respect of which RPL appears concerned would need to be undertaken via a separate process.)

[48] RPL's submission dated 23 October 2015 at 10.9

147. If the relief sought by RPL is to retain the status quo (i.e. cancel the modification), that does not address the inconsistency identified above.

148. RPL asserts in legal submissions that the modification proposed in respect of the "inner edge" would have the effect of creating a 300 metre wide runway strip with.[49] RPL's counsel then sets out some detail the arguments had in the context of the Lot 6 NOR proceeding and the Environment Court's findings in relation to whether or not protecting for a "precision approach"[50], as sought by that NOR, was sufficiently connected, in terms of section 171(1)(c), to the objective of QAC for which the NOR was sought. The Environment Court found it was not, and then purported to cancel this part of the NOR.

149. The Environment Court's decision was appealed by both RPL and QAC in respect of numerous findings. On the precision approach issue, the High Court concluded that Environment Court's discussion had no bearing on its ultimate decision, in that it did not translate into any restrictions or conditions on the designation which limited the internal operations of the Airport within the existing designated area (noting the High Court accepted that a precision approach could be accommodated within the existing designation if QAC sought to do so, irrespective of the confirmation of the Lot 6 NOR).

150. That is, the High Court found the Environment Court's "comments" in respect of the precision approach did not form part of the ratio of its decision, and were (at best) obiter dictum.

151. Ultimately, the High Court referred the Environment Court's decision back to it for reconsideration of a number of other issues. The Environment Court is yet to complete its reconsideration.

152. Without addressing the relevance of the High Court appeal, as outlined above, RPL asserts that the object of the Lot 6 NOR and the purpose of Designation 2 are similar in that "*they both seek to provide for or protect or airport operations into the future*".[51] That is wholly incorrect.

---

[49] QPL/RPL's Legal Submissions dated 6 October 2016 at paragraph 3.1
[50] In very simple terms, a precision approach is an instrument approach and landing using precision lateral and vertical guidance.
[51] QPL/RPL Legal Submissions dated 6 October 206, at paragraph 3.3.

153. QAC's objectives for this modification are as stated in the NOR, and include:[52]

  (a) To provide for the safe and efficient operation of aircraft approaching and departing the Airport;

  (b) To maintain and enhance operating capacity at the Airport

  (c) To meet international aviation standards and CAA rules in relation to protection of flight paths; and

  (d) To provide the community with certainty and clarity as to the height restrictions for properties affected by obstacle limitation surfaces.

154. There is clearly a safety focus in QAC's objectives for this NOR.

155. In contrast, QAC's objective for the Lot 6 NOR is "*to provide for the expansion of Queenstown Airport to meet projected growth while achieving the maximum operational efficiency as far as practicable*".

156. RPL's assertion at paragraph 3.3 of its counsel's legal submissions is therefore wrong.

157. In any case, the objective of the Lot 6 NOR (which related to Designation 2) is irrelevant to the assessment of this modification.

158. Accordingly, it is submitted that paragraphs 3.1 – 3.5 of RPL's legal submissions are of no relevance to assessment required of this modification because they relate to Environment Court proceedings for a different NOR, with a different objective, and rely on findings that were not upheld on appeal. It is submitted that RPL's submissions detract from the straightforward issue before this Commission.

159. For the avoidance of doubt, QAC is not, as RPL alleges,[53] seeking a material change to Designation 4, which imposes any additional restrictions on landowners.

160. Rather, as already stated, it is seeking the inclusion of additional words in the text of the designation which clarify the point from where the inner

---

[52] NOR, paragraph 4.1
[53] QPL/RPL Legal Submissions dated 6 October 2016, at paragraph 3.5.

edges of the obstacle limitation surfaces start, and ensure consistency with the Figures of the Designation, which correctly depict the start point, and are presently relied on and respected by QAC when undertaken its own development activities at the Airport, and when assessing compliance by third parties on land around the Airport. Mr Kyle addresses this in further detail.

161. It is submitted that because Designation 4 extends on to/over land not owned by QAC, the provisions of the Designation in relation to the take off/ climb/ and approach surfaces, and the transitional surfaces, must be certain. It is submitted that that certainty is provided by the scale drawings/Figures, which the text of the Designation ought to be consistent with.

Assessment of QAC's NORS under Section 171

162. It is submitted that QACs NORs for Designations 2 and 4 satisfy section 171.

163. In particular:

Effects

(a) The effects of the proposed modifications to Designations 2 are minor in nature and do not give rise to any significant adverse effects. Any effects that may arise can be appropriately addressed via the outline plan process under section 176A of the Act;

(b) The proposed modifications to Designation 4 do not have any material effect on the existing OLS controls under the operative Designation. Any effects will be positive, in that the modifications will ensure that the OLS are better understood and applied, which is wholly desirable given their safety purpose.

Statutory Planning Instruments

(c) The proposed modifications to the Designations are supported by the higher level objectives and policies of the district and the region which, among others things, identify the importance of safe transportation links, and of protecting, maximising the use of existing, and providing for the further development of significant

infrastructure. They also recognise the national and regional significance of airports.

Consideration of Alternatives

(d) Because QAC owns the land the subject of the Designations, and/or the "works" enabled by the proposed modifications will not give rise to any significant adverse effects, a consideration of alternative sites, routes or methods is not required.

"Reasonably Necessary"

(e) QAC's objectives relevant to the NOR to modify Designation 2 are set out in QAC's Statement of Intent for the Years 2015 – 2017, which is attached as Appendix C to the NOR. The objectives are multifaceted, but there is an underlying focus on providing for the ongoing growth and development of, and diversification of activities at the Airport, and on creating a desirable place for people to work and visit.

(f) Mr Kyle undertakes a detailed assessment of the proposed modifications as against these objectives, and concludes the modifications are reasonably necessary because (in summary):

   (i) The provide certainty as to the long term management, development and operation of the Airport, and address undue constraints;

   (ii) They assist QAC in providing a memorable and superior experience for visitors, while addressing effects;

   (iii) They enable increased diversity and employment opportunities at the Airport

(g) The objectives relevant to the NOR to modify Designation 4 are set out at paragraph 4.1 of the NOR. The objectives are focused on safety and certainty as to the effect of the Designation. Mr Kyle's assessment is that the modifications are reasonably necessary to achieve these objectives.

Other Matters

(h) It is submitted there are no other matters to which particular regard should be had when considering and making a recommendation on these NORs.

Part 2

(i) Although Part 2 of the Act does not involve any separate test, but instead sets the context within which section 171 matters must be assessed, it is submitted that the NORs achieve Part 2.

(j) Queenstown Airport is undisputedly a significant regional resource and infrastructure, and contributes significantly to the District's economy.

(k) The modifications to Designation 2 will enable the efficient use of this important physical resource, while not giving rise to any significant adverse effects, thereby ensuring that amenity values and the quality of the environment are maintained.

(l) Similarly, the modifications to Designation 4 will ensure the efficient and safe use of the Airport, and because they address the form as opposed to the substance of the designation (in that no substantive changes are proposed), they will ensure that any other relevant section 7 matters (e.g. subsections (c) and (f)) are addressed.

164. Given the above conclusions, which are elaborated upon in detail in Mr Kyle's evidence, it is submitted that the appropriate recommendation of the Commission under section 171(2) is to confirm the modifications for both Designations 2 and 4, in accordance with section 171(2)(a).

QAC's Submissions on Chapter 37

165. QAC made submissions on Chapter 37 (Designations) of the Proposed Plan in respect of the following:

(a) QLDC's NOR to modify its designation for the Queenstown Events Centre, namely Designation 29 (Multi Purpose Indoor and Outdoor Recreation, Cultural and Conference Complex);

(b) The requirement for the Meteorological Service NZ Limited's Designations 230 and 576 (Meteorological Purposes); and

(c) QLDC's NORs to modify its designations for Wanaka Airport, namely Designation 64 (Aerodrome Purposes) and Designations 65 (Airport Approach and Land Use Controls).

166. These submissions are now addressed.

Designation 29 (Queenstown Events Centre)

167. QAC's submissions on Designation 29 were, in summary:

(a) That the modifications to the Designation should include a requirement that any day care facilities on site be restricted to use by children whose parents or guardians are using the Events Centre, that modification being necessary to achieve the purpose of the Designation;

(b) That the modifications to the Designation should include a requirement that any rooms or buildings within the Events Centre that are to be used for noise sensitive activities be designed to achieve an indoor design sound level of 40 dB Ldn, that modification being necessary to mitigate permitted aircraft noise and potential reverse sensitivity effects;

(c) That the modifications to the Designation should include a requirement that any community facilities enabled by the Designation be directly related or ancillary to the operation of the Events Centre, that modification being necessary to achieve the purpose of the Designation;

(d) That the Designation should make express reference to the need to comply with the obstacle limitation surfaces provided for by Designation 4, which affects the Events Centre site;

(e) That the planning maps should be amended to correctly depict the extent of the Designation.

168. Underpinning QAC's submission on Designation 29 is a concern that the NOR seeks to enable standalone Activities Sensitive to Aircraft Noise (**ASAN**) that have no connection to the purpose of the Designation, and without any assessment of effects on QAC or users of the Events Centre.

It is submitted that the NOR is deficient in terms of section 171, in that it contains no such assessment.

169. QAC's concern with the modifications sought by the NOR is two fold. Specifically:

    (a) That the ASAN sought to be enabled by the NOR may be subject to adverse amenity effects, specifically due to aircraft noise and the close proximity of the Events Centre to Queenstown Airport; and

    (b) That the ASAN sought to be enabled by the NOR have potential to give rise to reverse sensitivity effects on Queenstown Airport.

170. Accordingly, QAC seeks amendments to, and the inclusion of additional conditions on the Designation, to ensure any ASAN enabled are directly related/ancillary to the purpose of the Designation, and related to this, that any day-care facility cater for users of the complex only (i.e. standalone day-care facilities are not enabled).

171. Further, QAC seeks conditions which require that the buildings/rooms housing ASAN be appropriately designed to mitigate permitted aircraft noise. This includes existing buildings/rooms housing new ASAN. QAC's submission in this regard effectively seeks retention of the status quo under the operative Designation.

172. The section 42A report writer generally supports QAC's submission, excepting insofar as it seeks the inclusion of words which clarify that ASAN (specifically, community facilities) must be directly related or ancillary to the purpose of the Designation. The section 42A report writer recommends that this submission point be rejected on the basis that it is an implicit requirement of the Designation in any case, and is therefore unnecessary.

173. QAC agrees that it is an implicit requirement of any Designation that the activities carried out under it must be directly related or ancillary to the purpose of the Designation, but submits that it is nonetheless desirable and appropriate to expressly state as much within the Designation, so to ensure that no ambiguity or uncertainty, or the potential effects identified in paragraph 171 above, arise.

174. It is noted that insofar as QAC's submission seeks to limit the establishment of ASAN at the Events Centre and require all new ASAN to be contained within a room/building designed to achieve an indoor designed sound level of 40 dB Ldn, QAC's submission is consistent with the approach adopted under Plan Change 35 (**PC35**), and has been endorsed by the Environment Court.

175. The background to and relevance of PC35 has been addressed in previous legal submissions[54], a copy of which is **attached** as "D" for the Commissioner's convenience (relevant paragraphs only).

176. It is submitted that PC35 is a relevant "other matter" to which the territorial authority may have particular regard under section 171(1)(d) when considering and assessing this NOR.

177. Finally, QAC also seeks inclusion of references to its obstacle limitation surfaces established under Designation 4, to ensure the integrity of OLS is not compromised or overlooked when new buildings and/or development within the Designation 29 area are established. The section 42A report writer supports this submission point. It is submitted that it is also a matter that the territorial authority can properly and should take into account under section 171(1)(d).

Designation 230 and 576 (Meteorological Purposes)

178. QAC's submission on these designations is addressed in the evidence of John Kyle dated 7 October. Through is submission, QAC is seeking a straightforward correction which gives rise to no legal issues, and is therefore not addressed further in these legal submissions.

Designations 64 and 64 (Wanaka Airport)

179. QAC made submissions on the modifications proposed to Designations 64 and 65, generally supporting these, but seeking the correction of typographical errors,, the inclusion of additional text to improve clarity, and, more substantively, that the requirement for a Wanaka Airport Liaison Committee (**WALC**) be an optional, as opposed to mandatory, requirement of Designation 64.

---

[54] Refer Attachment D, being extracts of QAC's legal submissions dated 29 February 2016.

180. Excepting QAC's submission in respect of the WALC, the section 42A reporting officer recommends that QAC's submission be accepted.

181. QAC is no longer pursuing its submission in respect of the WALC.

182. QAC otherwise supports the NORs. QAC has read and adopts the evidence of Mr Kyle, for QLDC, in support of the NORs.

183. Accordingly, QAC does not intend to appear or present any further legal submissions at this hearing in respect of Wanaka Airport.

R Wolt
Counsel for Queenstown Airport Corporation Limited

ATTACHMENT A

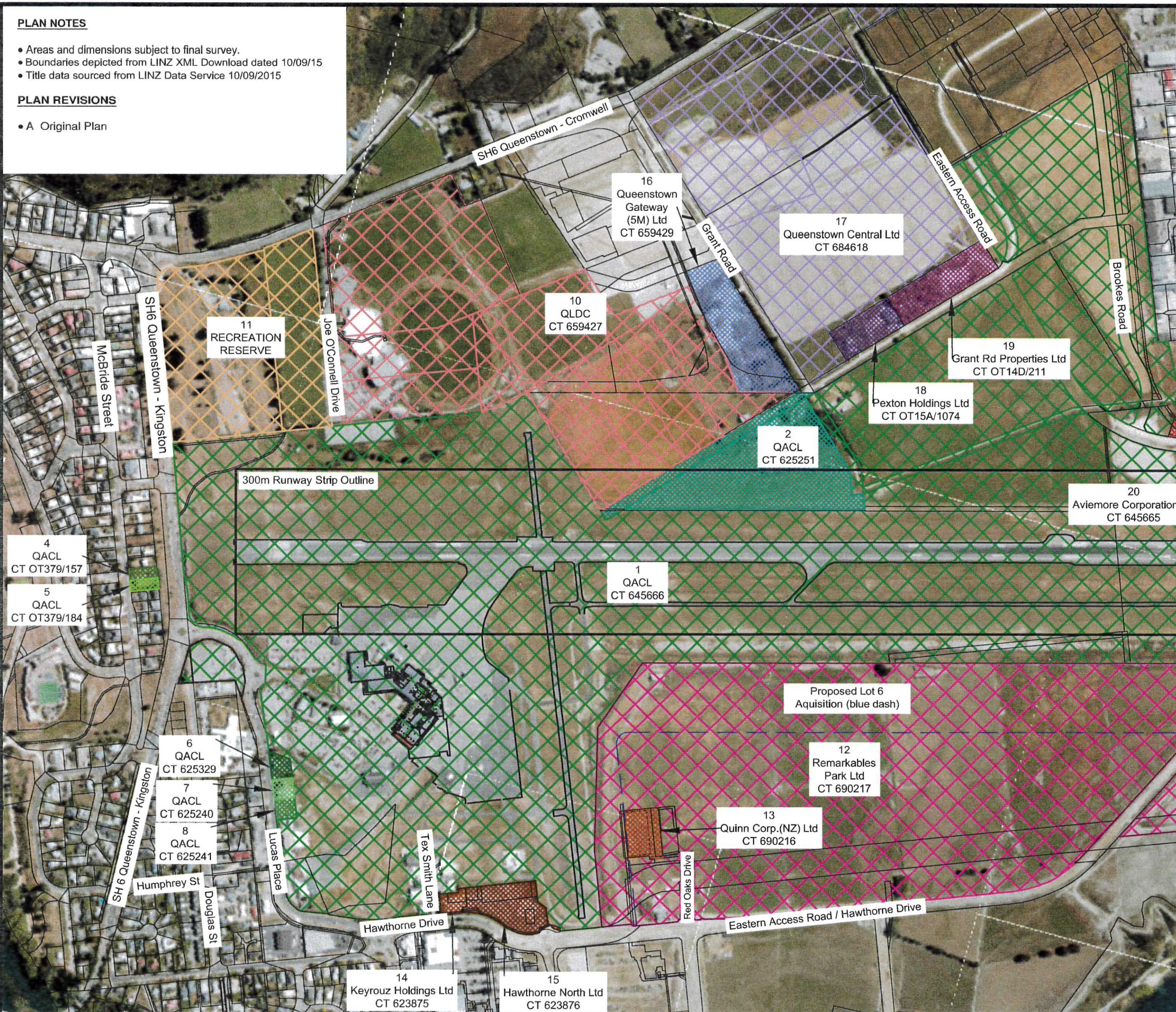
PLAN NOTES

- Areas and dimensions subject to final survey.
- Boundaries depicted from LINZ XML Download dated 10/09/15
- Title data sourced from LINZ Data Service 10/09/2015

PLAN REVISIONS

- A Original Plan

ID	OWNER	TITLE	AREA (Ha)
1	Queenstown Airport Corporation Ltd	645666	125.8002
2	Queenstown Airport Corporation Ltd	625251	52.9040
3	Queenstown Airport Corporation Ltd	625246	55.7470
4	Queenstown Airport Corporation Ltd	OT379/157	0.1012
5	Queenstown Airport Corporation Ltd	OT379/184	0.1012
6	Queenstown Airport Corporation Ltd	625329	0.1562
7	Queenstown Airport Corporation Ltd	625240	0.1316
8	Queenstown Airport Corporation Ltd	625241	0.1296
10	Queenstown Lakes Distrct Council	659427	24.5664
11	Recreation Reserve	N/A	9.5190
12	Remarkables Park Ltd	690217	48.8314
13	Quinn Corp. (NZ) Ltd	690216	0.5583
14	Keyrouz Holdings Ltd	623875	0.1786
15	Hawthorne North Ltd	623876	1.0282
16	Queenstown Gateway (5M) Ltd	659429	2.1545
17	Queenstown Central Ltd	684618	22.7258
18	Pexton Holdings Ltd	OT15A/1074	0.7371
19	Grant Rd Properties Ltd	OT14D/211	12.0000
20	Aviemore Corporation Ltd	645665	0.5462
21	BNZL Properties Ltd	625244	0.8067



If this plan is used as the basis for any sale and purchase agreement, then it is done so on the basis that the areas and dimensions are preliminary, and may vary upon completion of the final survey.

© COPYRIGHT - This Drawing and its content remains the property of Construction Survey 2010 Ltd. Any unauthorised use or reproduction in part or full is forbidden.

150910 4020 LAND OWNERSHIP REVA.DWG

constructionsurvey

www.constructionsurvey.co.nz

P.O. Box 1425, Queenstown
Phone: 03 4423889

QUEENSTOWN AIRPORT CORPORATION

LAND OWNERSHIP PLAN

SURVEYED	G.H. LESTER	DATE: 10-Sep-15
DESIGNED	---	SCALE 1: 7000 ORIGINAL PLAN A3
DRAWN	G.H. LESTER	
CHECKED	---	DRAWING & ISSUE NO. 4020.SHEET01.REV A
APPROVED	---	

ATTACHMENT B

171 Recommendation by territorial authority

(1A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.

(1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—

(a) any relevant provisions of—

(i) a national policy statement:

(ii) a New Zealand coastal policy statement:

(iii) a regional policy statement or proposed regional policy statement:

(iv) a plan or proposed plan; and

(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—

(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or

(ii) it is likely that the work will have a significant adverse effect on the environment; and

(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and

(d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

(2) The territorial authority may recommend to the requiring authority that it—

(a) confirm the requirement:

(b) modify the requirement:

(c) impose conditions:

(d) withdraw the requirement.

(3) The territorial authority must give reasons for its recommendation under subsection (2).

ATTACHMENT C

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 30 (Energy and Utilities), Chapter 35 (Temporary Activities) and Chapter 36 (Noise)

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

Dated: 9 September 2016

---

lane neave.
Level 1, 2 Memorial Street
PO Box 701
Queenstown
Solicitor Acting: Rebecca Wolt
Phone: 03 409 0321
Fax: 03 409 0322
Email:
rebecca.wolt@laneneave.co.nz

QUE912172 5168688.1

Introduction

1. These legal submissions address Queenstown Airport Corporation Limited's (**QAC**) submissions and further submissions on Chapters 30 (Energy and Utilities), 35 (Temporary Activities) and 36 (Noise) 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 submissions and further submissions on Chapters 30, 35 and 36, QAC is broadly concerned to ensure that the Proposed Plan:

   Chapter 30

   (a) Affords appropriate recognition of and makes appropriate provision for utilities, which include regionally significant infrastructure (such as airports);

   (b) Recognises that the technical requirements of utilities may necessitate a specific design and location, which may mean that not all adverse effects can be avoided;

   (c) Does not promote a regime whereby the general utility provisions override and render nugatory more specific airport related provisions (specifically, those in Chapter 17, Airport Mixed Use Zone);

Chapter 35

(d) Makes appropriate provision for temporary airshows;

(e) Appropriately recognises and protects the designated obstacle limitation surfaces at Queenstown and Wanaka Airports, particularly from the risk of infringement by temporary activities;

(f) Ensures that relocatable buildings are required to adhere to the relevant zone's development standards, specifically, so as not to circumvent the noise insulation and other airport noise related provisions established under PC35;

Chapter 36

(g) Ensures that noise from aircraft operations is not caught by the general provisions pertaining to noise, given such noise is already managed under the airport designations;

(h) Appropriately and consistently manages noise from other airport activities;

(i) In respect of mitigating the effects of aircraft noise, contains sound insulation and mechanical ventilation requirements that are effective, workable and can be readily complied with.

7. These issues will be addressed in further detail shortly.

Previous Legal Submissions Adopted for Chapter 27 Hearing

8. 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 submissions on Chapters 30, 35 and 36.

9. 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 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);

(f) Paragraphs 45 – 63, where the statutory framework within which submissions on the Proposed Plan must be considered, and decisions made, is detailed; and

(g) 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.

10. A copy of QAC's 29 February 2016 legal submissions is **attached**, for the Panel's convenience.

Evidence

11. Expert planning evidence has been pre-lodged for QAC as follows:[1]

(a) Scott Roberts (Building Services Engineer) in respect of QAC's submission on Chapter 36 (Noise);

(b) Chris Day (Acoustics Engineer) in respect of QAC's submission on Chapter 36 (Noise);

(c) Kirsty O'Sullivan (Planner) in respect of QAC's submissions and further submissions on Chapters 30 (Energy and Utilities), 35 (Temporary Activities) and 36 (Noise).

[1] All dated 2 September 2016

QAC's Submissions and Further Submissions on Chapters 30, 35 and 36

Chapter 30 (Energy and Utilities)

12. QAC further submitted on a number of original submissions on Chapter 30, generally supporting those submissions which seek that the Proposed Plan:

    (a) recognise the social, cultural and environmental benefits of utilities;

    (b) recognise that the technical requirements of utilities may necessitate a specific design and location, which may mean that not all adverse effects can be avoided (e.g. aircraft navigational aids in an ONL which, for functional reasons may be required to be highly visible);

    (c) provide for buildings ancillary to and associated with utilities as a permitted activity (where not located in and ONL or ONF, and provided the relevant underlying zone standards are met).

13. Points (a) and (b) above are consistent with and to some extent repeat QAC's submission on the higher order chapters of the Proposed Plan (i.e. Chapters 3 and 6), and legal submissions and evidence have previously been presented for QAC in respect of them. Ms O'Sullivan addresses this further in her evidence, and refers the Panel to the earlier evidence for QAC, as relevant.

14. It is submitted that point (c) is a foreseeable consequence of QAC's submission in support of Chapter 17, and more generally, its submission that the Proposed Plan appropriately recognises and provides for Queenstown and Wanaka Airports to operate in an efficient and effective manner, with appropriate flexibility to provide for the range of activities expected of modern airports and to respond quickly to changes and growth in the tourism market (see for example, paragraphs 4.10, 4.25 and 4.28 of QAC's original submission).

15. QAC's further submission on point (c) above was necessary given the relationship between the provisions of Chapters 17 and 30, specifically, Clarification Note 30.3.3.3 which provides that the rules contained in

Chapter 30 "*take precedence over any other rules that may apply to energy and utilities in the District Plan...*".

16. The "trumping" effect of the Chapter 30 provisions over Chapter 17 (as a consequence of Clarification Note 30.3.3.3) is addressed further shortly.

17. Firstly however, it is appropriate to set out the background to QAC's further submission on Chapter 30, as it may assist the Panel with understanding the issue QAC seeks be addressed.

QAC's Further Submission On Chapter 30

18. The word "utility" connotes a commodity or service, such as electricity, water, or telecommunications, for example. Airports do immediately come to mind as a "utility", as that word is commonly used.

19. The definition of "utility" in the Operative District Plan includes "*structures, facilities, plant and equipment necessary for navigation by water or air*". This definition appears to capture only the navigational equipment associated with air travel, but not the airport operation as a whole.

20. Under the Proposed Plan the definition of "utility" is broadened to include "*Anything described as a network utility operation in s166 of the Resource Management Act 1991*".

21. "Network utility operation" is not expressly defined in the Act, but is stated as having a meaning that corresponds with "network utility operator", which is defined in section 166 as including:

    "*...(g) an airport authority as defined by the Airport Authorities Act 1966 for the purposes of operating and airport as defined by that Act.*"

22. QAC and QLDC are airport authorities under the Airport Authorities Act (for Queenstown and Wanaka Airports respectively).

23. Accordingly, the operations conducted by QAC at Queenstown Airport and by QLDC at Wanaka Airport are "utilities" for the purposes of the Proposed Plan, and on the face of it, are caught by the provisions of Chapter 30.

24. That is, however, problematic for a number of reasons, now explained.

Inconsistencies Between Proposed Chapters 17 and 30

25. Chapter 17 (Queenstown Airport Mixed Use Zone) of the Proposed Plan comprehensively provides for airport and airport related activities at Queenstown Airport.[2]

26. Airport and Airport related activities at Queenstown Airport[3] are defined in the Proposed Plan as follows:

"Airport Activity: *means land used wholly or partly for the landing, departure, and surface movement of aircraft, including but not limited to:*

(a) aircraft operations, private aircraft traffic, domestic and international aircraft traffic, rotary wing operations, aircraft servicing, general aviation, airport or aircraft training facilities and associated offices.

(b) Runways, taxiways, aprons, and other aircraft movement areas.

(c) Terminal buildings, hangars, control towers, rescue facilities, navigation and safety aids, lighting, car parking, maintenance and service facilities, catering facilities, freight facilities, quarantine and incineration facilities, border control and immigration facilities, medical facilities, fuel storage and fuelling facilities, facilities for the handling and storage of hazardous substances, and associated offices."

"Airport Related Activity: *means an ancillary activity or service that provides support to the airport. This includes, but is not limited to, land transport activities, buildings and structures, servicing and infrastructure, police stations, fire stations, medical facilities and education facilities provided they serve an aviation related purpose, retail and commercial services, industry and visitor accommodation associated with the needs of Airport passengers, visitors and employees and/or aircraft movements and Airport businesses."*

27. These definitions provide for the full range of activities enabled by the Queenstown Airport Aerodrome Purposes Designation, including

---

[2] As the Panel will be aware, it is proposed to extend the ambit of Chapter 17 to include Wanaka Airport. The merits and details of this will be addressed at the Business Zones hearing stream, scheduled to commence in late November.
[3] Noting separate definitions are proposed for Wanaka Airport

supporting infrastructure[4] and servicing, as well as activities currently established at the Airport (or likely to be established in the foreseeable future).

28. The section 32 evaluation of the Queenstown Airport Mixed Use Zone describes the purpose of the Zone as being to provide for the activities that currently and are anticipated to occur at Queenstown Airport over the next planning period[5] and to generally align the provisions of the Zone with overlying Queenstown Airport Aerodrome Purposes Designation,[6] so as to enable the efficient and effective functioning of the Airport.[7]

29. It is submitted that when read as a whole, it is clear that the Queenstown Airport Mixed Use Zone is intended to be a complete code for existing and future activities at Queenstown Airport.

30. In contrast, Chapter 30 does not contemplate the range of activities provided at and expected of modern airports. Chapter 30 is instead more broadly framed, and appears to focus on "traditional" utilities, such as electricity, telecommunications, wastewater etc.

31. When read as a whole, it is clear that the majority of the Chapter's provisions are of no direct relevance to airports. In fact, neither the notified Chapter nor the section 32 evaluation of it make any mention of airports at all.

32. Nonetheless, given the Proposed Plan's definition of "utility", the Chapter 30 provisions do apply to airports, and by virtue of Clarification Note 30.3.3.3, take precedence over the more specific airport focussed provisions contained in Chapter 17.

33. This is particularly problematic for, by way of example, buildings and structures at Queenstown Airport. Under the provisions of Chapter 17, buildings and structures within the Airport Mixed Use Zone are permitted

[4] The term "infrastructure" is not defined in the Proposed Plan, but is defined in the RMA, and this definition appears to include all "utilities" as defined in the Proposed Plan. This supports the submission at paragraph 29 below.
[5] Section 32 Evaluation Report, Queenstown Airport Mixed Use Zone, Section 7, page 6.
[6] Ibid, Section 8, page 11.
[7] Ibid.

activities,[8] whereas under Chapter 30, they are controlled activities (provided they are associated with a utility).[9] Given Clarification Note 30.3.3, the Chapter 17 provision is negated, meaning all buildings and structures within the Airport Mixed Use Zone are controlled activities.[10]

34. The implications of this inconsistency are obvious for QAC: all buildings and structures within the Airport Mixed Use zone that it seeks to establish will require resource consent.[11]

35. However, this is not the case for all persons seeking to establish buildings and structures within the Zone. Any persons other than QAC (e.g. private landowners and persons holding ground leases from QAC), will not be caught by the Chapter 30 provisions (as they are not network utility operators/operations) and will therefore have the benefit of the more permissive regime under Chapter 17.

36. There are numerous other inconsistencies between the Chapters 17 and 30, which will be detailed by Ms O'Sullivan.

37. Clearly this two tiered regime for land use within the Airport Mixed Use Zone was not intended when Chapter 30 was drafted and notified, noting there has been no evaluation or justification of its implications and costs under section 32 of the Act. In fact, the section 32 evaluation of Clarification Note 30.3.3.3 identifies no costs at all.

38. Nor does it contain any analysis as to why it is appropriate for the provisions of the chapters listed in the Note (namely Historic Heritage, Hazardous Substances and Earthworks) to take precedence over the provisions in Chapter 30.

39. Accordingly, the more restrictive approach to land use by network utility operators within the Airport Mixed Use Zone appears to be an inadvertent, rather than intentional consequence of the Clarification Note in Chapter 30.

---

[8] Proposed Rule 17.4.1.
[9] Proposed Rule 30.4.17 (using the referencing in Appendix 1 of the Section 42A Report).
[10] Note that if Wanaka Airport is also addressed by Chapter 17, it is proposed that all Airport an Airport Related activities (which airport related buildings and structures) are also controlled activities; however the proposed matters over which the Council reserves its control are different to those stated in Chapter 17.
[11] Noting however, that in many (but not all) instances QAC will be able to rely on its Aerodrome Purposes Designation for such activities, but only where they fall within the ambit of the Designation.

40. It is submitted the two tiered approach could not survive scrutiny under section 32 if such assessment were to be undertaken.

41. It is submitted it is a wholly undesirable and inappropriate state of affairs that needs to be rectified, noting that in addition to the problems outlined in the preceding paragraphs, the inconsistencies will inevitably give rise to confusion and uncertainty for both users of the Proposed Plan, and those administering it.

42. Accordingly, QAC's further submission sought to address (in part)[12] this complicated and potentially inefficient and ineffective circumstance by part supporting submissions which seek that buildings and structures ancillary to and associated with utilities be permitted activities, provided they comply with the relevant zone standards, (Proposed new Rule 30.4.10).

43. While the original submissions that QAC supports[13] are broadly framed and seek permitted activity status for buildings associated with and ancillary to utilities in all zones, QAC's further submission supports the original relief only to the extent that it applies to utilities at Queenstown and Wanaka Airports.

44. The purpose and intent of QAC's further submission is to ensure that the general provisions in Chapter 30 are consistent with, and do not negate the more specific Chapter 17 provisions that otherwise apply at these airports,[14] (at least in respect of buildings and structures).

45. It is acknowledged that the relief sought by QAC through its part support of the submissions seeking permitted activity status for utility related buildings and structures may to difficult to draft. It also does not resolve the other identified inconsistencies between the two Chapters.

46. It is therefore submitted that a better and preferable way to addresses this issue is to include a new clause in Clarification Note 30.3.3.3, which

[12] QAC's further submission only addresses Proposed Rule 30.4.15 (being Rule 30.4.17 in Appendix 1 of the Section 42A Report), as there was no scope to address the other inconsistencies via a further submission.
[13] Submitters 179, 191 and 781.
[14] Acknowledging that the Panel is yet to hear and make a decision on whether Chapter 17 should apply to Wanaka Airport. If the Chapter 17 provisions do not apply to Wanaka Airport, QAC's original submission was that a bespoke set of rural zone provisions apply, which would achieve the same outcome.

expressly states that the general provisions in Chapter 30 do not take precedence over the more specific airport related provisions in Chapter 17.

47. This would achieve the same outcome as granting the relief supported by QAC in its further submission, and would additionally address and resolve all the inconsistencies between Chapters 17 and 30 (not only those relating to buildings and structures). Ms O'Sullivan addresses this further in her evidence.

48. It is submitted the Panel has scope to amend the Proposed Plan in this (alternative) way because:

(a) case law has established that the scope to amend a Plan is not limited by the words of the submission[15];

(b) in this case, the alternative drafting is within the ambit of what was raised by QAC in its original and further submissions, and it is an outcome that is foreseeable from those submissions, and from Chapter 17 as notified;

(c) given the above, no issues of prejudice arise for any party;

49. Detailed legal submissions addressing the jurisdictional issue of scope have previously been presented to the Panel (differently comprised) in the context of QAC's submission on Chapter 21. These earlier submissions are of relevance presently (and form the basis for the submission in paragraph 48 above), and for the Panel's convenience are set out in **Appendix A.**

50. Counsel for QLDC also presented detailed legal submissions on the issue of scope in the course of its written right of reply in relation to Chapter 27 (Subdivision).[16] QLDC's submissions are entirely consistent with and complement these submissions, and are adopted presently. For the Panel's convenience the relevant paragraphs of QLDC's legal submissions are reproduced in **Appendix B**.

---

[15] *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556, and 574 – 575.
[16] Legal Submissions Behalf of QLDC as Part of Council's Reply, dated 26 August 2016, paragraphs 13.2 – 13.4.

51. Similarly, the legal opinion provided by Meredith Connell to the Panel (dated 9 August 2016) on a related but slightly differently focussed jurisdictional issue is consistent with both these and QLDC's legal submissions, as summarised above. For the Panel's convenience, a copy of Meredith Connell's opinion is attached as **Appendix C**.

52. Applying these legal principles presently, it is noted that QAC's original submission was broadly framed and sought that the Proposed Plan appropriately recognise and provide for Queenstown and Wanaka Airports to operate in a safe, efficient and effective manner, with appropriate flexibility to provide for the range of airport and airport related activities expected of modern airports and to quickly respond to change and growth in the tourism market (refer paragraphs 4.9, 4.10, 4.25 and 4.28 of QAC's original submission).

53. QAC's original submission also supported Chapter 17 in its entirety (subject to some minor amendments – refer paragraph 4.24 – 4.28 and Annexure A of QAC's original submission).

54. QAC's original submission relates to <u>all</u> airport and airport related activities within the Airport Mixed Use Zone, including "infrastructure" which encompasses a number of "utilities" as defined in the Proposed Plan and therefore potentially captured by Chapter 30.

55. It is therefore submitted that, when considered in the round, QAC's original submission provides scope for the exclusion[17] in their entirety of all activities carried out within the Airport Mixed Use Zone from the application of Chapter 30, (as would be provided for by the amendment to Clarification Note 30.3.3.3 sought by QAC).

56. Additionally, QAC's further submission in support of proposed new Rule 30.4.10 provides express scope for the exclusion of buildings and structures associated with a utility within the Queenstown Airport Mixed Use Zone from the application of Chapter 30.

57. It is noted that if Clarification Note 30.3.3.3 is amended in the manner described above (and further described by Ms O'Sullivan), the general

---

[17] "Exclusion" in the sense that the Chapter 17 provisions will prevail over those contained in Chapter 30.

Chapter 30 provisions will not apply to any utility activities carried out within the Airport Mixed Use Zone, but will apply to any activities QAC (or any other network utility operator) seeks to undertake outside that Zone – for example, the installation of navigational or meteorological facilities on the land around on the Airport. This is considered appropriate as it is only land within the Airport Mixed Use Zone that has the benefit of the comprehensive and specific Chapter 17 provisions.

Chapter 35 (Temporary Activities)

58. QAC's submission and further submission on Chapter 35:

    (a) Supports the inclusion of objectives and policies that recognise the contribution that temporary activities make to the social, economic and cultural well being of the community;

    (b) Seeks the inclusion of new provisions that expressly enable temporary airshows at Wanaka Airport, such as Warbirds Over Wanaka;

    (c) Seeks the inclusion of new provisions relating to the protection of the designated obstacle limitation surfaces at Queenstown and Wanaka Airports;

    (d) Opposes submissions that seek to provide a new framework for relocatable buildings, in so far as that may circumvent specific development standards (specifically, those established under PC35).

59. There is little at issue between the Section 42A Report Writer and QAC in respect of these submission points.

60. The Section 42A Report Writer recommends that QAC's submission on points (a) and (d) above be accepted, which, for the reasons given in QAC's submission, is appropriate.

61. The recommendation in respect of point (b) is that the issue be dealt with later, at the hearing of submissions on Chapter 17 – Airport Mixed Use Zone, which QAC also accepts is appropriate.

62. In respect of point (c), the Section 42A recommendation is that QAC's submission be rejected, as it will result in unnecessary duplication of the requirements of section 176 RMA.

63. QAC acknowledges this point has some validity, and therefore proposes that the issue instead be addressed by the inclusion of a non-regulatory advice note as to the OLS designations, and the requirement for a consent applicant to obtain QAC's (for Queenstown Airport) or QLDC's (for Wanaka Airport) written approval for any proposed activity that will penetrate the (relevant) OLS.

64. It is submitted the inclusion of an advice note is an appropriate and balanced way of addressing this issue in that it will bring the need to comply with, or otherwise seek the relevant requiring authority's written approval for, any breach of the OLS to resource consent applicants' (and the Council's) attention, but will avoid the duplication of control with which the Section 42A Report Writer is concerned.

65. It is submitted that the Section 42A Report Writer's recommended alternative option, being to remain silent on the issue in the Proposed Plan, and instead rely on persons to be aware of their obligations under section 176 RMA, (i.e. retention of the status quo), is inappropriate given it has been previously demonstrated as ineffective.

66. Ms O'Sullivan elaborates on this submission point and the alternative relief in her evidence.

Chapter 36 (Noise)

67. QAC made a submission and further submission on Chapter 36 which:

    (a) Supports some provisions as notified,[18] including provisions which clarify that the noise limits set out in the Chapter do not apply to sound from aircraft operations at Queenstown and Wanaka Airports;

    (b) Seeks to ensure that only one set of noise provisions applies to Queenstown Airport;

[18] E.g. the Zone Purpose statement, provisions relating to noise from aircraft operations at Queenstown and Wanaka Airports, and a number of airport noise related definitions.

(c) Seeks minor amendments to Table 4, which relates to sound insulation requirements for buildings containing activities sensitive to aircraft noise (**ASAN**) within the Air Noise Boundary (**ANB**) for Queenstown Airport; and

(d) Seeks more substantive amendments to Table 5, which relates to mechanical ventilation requirements for buildings containing ASAN within the ANB and Outer Control Boundary (**OCB**) for Queenstown and Wanaka Airports.

68. Ms O'Sullivan addresses each of these submission points in detail, including the section 42A recommendations in respect of them. These legal submissions need only address above points (c) and (d).

Sound Insulation and Mechanical Ventilation Requirements

69. The sound insulation and mechanical ventilation requirements in Tables 4 and 5 of the Proposed Plan apply to new ASAN (including additions and alterations to existing ASAN) within the Queenstown Airport noise boundaries (although their application is dependant on the exact location of an ASAN within the noise boundaries). For ASAN located within the OCB at Wanaka Airport, only the mechanical ventilation requirements in Table 5 apply, because there is currently no ANB for that Airport.

70. The purpose and intent of the sound insulation and mechanical ventilation requirements is to ensure an appropriate level of indoor amenity is achieved, where external aircraft noise levels are (or will be at some point in the future) greater than 55 dB L^{dn}, thereby protecting persons residing or working in buildings affected by aircraft noise, and protecting the Airports from potential reverse sensitivity effects. Mr Day explains this in further detail.

71. Under the Operative and notified Proposed Plans, new, and alterations and additions to existing ASAN must include sound insulation and/or mechanical ventilation (depending on location) in accordance with Tables 4 and 5 of the Proposed Plan (being the same as Appendix 13, Tables 1 and 2 of the Operative Plan), or alternatively submit a certificate to the Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the specified Indoor Design Sound Level (being 40 dB L_{dn} in all Critical Listening Environments), with the windows open.

72. In addition, under the Aerodrome Purposes Designation for Queenstown Airport, QAC is required to fund or part fund (depending on location) the retrofitting of sound insulation and/or mechanical ventilation (depending on location) for Critical Listening Environments of ASAN that existed when the Designation was confirmed (being May 2013).

73. Accordingly, QAC's interest in these provisions is significant.

Sound Insulation Requirements

74. The notified sound insulation and mechanical ventilation requirements were established under PC35 and appear to have been carried over from the Operative District Plan (as that Plan was amended by PC35).

75. However, the sound insulation requirements in Table 4 of the Proposed Plan contain a small typographical error (in respect of the required thickness of gypsum or plasterboard) which, through its submission QAC seeks be corrected. Both the Council's expert acoustics engineer (Dr Chiles) and the Section 42A Reporting Officer agree this correction is necessary.

76. Additionally, QLDC made a submission seeking the glazing requirements stated in Table 4 be updated to provide for modern double glazing. Mr Day addresses this in his evidence, and agrees with both Dr Chiles and the Section 42A Report Writer, that the amendment should be made as sought.

77. Accordingly, given the experts are in full agreement, it is submitted that the amendments to Table 4 as sought by QAC and QLDC and recommended by the Section 42A Report Writer should be adopted by the Panel.

Mechanical Ventilation Requirements

78. The mechanical ventilation requirements in Table 5 require more substantive amendment.

79. As explained by Mr Roberts, since these requirements were first promulgated (around 2008) there have been a number of changes in technology and building techniques which have rendered the requirements of the Table now somewhat outdated.

80. In addition, QAC's practical experience with implementing mechanical ventilation in existing buildings containing ASAN in accordance with the requirements of Appendix 13 of the Operative District Plan (which Table 5 of the Proposed Plan replicates), has demonstrated that the stated requirements are not well suited to the Queenstown environment.

81. Accordingly, through its submission on the Proposed Plan QAC sought that Table 5 be amended to address these issues, and proposed specific wording.

82. In assessing this submission, Dr Chiles acknowledges the issues QAC has raised and agrees that Table 5 ought to be amended, but recommends a different approach to that proposed by QAC in its submission. Dr Chiles also recommends that a submission David Jerram[19], in respect of a requirement for a cooling function, be accepted.

83. Mr Roberts and Mr Day have considered Dr Chiles' suggested alternative approach (including his recommendation in respect of a cooling function), and agree it has some merit and is generally more straight forward than that proposed in QAC's submission, but consider it requires further amendment to ensure it is appropriate for Queenstown, and addresses all relevant matters. Mr Roberts details these further amendments (with reasons) in his evidence.

84. The key differences in the approaches recommended by Dr Chiles and Mr Roberts relate to:

    (a) The high setting of the system: Dr Chiles recommends a high fan setting of 6 air changes per hour, whereas Mr Roberts considers 5 air changes per hour is sufficient. Mr Roberts considers Dr Chiles' recommendation will result in 2 or more fans being required to achieve the high and low settings, which will be costly to install and operate, (being an issue with the existing rule) with no real additional benefit;

    (b) The low setting of the system: Dr Chiles recommends the low setting requirements replicate those of clause G4 of the Building

[19] Submitter 80.

Code, whereas Mr Roberts considers this is inappropriate as the purpose of the Building Code ventilation requirements is differently focussed to that of Table 5. Further, Dr Chiles' recommendation will result in the need for at least two fans to achieve the high and low settings, which will be costly to install and operate, with no real additional benefit;

(c) Provision of passive relief venting: Dr Chiles' recommendation does not address this issue, whereas Mr Roberts consider it should be addressed to ensure the safe and efficient operation of other combustion appliances within the building;

(d) Recognition of existing systems toward compliance with the Table: Dr Chiles' recommendation does not address this issue, whereas Mr Roberts considers that where there is an exiting system that complies with the requirements stated in Table 5, there should be no requirement to duplicate that system to ensure compliance with the Table.

85. It is submitted the Panel should prefer Mr Roberts' evidence over Dr Chiles', as Mr Roberts is an expert in the installation and operation of mechanical and other ventilation systems, and has experience (through his review work) with the installation of such systems in Queenstown buildings.

86. A further issue as between Dr Chiles and Mr Day is the measurement point for noise from the mechanical ventilation system itself.[20] Both agree the notified rule is ambiguous on this issue and requires amendment. Dr Chiles recommends a measurement point of 1 metre distant from the mechanical ventilation diffuser, whereas Mr Day recommends a measurement point of 2 metres distant.

87. As Mr Day pragmatically reasons, a measurement point of 2 metres distant from the unit is logical and appropriate given the ventilation systems contemplated by the Table are ordinarily located such that it is difficult for a person to come within 2 metres of them (e.g. a high wall unit).

[20] Noting the experts are in agreement as to what the permissible noise levels of the mechanical ventilation system should be.

88. Although not expressly addressed in the evidence, it is understood (and logical to infer) that the closer the measurement point, the quieter the system will need to be and the more difficult it will be to comply with the noise limits stated in the Table.

89. The stated measurement point in the notified Table was a point "1m to 2m distant" from any diffuser. QAC's submission did not expressly address the measurement point distance, nor did any other submission.

90. It is submitted that Mr Day's recommendation of a measurement point 2 metres distant is within the scope of the notified rule, whereas Dr Chiles' recommendation for a measurement point 1 metre distant is not.

91. Mr Day's recommendation is within the upper bounds of the notified rule; that is, noise from the system could in every case be measured at a point 2 metres distant from the diffuser and in every case that measurement point would comply with the notified rule.

92. In contrast, if the measurement point stated in the Table is amended to a point 1 metre distant from the diffuser, as recommended by Dr Chiles, noise from a system that previously complied at a measurement point of 2 metres distant, may no longer comply at this closer measuring point.

93. Dr Chiles' recommendation is therefore more onerous than and alters the status quo, in circumstances where no submitter has sought the change. His recommendation is therefore without scope, and can not be adopted by the Panel.

94. Conversely, Mr Day's recommendation maintains the status quo, but addresses (by removing) a minor ambiguity. It is submitted that Mr Day's recommendation should therefore be preferred.

95. A revised Table 5 (Rule 36.6.3) incorporating the further amendments summarised above and detailed more fully by Mr Roberts and Mr Day is set out in Ms O'Sullivan's evidence.

96. Overall, the revised rule (as set out in Ms O'Sullivan's evidence) is more certain, better suited and relevant to the Queenstown environment, and compliance is more readily attainable (i.e. the revised rule is more

effective) than either the notified rule (Table 5) or Dr Chiles' recommended revision of it.

97. The revised rule (as set out in Ms O'Sullivan's evidence) is also more straightforward and adaptable to changing technologies than the revisions expressly sought in QAC's original submission.

98. It will result in cost savings and efficiencies in terms of installation and operation, providing a benefit to building owners and occupiers to whom the rule applies, and to QAC who, under its Aerodrome Purposes Designation is required to fund the retrofitting of mechanical for existing ASAN located within the Airport's noise boundaries in accordance with the Table.[21]

99. Finally on this issue, it is noted that based on the technical advice of Dr Chiles, the Section 42A Report Writer has recommend merging into one Table the mechanical ventilation requirements of Table 5, which relate to and have been specifically drafted for Queenstown and Wanaka Airports, with the mechanical ventilation requirements of Table 6, which relate to various Town Centre, Shopping and Business Zones.

100. Ms O'Sullivan sets out the problems with this recommendation at para 5.33 of her evidence.

101. Significantly, Ms O'Sullivan identifies that no person submitted on Table 6, or sought that it be amended in any way. There is therefore no scope to amend Table 6, other than in a minor or consequential way.

102. There is certainly no scope to amend Table 6 in the same, substantive manner as it is proposed to amend Table 5, noting the amendments to Table 5 arise directly from QAC's submission as to the same.

103. The only way by which Table 6 can now be amended so as to align with Table 5 is by way of a variation under clause 16A RMA. However, for the reasons given by Ms O'Sullivan, it is inappropriate to merge the Tables, irrespective of any jurisdictional issue.

---

[21] Refer paragraphs 5.23 – 5.26 of Ms O'Sullivan's evidence dated 2 September 2016.

Summary

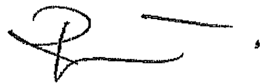
104. Chapter 30 requires amendment to ensure its general provisions do not override and render nugatory the more specific airport related provisions of Chapter 17.

105. The appropriateness of the Chapter 17 provisions has been scrutinised in detail, whereas (other than that undertaken by Mr O'Sullivan) there appears to have been no scrutiny at all of the Chapter 30 provisions in so far as they relate to, and potentially constrain activities at, Queenstown and Wanaka Airports.

106. Given the regional importance of these Airports as significant infrastructure, and the economic and social benefits they contribute to the District's community, it is imperative the amendment to Clarification Note 30.3.3.3 is made, as sought by QAC.

107. Similarly, given the importance of the Airports, it is necessary to ensure that the Proposed Plan appropriately brings to the attention of Plan users and those administering it, the need to comply with the Airports' Obstacle Limitation Surfaces Designations, so as to ensure the Airports can continue to operate safely and efficiently.

108. Various amendments are required to Chapter 36 of the Proposed Plan to ensure it appropriately, efficiently and effectively addresses airport noise related matters, both to maintain residents' amenity, and to ensure the Airports are appropriately protected from potential reverse sensitivity effects. Additionally, to ensure the approach to airport and airport related noise is clear and consistent across the Proposed Plan.



R Wolt
Counsel for Queenstown Airport Corporation Limited

Appendix A

1. Case law has established that when considering the scope of possible decisions on submissions on a plan change (or review), the issue is to be approached objectively, and with a degree of latitude so as to be realistic and workable, rather than a matter of legal nicety.[22]

2. To elaborate, the legal principles relating to the scope of decisions in submissions available to a council (and thus, the Panel) are as follows:

   (a) It is trite that a council can not grant relief beyond the scope of the submissions lodged in relation to a Proposed Plan.

   (b) However, the scope of a council's decision making under clause 10 of the First Schedule to the Act is not limited to accepting or rejecting a submission. To take a legalistic view that a council could only accept or reject a submission would be unreal.[23]

   (c) The paramount test is whether or not the amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the Proposed Plan. This will usually be a question of degree to be judged by the terms of the Proposed Plan and the content of submissions.[24]

   (d) The assessment of whether any amendment is reasonably and fairly raised in the course of submissions should be approached in a realistic and workable fashion, rather than from the perspective of legal nicety.[25]

   (e) Another way of considering the issue is whether the amendment can be said to be a 'foreseeable consequence' of the relief sought in a submission; the scope to change a plan is not limited by the words of the submission.[26]

---

[22] *EDS v Otorohanga District Council* (2014) NZEvnc 070, at [43]
[23] *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 165.
[24] Ibid, at 166.
[25] *Royal Forest and Bird Society Inc v Southland District Council* [1997] NZRMA 408 at 413, (HC).
[26] *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556, and 574 – 575.

(f) It is relevant to consider what an informed and reasonable owner of affected land should have appreciated might result from a decision on a submission, although this is not the sole test (given the danger of endeavouring to ascertain the mind or appreciation of a hypothetical person).[27]

(g) A council can not permit a planning instrument to be appreciably amended without real opportunity for participation for those potentially affected.[28]

(h) Ultimately, it is a question of procedural fairness. Procedural fairness extends to the public as well as to the submitter and the council.[29]

---

[27] *Countdown Properties*, Supra at 166 – 167.
[28] *Clearwater Resort Ltd v CCC*, unreported: High Court, Tauranga, CIV-2008-470-456, 30 October 2009, Allan J, at para [30].
[29] *Westfield (NZ) Ltd*, Supra, at [74].

APPENDIX B

13. SCOPE ISSUES

13.1 The evidence of a number of submitters on the Subdivision chapter has brought about the need to address issues of scope. The legal principles relating to scope have been addressed in depth in the Council's various submissions on Hearing Streams 1A and 1B[28] Hearing Stream 2[29] and these submissions are not repeated here.

27 See Council's right of reply legal submissions, Streams 01A and 01B, dated 7 April 2016 at paragraphs 10.1 – 10.2

28 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7; Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2.

29 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

The relevant principles are however summarised below for the convenience of the Panel.

Legal principles

13.2 The legal principles regarding scope and the Panel's powers to recommend (and subsequently the Council's power to decide) are:

(a) a submission must first, be *on* the proposed plan;[30] and

(b) a decision maker is limited to making changes within the scope *of the submissions* made *on the* proposed plan.[31]

13.3 The two limb approach endorsed in the case of *Palmerston North City Council v Motor Machinists Ltd*,[32] subject to some limitations, is relevant to the Panel's consideration of whether a submission is *on* the plan change.[33] The two limbs to be considered are:

(a) whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and

(b) whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.

13.4 The principles that pertain to whether certain relief is within the scope of a submitter's submission can be summarised as follows:

(a) the paramount test is whether or not amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP. This will usually be a question of degree to be judged by the terms of the PDP and the content of submissions;[34]

---

30 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7.
31 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.
32 [2014] NZRMA 519.
33 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at paragraph 7.3-7.12.
34 *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 166.

(b) another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought in a submission; the scope to change a plan is not limited by the words of the submission;[35]

(c) ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter;[36] and

(d) scope is an issue to be considered by the Panel both individually and collectively. There is no doubt that the Panel is able to rely on "collective scope". As to whether submitters are also able to avail themselves of the concept is less clear. To the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief, it is submitted that the submitter could not advance relief.[37]

APPENDIX C

Memorandum

To:	Queenstown Lakes District Council - Hearing Panel
From:	Meredith Connell
Date:	9 August 2016
Subject:	**Request for legal opinion regarding consequential amendments**

1 We refer to the Hearing Panel's request for legal advice of 4 August 2016 as to whether:

> Where a submitter has sought amendments to the rules but not to the overlaying objectives and policies, it is within scope to amend the objectives and policies that the rule(s) are implementing to ensure that there remains a consistent series of implementation links from objectives to policies and policies to rules by classing such changes as consequential amendments?

2 In our view, the Panel is not prevented from amending the overlaying objectives and policies where a submitter has only sought amendments to the relevant rule(s) as long as any such amendments do not go beyond what is fairly and reasonably raised in the submission.

3 The Courts have considered this matter in past cases where local authorities have proposed amendments in response to submissions, but which are not included in the specific relief sought. The Courts have taken a liberal approach to these situations, finding that a legalistic view whereby local authorities (the Panel in this case) can only accept or reject the specific relief sought in submissions is unrealistic.

4 This is on the basis that decision-makers generally need to reconcile multiple conflicting submissions and submissions are often prepared without professional assistance, so a submitter may not understand the planning framework and the requirement for implementation links from objectives to policies and policies to rules.

5 Accordingly, the Panel should ask itself whether any amendment it proposes, in order to ensure a consistent series of implementation links, goes beyond what is fairly and reasonably raised in the submission.

6 This will be a question of degree, to be judged by the terms of the proposed change (ie is it a significant change, perhaps to the structure of the Proposed Plan or in respect of a Plan-wide matter? Or is it simply a minor change?) and the content of the relevant submission. As an example, an amendment to a rule might be the specific relief sought, but the grounds for the submission might outline what the submission seeks to achieve, which the Panel could find to encompass a change to the relevant objectives and policies.

7 The Environment Court in *Campbell v Christchurch City Council* [2002] NZRMA 332 (EC) set out three useful steps in asking whether a submission reasonably raises any particular relief:[1]

(a) Does the submission clearly identify what issue is involved and some change sought in the proposed plan?

(b) Can the local authority rely on the submission as sufficiently informative for the local authority to summarise it accurately and fairly in a non-misleading way?

(c) Does the submission inform other persons what the submitter is seeking?

8 In applying this test and proposing "consequential" amendments, the Panel should also be careful to consider any proposed amendments to the overlaying objectives and policies in the context of the Proposed Plan more broadly. There may be consequences in terms of objective and policy direction that goes beyond what is fairly and reasonably raised in the relevant submission.

9 Some submissions will likely include "any other consequential changes" as relief sought. While the changes are, in effect, consequential amendments, it is open to the Panel to simply class the changes as within the scope of submissions (so long as the "fairly and reasonably" test is met).

---

1 *Campbell v Christchurch City Council* [2002] NZRMA 332 (EC). See also *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145 (HC).

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER OF	of the Resource Management Act 1991
AND	
IN THE MATTER OF	The Queenstown Lakes Proposed District Plan Chapter 30 (Energy and Utilities) Chapter 35 (Temporary Activities) Chapter 36 (Noise)

STATEMENT OF EVIDENCE BY KIRSTY O'SULLIVAN

(Submitter 433 and Further Submitter 1340)

2 SEPTEMBER 2016

---

1 INTRODUCTION

Qualifications and Experience

1.1 My name is Kirsty O'Sullivan. I am a Senior Resource Management Consultant with the firm Mitchell Partnerships Limited.

1.2 My qualifications and experience are set out in paragraphs 1.1 to 1.4 of my statement of evidence on Chapter 3 (Strategic Directions), Chapter 4 (Urban Development) and Chapter 6 (Landscapes) of the Proposed Queenstown Lakes District Plan ("PDP"), dated 29 February 2016.

1.3 I confirm my obligations in terms of the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I confirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of Evidence

1.4 This hearing specifically relates to the submissions made on the following chapters of the PDP:

1.4.1 Chapter 30 (Energy and Utilities);

1.4.2 Chapter 35 (Temporary Activities and Relocated Buildings); and,

1.4.3 Chapter 36 (Noise).

1.5 The Queenstown Airport Corporation ("QAC") made submissions and/or further submissions with respect to these chapters.

1.6 In this statement of evidence, I address the following matters:

1.6.1 The appropriateness or otherwise of provisions contained in Chapter 30, insofar as they relate to Airports (Chapter 30);

1.6.2 The appropriateness or otherwise of provisions pertaining the temporary airshows and relocated buildings (Chapter 35);

1.6.3 The protection of obstacle limitation surfaces surrounding Queenstown and Wanaka Airports (Chapter 35);

1.6.4 The general provisions relating to the management of noise at Queenstown, and to a lesser extent, Wanaka Airport (Chapter 36);

1.6.5 The proposed amendments to the sound insulation and mechanical ventilation tables and how they relate to the wider PDP provisions (Chapter 36);

1.7 In preparing this brief of evidence, I have read and reviewed:

1.7.1 The relevant chapters of the PDP as notified, including the associated section 32 evaluations;

1.7.2 QAC's submission and further submission on the PDP;

1.7.3 The section 42A reports prepared for Chapters 30, 35 and 36 (dated 19 August 2016); and,

1.7.4 The expert evidence of Dr Chiles (dated 17 August 2016);

1.7.5 The expert evidence of Mr Day (dated 2 September 2016); and,

1.7.6 The expert evidence of Mr Roberts (dated 2 September 2016);

1.8 Where I have recommended changes to the provisions contained in the section 42A reports, a further section 32AA evaluation is provided in **Appendix A** attached.

2. BACKGROUND CONTEXT

Queenstown and Wanaka Airport

2.1 The history of Queenstown and Wanaka Airports, their role in the Queenstown Lakes District, and the planning framework within which they operate has been described by Mr Mark Edghill and Mr John Kyle in

their respective statements of evidence on Chapter 3 (Strategic Directions), Chapter 4 (Urban Development) and Chapter 6 (Landscapes) of the PDP dated 29th February 2016 and 16th March 2016.

2.2 I adopt this evidence for the purposes of this hearing, noting it provides the contextual basis for some of the opinions I express in this statement. Copies of Mr Kyle's and Mr Edghill's evidence are **attached** (as **Appendix B**) to this statement, for the Panel's convenience.

3 CHAPTER 30 UTILITIES AND ENERGY

3.1 Chapter 30 of the PDP relates to energy and utilities.

3.2 The definition of utility in the PDP includes "Anything described as a network utility operation in s166 of the Resource Management Act 1991".[1] The provisions contained in Chapter 30 therefore apply to Queenstown and Wanaka Airports, as "network utility operations" under the Resource Management Act 1991 ("RMA").

3.3 QAC lodged a number of further submissions with respect to Chapter 30. I note that the section 42A report writer (herein referred to as the Council Officer) appears to have omitted QAC's further submissions from the analysis contained in the section 42A report, including Appendix 2. I can therefore only infer, based on the Council's Officer's recommendations with respect to the original submissions that QAC further submitted on, whether QAC's further submissions are recommended to be accepted or rejected.

[1] For the definition in full, refer to page 30-22 of the Chapter 30 section 42A report dated 19th August 2016.

General comment with respect to Chapter 30

3.4 Clarification Note 30.3.3.3 sets out that the rules contained in Chapter 30 take precedence over any other rules that may apply to energy and utilities in the District Plan, unless specifically stated to the contrary.

3.5 While I agree that this approach is appropriate in the context of traditional utilities, I consider it presents an inherent difficultly for airports, as Chapter 30 does not contemplate the range of activities provided for at modern airports. Such activities are instead provided for by Chapter 17 (Queenstown Airport Mixed Use Zone) of the PDP.

3.6 Furthermore, it is conceivable that a situation may arise whereby QAC or QLDC (as the network utility operators for Queenstown and Wanaka Airports respectively) may be captured by the consent requirements under Chapter 30, whereas the same activity undertaken by another party (i.e. that is not a network utility operator) at the airport would be assessed under Chapter 17 and would likely be a permitted activity. For example, if QAC sought to construct a new building greater than 10m² in area and 3m in height at Queenstown Airport, resource consent would be required under Rule 30.4.17[2] of Chapter 30 as a controlled activity. The same activity undertaken by another party (i.e. not a network utility operator) would be permitted under Rule 17.4.1 of Chapter 17. In my view, this approach would lead to administrative and consenting inefficiencies and would be ineffective at achieving the higher order strategic objectives of the PDP.

3.7 Despite the new inclusion of airports in the PDP definition of utility (through reference to all network utility operations under section 166 of the RMA), the section 32 evaluation for Chapter 30 does not include an evaluation of how the provisions might impact upon the districts airports. The cost/benefit evaluation specifically undertaken with respect to

[2] Rule 30.4.17 of the section 42A report for Chapter 30, or Rule 30.4.15 of Chapter 30 as notified.

Clarification Note 30.3.3.3 does not address, at all, the potential costs to the network utility operators at Queenstown and Wanaka Airports.

3.8 Given that there is an entire chapter within the PDP dedicated to Queenstown Airport, I suspect it was not the intent of the Council to inadvertently capture land use activities associated with airports within Chapter 30. By doing so, parts of Chapter 17 are negated. This is neither appropriate nor efficient in my view.

3.9 Accordingly, assuming the Panel has scope to do so, I consider that it would be appropriate to include a new clause (d) to Clarification Note 30.3.3.3 to clearly set out the Chapter 30 does not take precedence over Chapter 17 of the PDP.

Objectives and Policies

3.10 QAC supported a number of submissions that sought the retention of and/or amendment to notified provisions that recognise and provide for the operational and locational constraints of utilities and the positive benefits that accrue from the establishment of new and/or the ongoing operation of, existing utilities. [3]

3.11 The Council Officer has recommended some minor drafting amendments to the provisions that provide for the ongoing operation and use of utilities and their associated benefits. The Council Officer has therefore recommended accepting, in part, the original submissions that QAC further submitted on.[4] In my opinion, the Council Officer's recommendations are appropriate and ensure that the provisions give

3 Specifically, QAC lodged further submissions with respect to original submissions on Objectives 30.2.5, proposed new Policy 30.2.5.4, Objective 30.2.6, Policy 30.2.6.1, Policy 30.2.6.2, Policy 30.2.6.5, Objective 30.2.7, Policy 30.2.7.1 and Policy 30.2.7.4.

4 Submission 251.12 on Objective 30.2.5, submissions 179.16, 781.15 and 191.14 on proposed new Policy 30.2.5.4, submissions 179.19, 781.18 and 191.17 on Objective 30.2.6 and submission 251.13 on Policy 30.2.6.1.

effect to the higher order strategic directives contained in Chapter 3 of the PDP. [5]

3.12 With respect to provisions that provide for the operational and locational constraints of utilities, the Council Officer has recommended accepting[6], accepting in part[7] and rejecting[8] the original submissions on which QAC made further submissions.

3.13 As set out in my evidence[9] relating to Chapter 3 (Strategic Directions), Chapter 4 (Urban Development) and Chapter 6 (Landscapes), I consider that the PDP needs to recognise that the operational requirements of infrastructure may necessitate placement at a particular location. This includes the potential siting of infrastructure in areas of significant natural values such as Outstanding Natural Landscapes (ONL) or Outstanding Natural Features (ONF). An example might include a navigational aid located within an ONL.

3.14 As set out in the same brief of evidence[10], I am also of the view that it is appropriate for infrastructure occupying ONLs and ONF to be located and designed, as far as reasonably practicable, to minimise the potential for adverse effects on the particular landscape character and/or visual amenity values inherent at the site. However, the very nature and purpose of that infrastructure may mean that it is impossible or undesirable to avoid, remedy or mitigate all adverse effects.

[5] Objective 3.2.8.1 of Chapter 3, as proposed in the Council's Right of Reply for Chapters 3 and 4.
[6] Submission 251.16 on Policy 30.2.6.3 and submission 251.20 on Policy 30.2.7.4.
[7] Submission 251.14 on Policy 30.2.6.2 and submission 251.17 on Policy 30.2.7.1
[8] Submissions 179.23 and 191.21 on Objective 30.2.7 and submissions 179.24, 781.22 and 191.22 with respect to a new Policy.
[9] Refer to paragraphs 2.18 to 2.24 and 4.6 to 4.7 of the Statement of Evidence of Kirsty O'Sullivan, dated 29th February 2016.
[10] Refer to paragraphs 2.18 to 2.24 and 4.6 to 4.7 of the Statement of Evidence of Kirsty O'Sullivan, dated 29th February 2016.

3.15 It is on this basis that I support the recommendations of the Council Officer with respect to Policies 30.2.6.2, 30.2.6.5 and 30.2.7.4.[11] In my view, these policies all recognise and provide for the locational and operational constraints of network utilities and contemplate that there may be situations whereby the effects generated by such activities are adverse.

3.16 With respect to Objective 30.2.7[12], the Council Officer has recommended the following drafting amendments:

> *~~Avoid, remedy or mitigate t~~The adverse effects of utilities on surrounding environments, particularly those in or on land of high landscape value and within special character areas are avoided remedied or mitigated.*

3.17 In my view, the use of terms such as "high landscape value" and "special character areas" is inappropriate as they are subjective terms and are not defined. Such terms may give rise to inconsistent interpretation and application of this objective. I therefore prefer the drafting proposed by the telecommunications companies, as it focuses on the key landscapes where effects should be managed. I consider the wording proposed by these submitters should be further amended however, to reflect the Panel's 4th procedural minute:

> *The adverse effects of utilities on surrounding environments, particularly those in outstanding natural landscapes ~~and within identified special character areas~~ are avoided where practicable, and otherwise remedied or mitigated.*

3.18 To give effect to this policy, the telecommunication companies submitted that a new policy should be included in the PDP as follows:

[11] Refer to page refer to page 30-5 and 30-6 of the Chapter 30 section 42A report dated 19th August 2016.

[12] Refer to page 30-5 of the Chapter 30 section 42A report dated 19 August 2016.

Recognise that in some cases, it might not be possible for utilities to avoid outstanding natural landscapes, outstanding natural features or identified special character areas and in those situations greater flexibility as to the way that adverse effects are management may be appropriate.

3.19 For reasons set out in paragraph 3. 14, I consider that this policy is appropriate. I therefore support the submission of the telecommunications companies and QAC's further submission.

3.20 With respect to Policy 30.2.7.1, the Council Officer has recommended some drafting amendments to the policy. While I consider these to be an improvement on the originally notified policy, I consider that the following further amendments are required:

~~Reduce~~ Manage adverse effects associated with utilities by:

- *~~Avoiding, remedying or mitigating their location identified sensitive environments and~~ protecting Outstanding Natural Landscapes and Outstanding Natural Features, ~~and skylines and ridgelines~~ from inappropriate development.*
- *Managing adverse effects on the amenity values of urban areas and the Rural Landscapes.*
- *Encouraging co-location or multiple use of network utilities where this is efficient and practicable in order to avoid, remedy or mitigate adverse effects on the environment*
- *Ensuring that redundant utilities are removed*
- *Using landscaping and or colours and finishes to reduce visual effects*
- *~~Integrating utilities with the surrounding environment; whether that is a rural environment or existing built form.~~*

3.21 In my view, the above changes provide greater clarity around the application of the policy. The changes remove references to subjective terms such as "identified sensitive environments". It also removes the requirement to protect features such as "skylines" and "ridgelines" that otherwise appear to be afforded the same level of protection as section 6(b) landscapes which is inappropriate in my view. With respect the final

bullet point, it is unclear what is meant by the term "integrate". In my view, this bullet point should be deleted as the operational requirements may dictate a particular built form that may not "integrate" with rural or existing built form.

Rules

3.22 QAC made a number of further submissions with respect to the rules contained in Chapter 30. Specifically, QAC supported submissions that provided for buildings, equipment cabinets and structures ancillary to or associated with utilities as a permitted activity.[13] QAC also lodged a further submission in support of a restricted discretionary activity status for utility buildings that do not meet the zone standards for the underlying zone. [14]

3.23 I am aware that these further submissions were made in order to preserve the permitted activity status for buildings and structures under the provisions and within the Queenstown Airport Mixed Use Zone. I consider that these further submission points will be addressed by the inclusion of an additional clause for Clarification Noise 30.3.3.3.

Conclusion

3.24 Chapter 30 of the PDP provides the lower level detail around how to achieve the higher order strategic objectives and policies of the PDP, insofar as they relate to energy and utilities.

3.25 While I generally consider these provisions to be appropriate (particularly insofar as they relate to 'traditional' utilities), I consider that some further amendment is required in order to ensure the operational constraints of utilities is appropriately recognised and provided for.

[13] Submission 251.21 with respect to Rule 30.4.8 and submission 179.28, submission 191.26 and submission 781.26 with respect to a proposed new rule.

[14] Submission 251.28 with respect to Rule 30.5.6.

3.26 With a more specific focus on Airports, in my view, Chapter 30 appears to inadvertently capture some airport activities. Airports are provided for comprehensively via Chapter 17 of the PDP, and the relevant designations. I consider this to be an oversight when drafting this chapter and consider that this matter should be rectified, if scope is available, in order to avoid potential consenting and administrative inefficiencies.

4 CHAPTER 35 TEMPORARY ACTIVITIES AND RELOCATED BUILDINGS

4.1 Chapter 35 of the PDP relates to temporary activities and relocated buildings.

4.2 QAC lodged a number of submissions and further submissions with respect to this chapter which in summary:

4.2.1 Support the inclusion of objectives and policies that recognise the contribution that temporary events provide for the social, cultural and economic wellbeing of the community[15];

4.2.2 Seek the inclusion of new provisions that would provide for temporary airshows, such as "Warbirds over Wanaka", at Wanaka Airport;[16]

4.2.3 Seek the inclusion of new provisions relating to the protection of obstacle limitation surfaces at Queenstown and Wanaka Airports;[17]

4.2.4 Oppose submissions that seek to provide a new framework for relocatable buildings, insofar as it may circumvent the requirements to adhere to zone specific development standards (such as those established under PC35). [18]

I address each of these issues below.

---

15 Submission 433.104 on Objective 35.2.1 and submission 433.105 on Policy 35.2.1.1.
16 Submission 433.107.
17 Submission 433.106 to 109 and submission 433.33.
18 Further submission FS1340.46-48.

Temporary Airshows

Objective 35.2.1 and Policy 35.2.1.1

4.3 Objective 35.2.1 encourages temporary events and filming that are undertaken in a manner that manages adverse effects. Associated Policy 35.2.1.1 recognises the contribution that temporary events make to the social, economic and cultural wellbeing of the District.

4.4 QAC submitted that these provisions provide for the continuation of temporary events, such as Warbirds over Wanaka, which positively contribute towards the wellbeing of the community.[19] QAC therefore supported the retention of these provisions as notified. The Council Officer has recommended accepting QAC's submission.

4.5 In my view, these provisions are appropriate as they directly give effect to Part 2 of the Act through their encouragement of activities that enable people and communities to provide for their social, cultural and economic wellbeing while appropriately managing adverse effects. I therefore support the recommendations of the Council Officer with respect to these provisions.

New Rule for Temporary Airshows

4.6 To further give effect to the aforementioned objective and policy, QAC submitted that a new rule should be included in the PDP that provides for temporary airshows at Wanaka Airport as a permitted activity (subject to identified parameters).[20] QAC also submitted that the definition of temporary activity should be amended to include air shows. [21]

4.7 The Council Officer has recommended that provisions addressing the activities of private operators at Wanaka Airport would be better placed in a zone specific chapter for the Airport and therefore recommends

[19] Submission 433.104 and 433.105.

[20] Submission 433.107.

[21] Submission 433.33.

transferring this submission point for later consideration within the Business Zone hearing stream.[22] This recommendation is on the basis of a Minute issued by the Hearings Panel dated 16th June 2016, in which the Panel expressed an initial view that some specific zoning provision should be made for Wanaka Airport distinct from the surrounding Rural Zone. The Panel therefore directed QAC's submission concerning the zone provisions for Wanaka Airport be transferred to the Business Zone hearing stream (specifically, Chapter 17) for further consideration.

4.8 I agree with this approach and therefore do not address this submission point any further.

Regulation of Temporary Obstacles

4.9 Obstacle limitation surfaces are three dimensional surfaces that exist in the airspace above and adjacent to an Airport. As shown in Figure 1, obstacle limitation surfaces radiate outwards from an Airport's runway and can extend some distance beyond an Airport's actual location.

[22] Refer to Paragraph 10.6 of the Chapter 35 section 42A report.

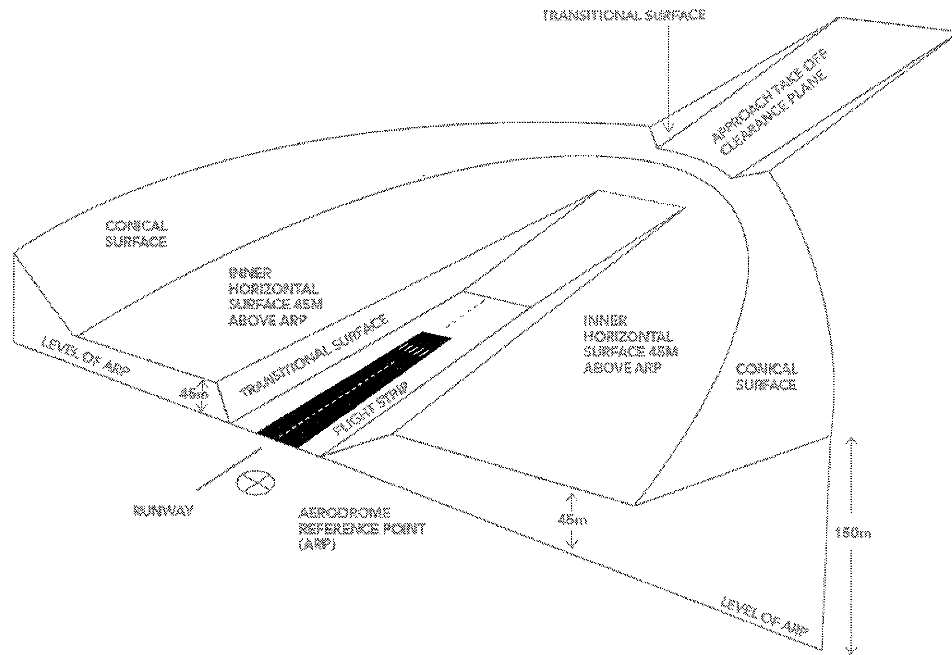


Figure 1: A three-dimensional depiction of an obstacle limitation surface surrounding an airport.

4.10 As set out in the overview of QAC's Airport Approach and Land Use Controls designation (Designation 4 in the Operative and Proposed District Plans), Civil Aviation rules require an Airport Operator to provide obstacle limitation surfaces around an airport to ensure the safe operation of aircraft approaching and departing the airport. The intention of these surfaces is to prevent objects such as structures and trees from penetrating the surfaces in areas critical to the operational safety and efficiency of the Airport. Obstacle limitation surfaces are therefore used as a tool to impose height limits on objects around an Airport.

4.11 The specific obstacle limitation surfaces that relate to Queenstown and Wanaka Airports are defined in Figures 1 to 4 of the Operative and Proposed Queenstown Lakes District. A copy of these figures are **attached** as **Appendix C**. These surfaces are designated for "Airport

Approach and Land Use Control" purposes in the Operative and Proposed Queenstown Lakes District Plan[23].

4.12 QAC submitted that, in its experience, the proponents of some temporary activities often overlook these designations and the associated requirement under section 176 (b) of the Act to obtain the written consent of QAC, as the requiring authority, before penetrating these surfaces. QAC therefore sought the inclusion of a new suite of provisions (including a policy, rule and notification parameter) to address this issue. [24]

4.13 The Council Officer has acknowledged QAC's need to manage obstacles within the operational airspace at Queenstown and Wanaka Airports. The Council Officer considers however, that the relief sought by QAC unnecessarily duplicate the requirements of the Civil Aviation Act 1990 and of the requirements of section 176 of the Resource Management Act 1991. The Council Officer therefore recommends rejecting QAC's submission.[25]

4.14 I understand that temporary filming activities associated with the Events Centre and temporary cranage activities on Frankton Flats have historically penetrated the obstacle limitation surfaces at Queenstown Airport. Such activities have occurred without the prior approval of QAC and have required immediate remediating action (i.e. removal of the structures) by the Airport and the Civil Aviation Authority. Noting the potential risks to aircraft safety arising from unauthorized penetration of the obstacle limitation surfaces, in my view, these examples both demonstrate that retaining status quo and remaining silent on the obstacle limitation surfaces in the PDP is ineffective at addressing this issue.

---

23 Refer to Designation 4 with respect to Queenstown Airport and Designation 65 with respect to Wanaka Airport.

24 Submissions 433.106, 433.108 and 433.109.

25 Refer to section 9 of Chapter 35 section 42A report.

4.15 Notwithstanding the above, I generally agree with the Council Officer's concerns around the potential efficiencies of duplicating controls under the Civil Aviation Act 1990 and section 176 of the Resource Management Act. I therefore recommend, as an alternative to the relief sought by QAC, the inclusion of a non-statutory clarification note which draws attention to the obstacle limitation surface designation. In my view, this approach is both efficient and effective, as it draws attention to the obstacle limitation surfaces without duplicating any existing statutory controls.

4.16 I recommend the new note should read as follows:

> *Any person wishing to undertake an activity that will penetrate the designated Airport Approach and Land Use Controls obstacle limitation surfaces at Queenstown or Wanaka Airport must first obtain the written approval of the relevant requiring authority, in accordance with section 176 of the Resource Management Act 1991.*

Relocated Buildings

4.17 The House Movers Section of New Zealand Heavy Haulage Association Incorporated (herein referred to "House Movers") lodged a number of submissions on Chapter 35 seeking the inclusion of a bespoke framework for relocatable buildings.[26]

4.18 QAC lodged further submissions in opposition to the House Movers, citing that all relocatable buildings should be subject to the performance standards of the zone to which they will be located.[27] I am aware this is a requirement of the notified PDP and understand that the relief sought by the House Movers effectively sought to remove this requirement.

4.19 The Council Officer appears to recommend accepting QAC's submission. In my view, this is appropriate as it will ensure that relocated buildings

[26] Submission number 496.1 to 496.3.
[27] Further submission FS1340.46 and 47.

cannot circumvent development standards that have been designed to achieve specific resource management outcomes for that particular zone.

4.20 For completeness, I acknowledge the comments of the Council Officer with respect to relocated buildings and whether they are captured by the acoustic insulation and mechanical ventilation requirements of the Low Density Residential Zone.[28] I agree with the Council Officer's recommendation that this matter is best addressed during the residential hearing and therefore do not address this matter further in this evidence.

Conclusions

4.21 Chapter 35 relates to the temporary activities and relocatable buildings. With the exception of provisions relating to temporary structures penetrating obstacle limitation surfaces, I generally agree with the recommendations of the Council Officer with respect to this chapter.

4.22 With respect to the provisions relating to the obstacle limitation surfaces, history demonstrates that retaining status quo and remaining silent on the controls imposed by these designations is ineffective at preventing structures penetrating these surfaces. I therefore consider that it is appropriate for the PDP to include a clarification note that draws attention towards the QAC and QLDC obstacle limitation designations.

5 CHAPTER 36 NOISE

5.1 The proposed noise management approach for the District is set out in Chapter 36 of the PDP.

5.2 QAC lodged a number of submissions and further submissions with respect to this chapter which in summary, sought to:

5.2.1 retain the purpose statement as notified;[29]

28 Refer to paragraph 8.3 of the Chapter 35 section 42A report.
29 Submission 433.10.

5.2.2 retain provisions that confirm the noise limits set out in Chapter 36 do not apply to sound from aircraft operations at Queenstown and Wanaka Airports (including helicopter and fixed wing aircraft);[30]

5.2.3 ensure that only one set of noise provisions apply to Queenstown Airport; [31]

5.2.4 retain Table 4 relating to sound insulation requirements for the acceptable construction materials, subject to a minor typographical amendment;[32]

5.2.5 amend Table 5 relating to mechanical ventilation requirements within the Air Noise Boundary ("ANB") and Outer Control Boundary ("OCB") at Queenstown and Wanaka Airports; [33] and,

5.2.6 Retain the definitions of "Design sound level", "Indoor design sound level", "Noise" and "Non-Critical Listening Environment" as notified and "Critical Listening Environment" subject to a minor amendment.[34]

5.3 The Council Officer has recommended accepting QAC's submissions with respect to the purpose statement and the advisory notes. [35] In my view, these provisions are both effective and efficient as they provide clarification around the application of the chapter and avoid duplicating the noise management obligations set out in the Queenstown and Wanaka Airport designations. I therefore do not discuss these provisions further.

5.4 In the following sections, I address each of the remaining points of QAC's submission. Where appropriate, I also draw on the evidence of Mr Day

---

[30] Submissions 433.11 to 433.12, and 433.115 to 116.

[31] Submission 433.113 and 433.14.

[32] Submission 433.117 and further submission FS1340.49.

[33] Submission 433.118.

[34] Submissions 433.18, 433.20, 433.23 and 433.26 and further submission FS1340.1.

[35] Refer to paragraphs 8.13, 8.19, 8.21, 8.49 and 8.51 of the Chapter 36 section 42A report date 19th August 2016.

and Mr Roberts with respect to the proposed sound insulation and mechanical ventilation requirements of the PDP.

Changes to Table 2 Heading and Rules 36.5.2 and 36.5.5

5.5 The Council Officer has recommended changes to the notified heading in Table 2 from "Activity or sound source" to "Zones sound is received in". The Council Officer has reasoned that the change makes the table consistent with the intent of Clarification Note 36.3.2.7[36].

5.6 In my view this is a substantive change which has the potential to impact the application of the rule. For example, as notified, Rule 36.5.5 places no restrictions on noise generated and received within the Queenstown Airport Mixed Use Zone (i.e. noise effects are internalized within the zone). Noise generated by these same activities and received in adjacent zones is managed by Rule 36.5.2. The Council Officer's proposed changes to the Table 2 headings will, in effect, mean that activities within the Queenstown Airport Mixed Use Zone must manage their effects on the adjacent zones (in accordance with Rule 36.5.2), yet there is no reciprocating requirement for users of the adjacent zone to manage their activities in a similar (i.e. users of the adjacent zone can generate an unlimited noise effect on the Queenstown Airport Mixed Use Zone). While in practice, this is unlikely to give rise to any adverse effects for QAC given the inherently noisy nature of the activities it undertakes, in my view, it demonstrates the unanticipated effects of the Council Officers recommended amendments.

5.7 With respect to Rule 36.5.2, QAC lodged a submission in opposition to Rule 36.5.2, reasoning that the rule does not identify a noise limit for the adjacent Remarkables Park Zone (as the receiver of noise generated in the Queenstown Airport Mixed Use Zone). QAC also submitted that Rule 36.5.2 was a duplicate of Rule 17.5.6. Given that Rule 17.5.6 did specify a

[36] Refer to paragraph 8.24 of the section 42A report for Chapter 36 dated 17th August 2016.

noise limit within the Remarkables Park Zone, QAC submitted that Rule 36.5.2 should be deleted and replaced with Rule 17.5.6. [37]

5.8 Rule 17.5.6 sets out (my paraphrasing):

5.8.1 the maximum permissible noise levels from land based activities within the Queenstown Airport Mixed Use Zone, when received at any point within the Residential Zone or Activity Areas 1, 3, 4, 6 and 8 of the Remarkables Park Zone and at the notional boundary in the Rural Zone (notified Rule 17.5.6.1);

5.8.2 Clarifies that the noise limits do not apply to sound from aircraft operations subject to the Aerodrome Purposes Designation (notified Rule 17.5.6.2); and,

5.8.3 Clarifies that the noise limits to do not apply to construction noise, which shall be managed in accordance with NZS6803:1999 Acoustics Construction Noise (notified Rule 17.5.6.3).

5.9 The Council Officer has recommended that QAC's submission be rejected. The Council Officer has also expressed a preference for Rule 17.5.6 to be deleted, however acknowledges that this is beyond the scope of this hearing. [38]

5.10 It appears that the intent of Rule 17.5.6 is not all that dissimilar from existing rules contained within Chapter 36, specifically Rules 36.5.2, 36.3.2.8 and Rule 36.5.15 as notified.[39] From my review of this rule, the main point of difference, as identified by QAC's submission, appears to be the reference to the Remarkables Park Zone.

5.11 In my view, it is appropriate for land based activities within the Queenstown Airport Mixed Use (or any zone for that matter) to be

[37] Submission 433.113.
[38] Refer to paragraph 8.26 of the Chapter 36 section 42A report dated 19th August 2016.
[39] Or Rules 36.5.2, 36.3.2.8 and 36.5.14 of the Chapter 36 report dated 19th August 2016.

managed in such a way to ensure that noise effects do not adversely impact adjacent zones. The Remarkables Park Zone is one such zone.

5.12 It remains unclear based on the section 42A report how the Council intends to manage and/or include provisions in Chapter 36 that relate to zones that are part of the Stage 2 of the PDP review. This is further complicated by references to some, but not all, Stage 2 zones in Chapter 36.

5.13 On the assumption that the Remarkables Park Zone has been omitted from Rule 36.5.2 as it does not form part of Stage 1 of the PDP and on the basis that this rule will be revisited during Stage 2, in my opinion the recommendation of the Council Officer is appropriate.

5.14 In response to concerns[40] raised by Dr Chiles with respect to the noise limits of the Queenstown Airport Mixed Use Zone being more lenient and having a longer daytime period, I note that this matter is addressed in the section 32 evaluation undertaken for the Queenstown Airport Mixed Use Zone. I understand that the extended day time period stated in the rule accounts for the operational hours of Queenstown Airport and provides consistency with the time periods that apply to similar activities within the adjacent Remarkables Park Zone and Frankton Flats zone.[41]

5.15 Returning to my earlier concerns with respect to the effects of the proposed changes to the Table 2 headings, I note that Rule 36.5.2 does not "fit" the new table format as it describes the source of the sound (i.e. land based activities within the Queenstown Airport Mixed Use Zone). While I consider that the current drafting is "workable" and can be interpreted in the manner it was intended, the drafting is clumsy and inconsistent with the remainder of Table 2. If the Panel has scope to do so, I consider that

---

[40] Refer to paragraph 8.3 of the evidence of Mr Chiles dated 17th August 2016.

[41] Refer to page 7 of the Marshall Day Acoustics report appended as Attachment 4 of the section 32 evaluation of the Queenstown Airport Mixed Use Zone.

should be rectified to ensure consistent interpretation and application of this rule in the future.

Interpretation Matters

5.16 As noted by Mr Day, there are a number of issues with the current drafting of Chapter 36 that may give rise to inconsistent interpretation and application of the rules contained in Chapter 36. While I note that these matters go beyond the scope of QAC's submissions, as an independent expert I consider that it is appropriate to bring these matters to the attention of the Hearings Panel. Specifically:

5.16.1 Clarification note 36.3.2.1 is vague and difficult to interpret. It is not clear what reference to a "level of activity" means and which part(s) of Chapter 36 it relates to. It also appears that the latter part of this note duplicates the non-compliance status column of Tables 2 to 3, and in some instances, gives rise to inconsistencies in the activity status for non-compliance. [42]

5.16.2 Clarification note 36.3.2.4 requires updating to reflect the recommended removal of Table 5.

5.16.3 Noise is not an "activity", as noted by Mr Day.[43]

5.16.4 It appears that the intent of Clarification Note 36.3.2.5 is to exempt "activities" contained in Table 1 to the underlying zone noise standards.[44] Table 1 then goes on to identify "activities" that are permitted. In my view, if the Panel has scope to do so,

---

[42] Refer to Rules 36.5.2, 36.5.8 and 36.5.15 as notified or 36.5.2, 36.5.7 and 36.5.14 of the section 42A report for Chapter 36 and Rule 17.5.6.1 of Chapter 17 as notified.

[43] Refer to paragraph 48 of the Statement of Evidence of Mr Day, dated 2 September 2016.

[44] Refer to page 12 of the section 32 report, which specifically states "These rules will result in efficiencies in District Plan administration by clearly stating that these activities are exempt from the underlying zone noise limits".

this table would be better described as "exemptions" rather than "activities" and remove the activity status column.[45]

5.16.5 Clarification note 36.3.2.7 is unclear and could benefit from further drafting amendments.

5.16.6 There appears to be little distinguishing the second and third columns of Table 2, as amended by the Council Officer. For example, the second column of Table 2 identifies "Zones sound is received in". The third column identifies the "Assessment location", or in other words, the receiving environment where noise is measured from.

5.16.7 The assessment location where noise is measured from is unhelpfully vague and could capture the generator of the noise. I understand that this is not the intention.

Acoustic Treatment and Mechanical Ventilation

5.17 Tables 4 and 5 of the notified PDP contain provisions relating to acoustic insulation and mechanical ventilation. In order to provide context to the opinions that I express with respect to these two tables, I consider that is appropriate to provide some background context around their provenance and their interlinkages with other sections of the PDP.

5.18 I also note that Mr Day has provided the rationale for requiring mechanical ventilation within the ANB and OCB at airports.[46] I do not repeat that evidence here and defer to Mr Day with respect to this matter.

---

[45] Note that if this approach is adopted, Rule 36.4.6 could be retained, subject to the word "movement" being replaced with the word "operations".

[46] Refer to paragraphs 34 to 36 of the Statement of Evidence of Mr Day, dated 2 September 2016.

Plan Change 35 and the associated Notice of Requirement for Designation 2

5.19 The history of PC35 is set out in the evidence of Mr Kyle dated 29th February 2015 and his summary evidence dated 16th March 2016.[47]

5.20 I adopt the evidence of Mr Kyle with respect to PC35.

5.21 To provide context to the following discussion, I wish to highlight the following key points from Mr Kyle's evidence:

5.21.1 The purpose of PC35 was to put in place an appropriate management regime for land use around Queenstown Airport, while providing for predicted ongoing growth in aircraft operations until 2037[48]. Accordingly, PC35 updated the Airport's noise boundaries to provide for predicted growth in aircraft operations and amended various zone provisions relating to the use of land within those noise boundaries likely to be affected by increased aircraft noise.

5.21.2 The foundation of the land use management approach adopted in PC35 is the New Zealand Standard for Airport Noise Management and Land Use Planning, NZS6805:1992 ("NZS6805");[49]

5.21.3 NZS6805 recommends that all new activities sensitive to aircraft noise ("ASAN")[50] within an airport's ANB and OCB are prohibited; [51]

5.21.4 PC35 adopted a more moderated approach than recommended by NZS6805 for existing Low Density Residential zoned sites

[47] Section 5 of the Statement of Evidence of Mr Kyle, Hearing 1B, dated 29 February 2016.

[48] Paragraph 5.1 of the Statement of Evidence of Mr Kyle, Hearing 1B, dated 29 February 2016

[49] Paragraph 5.11 of the Statement of Evidence of Mr Kyle, Hearing 1B, dated 29 February 2016.

[50] Activity Sensitive to Aircraft Noise is defined in the Operative and Proposed Plans as meaning "any residential activity, visitor accommodation activity, community activity and day care facility activity as defined in this District Plan including all outdoor spaces associated with any educational facility, but excludes activity in police stations, fire stations, courthouses, probation and detention centres, government and local government offices".

[51] Paragraph 5.22 and 5.27 of the Statement of Evidence of Mr Kyle, Hearing 1B, dated 29 February 2016.

within the ANB, whereby new buildings and alterations and additions to existing buildings containing ASAN are able to be built inside the ANB, provided they incorporate appropriate sound insulation and mechanical ventilation measures, at the property owner's cost.[52]

5.21.5 Within the OCB, PC35 requires mechanical ventilation for new buildings containing ASAN within the Low Density Residential Zone and for alterations or additions to existing buildings containing ASAN inside the Rural, Low Density Residential, Frankton Flats and Remarkables Park zones.[53] The cost associated with such works is met by the developer, at the time the development work is undertaken.[54]

5.21.6 Any new buildings containing ASAN within the OCB in the Rural, Industrial and Frankton Flats zones are prohibited under PC35.[55]

5.22 Where the above described activities require acoustic insulation or mechanical ventilation under the relevant zone rule, compliance with the relevant rule can either be achieved either by implementing the construction specifications set out in Tables 1 and 2 of Appendix 13 of the operative District Plan (as amended by PC35) or by submitting a certificate to the Council from a person suitably qualified in acoustics stating that the proposed construction can achieve the specified indoor design level with the windows open. I note that Tables 4 and 5 of Chapter 36 of the PDP reflect those set out in Tables 1 and 2 of Appendix 13.

5.23 Mr Kyle also provided an overview of the NoR lodged in association with PC35. In summary, the NoR sought to amend the Aerodrome Purposes Designation (Designation 2) so to introduce obligations for QAC to undertake and fund noise mitigation works for those existing houses

[52] Paragraph 5.22 of the Statement of Evidence of Mr Kyle, Hearing 1B, dated 29 February 2016.
[53] Noting that excepting the Low Density Residential Zone, no new ASAN activity is provided for as of right within these zones.
[54] Paragraph 5.28 of the Statement of Evidence of Mr Kyle, Hearing 1B, dated 29 February 2016.
[55] Paragraph 5.28 of the Statement of Evidence of Mr Kyle, Hearing 1B, dated 29 February 2016.

within the updated noise boundaries likely to be exposed to increased levels of aircraft noise. [56]

5.24 Specifically, the designation, as amended by the NoR:

5.24.1 Obliges QAC to offer 100% funding of noise mitigation for Critical Listening Environments of buildings located within the ANB that existed at the time the NOR was confirmed. This mitigation is required to achieve an indoor design sound level of 40dB Ldn or less based on the 2037 Noise Contours;

5.24.2 Obliges QAC to offer to part fund retrofitting, over time, of mechanical ventilation of any Critical Listening Environment within existing buildings containing ASAN between the ANB and the 2037 60dB Noise Contour. Specifically, QAC is required to provide 75% funding;

5.24.3 Sets out QAC's monitoring requirements for aircraft noise at Queenstown Airport to ensure compliance with noise limits at the defined noise boundaries (the ANB and OCB);

5.24.4 Requires QAC to prepare and implement a Noise Management Plan; and

5.24.5 Establishes and sets out the purpose of the Queenstown Airport Liaison Committee.

5.25 Where mechanical ventilation is required in accordance with QAC's retrofitting obligations, a condition of the designation requires the ventilation to be provided in accordance with Table 2 of Appendix 13 of the operative District Plan, or by an alternative strategy agreed by QAC and the building owner.[57]

5.26 The Aerodrome Purposes Designation (as amended by the NoR) therefore makes reference to (and effectively incorporates) the mechanical

[56] Paragraph 5.3 of the Statement of Evidence of Mr Kyle, Hearing 1B, dated 29 February 2016.
[57] Refer to conditions 17 and 19 of the PDP or Operative Aerodrome Purposes Designation.

ventilation requirements set out in Table 2 of Appendix 13, which is akin to Table 5 of Chapter 36 of the PDP (as notified).

Plan Change 26

5.27 In November 2010, QLDC initiated Plan Change 26 (PC26). In a similar approach to PC35, PC26 sought to establish an appropriate land use management regime for ASAN around Wanaka Airport, while at the same time providing for the predicted and ongoing growth of the Airport.

5.28 Like PC35, PC26 updated Wanaka Airport's noise boundaries to provide for predicted growth in airport operations to 2036, and amended various zone provisions relating to land within the updated boundaries and likely to be affected by increased aircraft noise. PC26 was made operative on 14 March 2013.

5.29 Within the Rural General zone, new ASAN are prohibited with the OCB. For alternations or additions to existing buildings containing ASAN or building platforms approved before 20 October 2010, mechanical ventilation is required.

5.30 Where the provisions established under PC26 require mechanical ventilation, compliance with the relevant standards can be achieved by either implementing the construction specifications set out in Table 2 of Appendix 13 or by submitting a certificate to the Council from a person suitably qualified in acoustics stating that the proposed construction can achieve the specified indoor design sound level with the windows open.

Proposed restructure of Table 5 and 6

5.31 As demonstrated by the above overview of PC35, PC26 and the Aerodrome Purposes Designation for Queenstown Airport (as amended by the NoR associated with PC35), there are a number of interlinkages between Tables 4 and 5 of the PDP (as notified), the respective zone provisions and QAC's obligations under its Designation.

5.32 While I address the substantive amendments to the content of these tables below, I note that based on the technical advice of Dr Chiles, the Council Officer has recommended merging the mechanical ventilation requirements of Table 5 (which relate specifically to Queenstown and Wanaka Airports) with the mechanical ventilation requirements of Table 6 (which relate to the Queenstown and Wanaka Town Centre Zones, the Local Shopping Centre Zones and the Business Mixed Use Zone).

5.33 While I acknowledge that there is a degree of duplication between the two tables (as notified), in my view is inappropriate to combine these tables for the following reasons:

5.33.1 The origin of the effects the tables are trying to manage and/or mitigate are different and will likely change over time (i.e. noise associated with aircraft operations which is managed via a designation versus noise associated with an entertainment precinct).

5.33.2 There are numerous interlinkages between Table 5 and the various zone provisions relating to the management of aircraft noise and QAC's Aerodrome Purposes Designation.

5.33.3 The section 32AA evaluation has not taken into consideration the wider effects of this change on QAC's obligations (under the Aerodrome Purposes Designation) to provide noise mitigation treatment to existing residences within the 60dB noise contour.

5.33.4 No submissions were made to change or alter Table 6.

5.34 In light of the above, **I attach**, as **Appendix D**, a copy of the changes that I consider are appropriate to address these issues, as well as those discussed in the following sections with respect to mechanical ventilation and sound insulation.

Mechanical Ventilation

5.35 As notified, Table 5 of the PDP set out the mechanical ventilation requirements for Queenstown and Wanaka Airports. This table was consistent with Table 2 of Appendix 13, as amended by PC35.

5.36 As noted in QAC's submission, it has become apparent during the implementation of QAC's noise mitigation obligations under its Designation that there are some practical difficulties with implementing, and financial implications with using, a mechanical ventilation system in accordance with Table 5. I defer to the evidence of Mr Roberts for further detail on this matter.[58]

5.37 In accordance with expert advice received by Mr Roberts in 2015, QAC submitted that Table 5 of the PDP should be amended to reduce the high setting air changes and include the ability to use a more modern and efficient mix of plant.[59]

5.38 The Council Officer recommends accepting, in part, the submission of QAC with respect to this matter. The Council Officer has recommended however, based on the expert evidence of Dr Chiles, an alternative mechanical ventilation approach.[60]

5.39 While there appears to be some agreement between the experts around the need for changes to the mechanical ventilation requirements as notified, Mr Roberts and Mr Day have identified some difficulties with the approach proposed by Dr Chiles.[61] In summary, I understand the key issues to include:

---

58 Refer to paragraphs 8 to 14 of the Statement of Evidence of Mr Roberts, dated 2 September 2016.

59 Submission 433.118.

60 Refer to paragraph 8.63 of the section 42A report for Chapter 36, dated 17th August 2016.

61 Refer to paragraphs 25 to 38 of the Statement of Evidence of Mr Roberts and paragraphs 37 to 43 of the Statement of Evidence of Mr Day, dated 2 September 2016.

5.39.1 The low ventilation rates set out in the clause G4 of the New Zealand Building Code seek to control mould and moisture within buildings, whereas the intent of the mechanical ventilation rates in the PDP is to provide sufficient ventilation and thermal comfort to residents within the ANB and OCB who need to keep windows close in order to mitigate the effects of aircraft noise.[62]

5.39.2 G4 of the Building Code provides for opening windows as an alternative option to mechanical ventilation, as a means of compliance. This is not appropriate in the context of airport where windows are required to remain closed to achieve the required indoor design sound level. [63]

5.39.3 G4 of the Building Code also specifies a minimum low ventilation rate, but not a maximum low ventilation rate. It is necessary to specify a maximum low rate to avoid drafts in winter.[64]

5.39.4 In terms of the high setting, five air changes per hour (as originally proposed by QAC) can be achieved by one fan unit. Six air changes requires multiple units and provides little material benefit. [65]

5.39.5 Passive relief venting is required to ensure the building is not pressurised. [66]

5.39.6 Existing heating, ventilation and cooling systems can contribute towards compliance with achieving the mechanical ventilation requires.[67]

5.40 I understand that approximately eight years has passed since the initial conception of the mechanical ventilation requirements set out in PC35.

---

[62] Refer to paragraph 28 Statement of Evidence of Mr Roberts, dated 2 September 2016.

[63] Refer to paragraph 29 of the Statement of Evidence of Mr Roberts and paragraph 40 of the Statement of Evidence of Mr Day, both dated 2 September 2016.

[64] Refer to paragraph 30 Statement of Evidence of Mr Roberts, dated 2 September 2016.

[65] Refer to paragraphs 31 to 34 Statement of Evidence of Mr Roberts, dated 2 September 2016.

[66] Refer to paragraph 36 to 37 Statement of Evidence of Mr Roberts, dated 2 September 2016.

[67] Refer to paragraph 38 Statement of Evidence of Mr Roberts, dated 2 September 2016.

Given the difficulties experienced by QAC with implementing and operating the notified mechanical ventilation requirements of the PDP, I consider that it is appropriate to update the mechanical ventilations requirements to reflect current advances in technology. I therefore **attach,** as **Appendix D,** further amendments to the revised rule 36.6.3 proposed by Dr Chiles. The further amendments shown have been prepared in consultation with, and incorporate the recommendations of Mr Roberts and Mr Day.

Sound Insulation

5.41 Table 4 of the PDP (as notified) describes the sound insulation requirements for Queenstown and Wanaka Airports. QAC submitted in support of this table, citing that it was largely consistent with Appendix 13 of the operative District Plan, as amended by PC35 and PC26.[68] QLDC also lodged a corporate submission with respect to Table 4, which sought amendments to Table 4 to more appropriately reflect modern building solutions. [69]

5.42 Based on the expert evidence of Dr Chiles, the Council Officer has recommended some amendments to Table 4 to update the glazing requirements of windows and doors. The Council Officer has also recommended updating the required width of ceiling gypsum or plasterboard.

5.43 On review of the evidence of Dr Chiles and Mr Day with respect to the glazing, it appears that both experts agree on this matter. I therefore consider that the recommendations of the Council Officer are acceptable and should be adopted by the Panel to address QAC and QLDC's submissions.

[68] Submission 433.17.
[69] Submission 383.72.

5.44 With respect to the proposed width of the of gypsum or plasterboard, I consider this to be typographical rather than substantive amendment and support the proposed change from 1mm to 9mm.

5.45 I also note that Rule 36.6.2 makes reference to Queenstown and Wanaka Airports. As far as I am aware, there is no ANB at Wanaka Airport, therefore I cannot identify any circumstance in which this table would be triggered in the context of Wanaka Airport. In my view, it would therefore be appropriate to remove the reference to Wanaka Airport if the Panel considers it has scope to do so.

Definitions

5.46 QAC lodged submissions in support of the following notified definitions:

5.46.1 Design sound level

5.46.2 Indoor design sound level

5.46.3 Non critical listening environment

5.46.4 Noise

5.46.5 Critical listening environment (subject to a minor amendment);

5.47 While the Council Officer considers that these submissions points could be accepted in the context of the noise chapter, it is recommended that the definitions be deferred until the Airport Mixed Use Zone hearing.[70]

5.48 Some of these terms will have a bearing on the interpretation of rules and/or standards contained in Chapter 36 as well as provisions due to be heard as part of the residential hearing stream in early October. I therefore consider that it is appropriate to consider these definitions as part of these proceedings.

---

[70] Refer to paragraph 8.7 of the section 42A report for Chapter 36 dated 19th August 2016.

5.49 The definitions, as set out on the section 42A report, are in my view, appropriate, as they are largely consistent with the Environment Court decisions with respect to PC26 and PC35. I note however, that the definition of "Critical Listening Environment" makes reference to "non-critical <u>living</u> environments". This term is not defined in the PDP (nor PC26 or PC35), therefore I consider that this term should be amended to refer to "Non-Critical <u>Listening</u> Environments". I consider it likely that this is simply a typographical error.

Conclusions

5.50 QAC made a number of submissions with respect to Chapter 36. While the recommendations of the Council Officer appear to address, for the most part, QAC's submissions, I consider that there are wider issues with the interpretation and application of this chapter that will give rise to potential consenting and administrative inefficiencies.

5.51 With respect to the proposed amendments to the mechanical ventilation and sound insulation requirements, there appears to be agreement between the experts that further amendments are required to these provisions to reflect modern building practices and advances in technology. I therefore consider it is appropriate for these provisions to be updated, however for reasons set out in my evidence at paragraph 5.39, I consider that the requirements proposed by Mr Roberts are more appropriate.

K O'Sullivan

2 September 2016

Appendix A

Amendments and S32AA Evaluation

CHAPTER 30 – ENERGY AND UTILITIES - AMENDMENTS AND SECTION 32AA ASSESSMENT

<table>
<tr><th rowspan="1">Proposed provisions set out in the section 42A report dated 17 August 2016</th><th>Amended Provisions (deleted text ~~struck through~~ added text underlined) recommended by Kirsty O'Sullivan on 2 September 2016</th><th colspan="3">General Comments and the appropriateness of achieving the purpose of the Act / purpose of the Objective</th></tr>
<tr><td rowspan="3">30.3.3.3 Clarification
The rules contained in this Chapter take precedence over any other rules that may apply to energy and utilities in the District Plan, unless specifically stated to the contrary and with the exception of:
a. 26 Historic Heritage
b. Hazardous Substances (16 ODP Operative)
c. Earthworks (22 Operative)</td><td rowspan="3">30.3.3.3 Clarification
The rules contained in this Chapter take precedence over any other rules that may apply to energy and utilities in the District Plan, unless specifically stated to the contrary and with the exception of:
a. 26 Historic Heritage
b. Hazardous Substances (16 ODP Operative)
c. Earthworks (22 Operative)
d. 17 Queenstown Airport Mixed Use Zone</td><td colspan="3">• Queenstown and Wanaka Airports comprise "regionally significant infrastructure" in the PDP.
• Chapter 17 of the PDP specifically provides for Queenstown (and potentially) Wanaka Airports.
• The objectives contained within Chapter 17 of the PDP and the higher order strategic objectives have regard to the efficient use and development of Queenstown and Wanaka Airports, as existing physical resources (section 7(b)).
• The amendment is appropriate as it gives effect to the objectives and policies contained with Chapter 17 and the higher order objectives and policies.
• The amendment is appropriate as ensures that Queenstown Airport is not inadvertently captured by Chapter 30.</td></tr>
<tr><th>Environmental, Cultural, Economic, Social and Cultural Benefits</th><th>Environmental, Economic, Social and Cultural Costs</th><th>Effectiveness & Efficiency</th></tr>
<tr><td>• Economic benefits will accrue from removing the costs and time delays resulting from consenting requirements under Chapter 30.
• The proposed amendment will allow the social and economic wellbeing of the community to continue to be provided for, as enabled by Chapter 17 of the PDP.</td><td>• No costs have been identified that have not already been addressed in the context of Chapter 17.
• Provisions managing environment costs, as set out in Chapter 17, will continue to apply.</td><td>• Sub-clause (d) would remove administration and consenting inefficiencies resulting from a duplication in controls between Chapters 17 and 30.
• The proposed amendment is effective at providing for airports only and does not impact on the wider application of Chapter 30 for other utilities.</td></tr>
<tr><td>Objective 30.2.5
~~Co-ordinate the provision of utilities as necessary to support t~~The growth and development of the District is supported by utilities that are able to operate effectively and efficiently.</td><td>I agree with the proposed amendments.</td><td colspan="3">No section 32AA required. I agree with the amendments set out in the section 42A report dated 17 August 2016.</td></tr>
<tr><td>Policy 30.2.5.4
Recognise the positive social, economic, cultural and environmental benefits that utilities provide, including:
a. enabling enhancement of the quality of life and standard of living for people and communities
b. providing for public health and safety
c. enabling the functioning of businesses
d. enabling economic growth
e. enabling growth and development
f. protecting and enhancing the environment
g. enabling the transportation of freight,</td><td>I agree with the proposed amendments.</td><td colspan="3">No section 32AA required. I agree with the amendments set out in the section 42A report dated 17 August 2016.</td></tr>
</table>

goods, people h. enabling interaction and communication		
Objective 30.2.6 The wellbeing of the community is supported by the establishment, ~~efficient use~~, continued operation and maintenance of utilities ~~necessary for the well-being of the community~~.	I agree with the proposed amendments.	No section 32AA required. I agree with the amendments set out in the section 42A report dated 17 August 2016.
Policy 30.2.6.1 Recognise the need for maintenance or upgrading of ~~a~~ utilities ~~y~~ including regionally significant infrastructure to ensure its on-going viability and efficiency.	I agree with the proposed amendments.	No section 32AA required. I agree with the amendments set out in the section 42A report dated 17 August 2016.
Policy 30.2.6.2 ~~Consider long term options and economic costs and strategic needs when considering alternative locations, sites or methods for the establishment or alteration of a utility.~~ When considering the effects of proposed utility developments with adverse environmental effects, consideration shall be given to the consideration of alternatives, but also to how adverse effects have been managed through the route, site and method selection process while taking into account the locational, technical and operational requirements of the utility and the benefits associated with the utility.	I agree with the proposed amendments.	No section 32AA required. I agree with the amendments set out in the section 42A report dated 17 August 2016.
Policy 30.2.6.5 Recognise the presence and function of established network utilities, and their locational and operational requirements, by managing land use, development and/or subdivision in locations which could compromise their safe and efficient operation.	I agree with the drafting proposed.	No section 32AA required. I agree with the notified drafting of this rule.
Objective 30.2.7 ~~Avoid, remedy or mitigate t~~ The adverse effects of utilities on surrounding environments, particularly those in or on land of high landscape value, and within special character areas are avoided, remedied or mitigated.	**Objective 30.2.7** ~~Avoid, remedy or mitigate t~~ The adverse effects of utilities on surrounding environments, particularly those in or on identified ~~land of high~~ outstanding natural landscape value, and within special character areas are avoided where practicable, and otherwise remedied or	**General Comments and the appropriateness of achieving the purpose of the Act / purpose of the Objective** • The amendments remove the use of vague and subjective terms such as "high landscape values" and "special character areas". • The amendments recognise that in some circumstances, it will not be practicable or possible to avoid adverse effects. • The objective recognises and provides for outstanding natural landscapes, as a matter of national importance under section 6(b) of the RMA. • It is inappropriate for policies to afford 'skylines' and ridgelines with the same level of protection as outstanding natural landscapes. • The policy is the most appropriate way to achieve the objective as it provides direction around how to manage the effects of utilities on outstanding natural landscapes.

<table>
<tr>
<td rowspan="2">Policy 30.2.7.1
Reduce adverse effects associated with utilities by:
• Avoiding, remedying or mitigating their location on ~~sensitive sites including heritage and~~ identified sensitive environments ~~special character areas,~~ and protecting Outstanding Natural Landscapes and Outstanding Natural Features, and skylines and ridgelines from inappropriate development.
• Managing adverse effects on the amenity values of urban areas and the Rural Landscapes.
• Encouraging co-location or multiple use of network utilities where this is efficient and practicable in order to avoid, remedy or mitigate adverse effects on the environment
• Ensuring that redundant utilities are removed
• Using landscaping and or colours and finishes to reduce visual effects
• Integrating utilities with the surrounding environment; whether that is a rural environment or existing built form.</td>
<td rowspan="2">mitigated.
Policy 30.2.7.1
~~Reduce~~ Manage adverse effects associated with utilities by:
• ~~Avoiding, remedying or mitigating their location on sensitive sites including heritage and identified sensitive environments special character areas, and p~~ Protecting Outstanding Natural Landscapes and Outstanding Natural Features, ~~and skylines and ridgelines~~ from inappropriate development.
• Managing adverse effects on the amenity values of urban areas and the Rural Landscapes.
• Encouraging co-location or multiple use of network utilities where this is efficient and practicable in order to avoid, remedy or mitigate adverse effects on the environment
• Ensuring that redundant utilities are removed
• Using landscaping and or colours and finishes to reduce visual effects
• ~~Integrating utilities with the surrounding environment; whether that is a rural environment or existing built form.~~</td>
<td>Environmental, Cultural, Economic, Social and Cultural Benefits</td>
<td>Environmental, Economic, Social and Cultural Costs</td>
<td>Effectiveness & Efficiency</td>
</tr>
<tr>
<td>• The amendments continue to protect Outstanding Natural Landscapes and Outstanding Natural Features from inappropriate development of utilities.
• It is not clear what is meant by 'integrating' utilities with the surrounding environment and to what extent. Removing the last bullet point and relying on requirement to manage adverse effects on amenity values or urban areas and Rural Landscapes appears sufficient and removes the costs associated with duplicating controls.</td>
<td>• The policy may result in some development of utilities within outstanding natural landscapes and features, as well as rural landscapes.</td>
<td>• The amendments are efficient as they remove references to terms that are vague and/or not defined which could lead to inconsistent interpretation and application of the policy.
• The amendments are effective at recognising the tiered approach to landscape protection, as set out in sections 6(b) and 7 (c) of the RMA.
• The amendments are efficient as they remove duplication of controls contained within the policy.</td>
</tr>
<tr>
<td rowspan="3"></td>
<td rowspan="3">New Policy
Recognise that in some cases it might not be possible for utilities to avoid outstanding natural landscapes, outstanding natural features and in those situations greater flexibility as to the way the adverse effects are managed may be appropriate.</td>
<td colspan="3">General Comments and the appropriateness of achieving the purpose of the Act / purpose of the Objective
• While it is appropriate for infrastructure occupying sensitive locations to be located and designed, as far as reasonably practicable, to minimise the potential for adverse effects on the particular landscape character and/or the visual amenity values inherent at the site, there may be circumstances where the regionally and/or nationally significant benefits of enabling an activity need to be balanced against the adverse effects of a particular location.
• The new policy is appropriate at achieving the objective as it provides guidance to decision makers that some flexibility should be afforded to the way in which adverse effects are managed.</td>
</tr>
<tr>
<td>Environmental, Cultural, Economic, Social and Cultural Benefits</td>
<td>Environmental, Economic, Social and Cultural Costs</td>
<td>Effectiveness & Efficiency</td>
</tr>
<tr>
<td>• The policy achieves a balance between providing for utilities, while mitigating their effects as far as reasonable practicable on the qualities and values held for the particular landscape within which they are located.</td>
<td>• The provisions may result in some development within ONLs and ONFs, however the effects of these will be managed as appropriate.</td>
<td>• The proposed policy is effective at achieving the objective, as well as other objective within the PDP that seek to provide for the effective and efficient operation of utilities.</td>
</tr>
</table>

<table>
<tr><td>Policy 30.2.7.4
Take account of economic and operational needs in assessing the location and external appearance of utilities.</td><td>I agree with the drafting proposed.</td><td colspan="3">No section 32AA required. I agree with the notified drafting of this rule.</td></tr>
<tr><td rowspan="4">30.4.8 Rule Utilities, Building, Structures and Earthworks which are not otherwise listed in this table
Utilities, Building, Structures and Earthworks which are not otherwise listed in this table – D (Discretionary Activities)

30.5.6 Setback from internal boundaries and road boundaries
Where the utility is a building, it shall be set back in accordance with the internal and road boundary setbacks for accessory buildings in the zone in which it is located.</td><td rowspan="4">30.4.8 Rule Utilities, Building, Structures and Earthworks which are not otherwise listed in this table
Utilities, Building, Structures, Underground Lines and Earthworks which are not otherwise listed in this table – ~~D~~ P (Permitted Activities)

30.5.6 Setback from internal boundaries and road boundaries
Where the utility is a building, it shall be set back in accordance with the internal and road boundary setbacks for accessory buildings in the zone in which it is located. – ~~D~~ RD

New Rule
Permitted Activities
The following activities shall be Permitted Activities throughout the District……
Rule 30.4.10 Buildings, equipment cabinets and structures ancillary to or associated with Utilities provided:
a) If the building or equipment cabinet is located in an identified Outstanding Natural Landscape or Feature, the building or cabinet is less 3.6m2 in total footprint and 3m in height; and,
b) Meets the underlying zone standards, if the building or cabinet is not located in an identified Outstanding Natural Landscape or Feature, and the building or cabinets is more than $3.6m^2$ in total footprint or more than 3m in height.</td><td colspan="3">General Comments and the appropriateness of achieving the purpose of the Act / purpose of the Objective</td></tr>
<tr><td colspan="3">• It is appropriate for the rules in Chapter 17 and Chapter 30 to be consistent, insofar as they relate to airports. The proposed amendment will achieve this consistency.
• Permitting airport activities will give effect to the objectives and policies of Chapter 17.</td></tr>
<tr><td>Environmental, Cultural, Economic, Social and Cultural Benefits</td><td>Environmental, Economic, Social and Cultural Costs</td><td>Effectiveness & Efficiency</td></tr>
<tr><td>• The proposed new rule will remove unnecessary consenting costs for utilities that are consistent with the built form and location of the underlying zone.
• The amenity of the underlying zones will be maintained.</td><td>• The amendments may have further reaching effects as the rule is broader than just airports.</td><td>• The new rule is efficient as it creates consistency in the built form and location of utilities with the underlying zones.</td></tr>
<tr><td>30.5.7 Rule Buildings in Outstanding Natural Landscapes (ONL) and Outstanding Natural Features (ONF)
Any building within an ONL or ONF shall be less than 10m2 in area and less than 3m in height. – D (Discretionary Activity)</td><td>I agree with the drafting proposed.</td><td colspan="3">No section 32AA required. I agree with the notified drafting of this rule.</td></tr>
</table>

CHAPTER 35 – TEMPORARY ACTIVITIES - AMENDMENTS AND SECTION 32AA ASSESSMENT

<table>
<tr><th>Proposed objectives and policies of the section 42A report</th><th>Amended Provisions (deleted text ~~struck through~~ added text underlined) recommended by Kirsty O'Sullivan on 2 September 2016</th><th colspan="3">General Comments and the appropriateness of achieving the purpose of the Act / purpose of the Objective</th></tr>
<tr><td rowspan="3"></td><td rowspan="3">Clarification 35.3.2
In addition to these rules, any person wishing to undertake an activity that will penetrate the designated Airport Approach and Land Use Controls obstacle limitation surfaces at Queenstown or Wanaka Airport must first obtain the written approval of the relevant requiring authority, in accordance with section 176 of the Resource Management Act 1991.</td><td colspan="3">• The clarification note is appropriate as it draws attention to the Airport Approach and Land Use Controls designation which is not otherwise mapped on the zone maps and the associated requirements under section 176 of the RMA.
• The note is appropriate, as it maintains the safety and operational imperatives of the airports and also provides for the health and safety of the community, as set out in section 5 of the RMA.</td></tr>
<tr><td>Environmental, Cultural, Economic, Social and Cultural Benefits</td><td>Environmental, Economic, Social and Cultural Costs</td><td>Effectiveness & Efficiency</td></tr>
<tr><td>• Safety benefits will accrue for aircraft and their passengers using Queenstown and Wanaka Airports as plan users will be more aware of the requirements of the Airport Approach and Land Use Controls designation.</td><td>• No costs have been identified. The proposed note is simply restating an existing requirement under RMA.</td><td>• The clarification note is effective and efficient as it draws attention to the designations and the existing requirements under section 176(b) of the Act, without creating any additional consenting requirements.</td></tr>
<tr><td>Objective 35.2.1
Temporary Events and Filming are encouraged and are undertaken in a manner that ensures the activity is managed to minimise adverse effects.</td><td>I agree with the proposed amendments.</td><td colspan="3">No section 32AA required. I agree with the amendments set out in the section 42A report dated 17 August 2016.</td></tr>
<tr><td>Policy 35.2.1.1
Recognise and encourage the contribution that temporary events and filming make to the social, economic and cultural wellbeing of the District's people and communities.</td><td>I agree with the proposed amendments.</td><td colspan="3">No section 32AA required. I agree with the amendments set out in the section 42A report dated 17 August 2016.</td></tr>
</table>

CHAPTER 36 – NOISE - AMENDMENTS AND SECTION 32AA ASSESSMENT

Proposed objectives and policies of the section 42A report	Amended Provisions (deleted text ~~struck through~~ added text underlined) recommended by Kirsty O'Sullivan on 2 September 2016	General Comments and the appropriateness of achieving the purpose of the Act / purpose of the Objective
Purpose Overflying aircraft have the potential to adversely affect amenity values. The Council controls noise emissions from airports, including take-offs and landings,	I agree with the proposed amendments.	No section 32AA required. I agree with the amendments set out in the section 42A report dated 17 August 2016.

via provisions in this District Plan, and Designation conditions. However, this is different from controlling noise from aircraft that are in flight. The RMA which empowers territorial authorities to regulate activities on land and water affecting amenity values, does not enable the authorities to control noise from overflying aircraft. Noise from overflying aircraft ~~can be controlled through~~ <u>is controlled under</u> section 29A of the Civil Aviation Act 1990.		
36.3.2.8 The noise limits contained in Table 2 do not apply to sound from aircraft operations at Queenstown Airport<u> or Wanaka Airport</u>.	I agree with the proposed amendments.	No section 32AA required. I agree with the amendments set out in the section 42A report dated 17 August 2016.
~~Rule 36.4.6~~ ~~Sound from aircraft movements within designated airports.~~	I agree with the proposed amendments.	No section 32AA required. I agree with the amendments set out in the section 42A report dated 17 August 2016, however note that could be retained if the Panel consider there is sufficient scope for the table within which this rule is located instead refer to 'exemptions'.
Rule 36.5.2 Sound from the Queenstown Airport Mixed Use Zone received in the Residential Zones and the Rural Zone	I agree with the drafting proposed.	No section 32AA required. I agree with the notified drafting of this rule.
Table 2 Rule 36.5.5 **Activity or Sound Source** Queenstown Airport Mixed Use Zone At any point within the zone. **Assessment Location** At any point within the Zone. **Time** Any time **Noise Limits** No limit **Non-Compliance Status** P	I agree with the drafting proposed.	No section 32AA required. I agree with the notified drafting of this rule, however note my wider concerns with the amendment to the headings of Table 2.
35.5.13 Helicopters ..... * For the avoidance of doubt this rule does not apply to designated airports.	I agree with the drafting proposed.	No section 32AA required. I agree with the notified drafting of this rule.

<table>
<tr>
<td>36.5.14 Fixed Wing Aircraft
.....
* For the avoidance of doubt this rule does not apply to designated airports.</td>
<td>I agree with the drafting proposed.</td>
<td colspan="3">No section 32AA required. I agree with the notified drafting of this rule.</td>
</tr>
<tr>
<td>36.6.2
Sound Insulation Requirements for the Queenstown and Wanaka Airport - Acceptable Construction Materials (Table 4).
~~4mm glazing with effective compression seals or for double glazing 6mm-6mm airgap-6mm~~
Double-glazing with 4 mm thick panes separated by a cavity at least 12 mm wide.</td>
<td>I agree with the drafting proposed.</td>
<td colspan="3">No section 32AA required. I agree with the amendments set out in the section 42A report dated 17 August 2016.</td>
</tr>
<tr>
<td rowspan="4">36.6.3
Ventilation Requirements ~~for the Queenstown and Wanaka Airport (Table 5)~~

The following ~~table sets out~~ applies to the ventilation requirements within:
(a) the airport Outer Control Boundary (OCB) and Air Noise Boundary (ANB); and

(b) the Wanaka and Queenstown Town Centre Zones, Local Shopping Centre Zone and the Business Mixed Use Zone.

Critical Listening Environments must have a ventilation and cooling system designed, constructed and maintained to achieve the following:
i. Ventilation must be provided to meet clause G4 of the New Zealand Building Code. At the same time, the sound of the system must not exceed 30 dB LAeq(30s) when measured 1 m away from any grille or diffuser.
ii. The occupant must be able to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour. At the same time, the sound of the system must not exceed 35 dB LAeq(30s) when measured 1 m away from any grille or diffuser.
iii. The system must provide cooling that is controllable by the occupant and can maintain the temperature at no greater</td>
<td rowspan="4">36.6.3
Ventilation Requirements for Queenstown and Wanaka Airports ~~for the Queenstown and Wanaka Airport (Table 5)~~

The following ~~table sets out~~ applies to the ventilation requirements within the airport Outer Control Boundary (OCB) and Air Noise Boundary (ANB) at Queenstown Airport, and the OCB at Wanaka Airport:

Critical Listening Environments must have a ~~ventilation and cooling~~ system(s) designed, constructed and maintained to achieve the following:

(a) An outdoor air ventilation system. The ventilation rate must be able to be controlled by the occupant in increments as follows:
(i) a low air flow setting that provides air at a rate of of between 0.35 and 0.5 air changes per hour. The sound of the system on this setting must not exceed 30 dB LAeq(30s) when measured 1 - 2m away from any grille or diffuser;
(ii) a high air flow setting that provides at least 5 air changes per hour. The sound of the system on this setting must not exceed 35 dB LAeq(30s) when measured 2m away from any grille or diffuser.

(b) The system must provide, either by outdoor air alone, combined outdoor air and heating / cooling system or by direct room heating / cooling:</td>
<td colspan="3">General Comments and the appropriateness of achieving the purpose of the Act / purpose of the Objective</td>
</tr>
<tr>
<td colspan="3">• The mechanical ventilation requirements enable residents within the ANB (Queenstown only) and OCB to keep their windows closed to reduce the effects of aircraft noise, while still maintaining an appropriate level of fresh air exchange.
• Based on the evidence of Mr Scott, there appears to be some difficulties with the implementation and operation of the mechanical ventilation requirements of the PDP.
• The proposed amendments ensure that the mechanical ventilation requirements are cost effective, yet still maintain an appropriate level of amenity for residents.
• The amendments are appropriate at achieving various objectives and policies of the PDP, which seek to manage the effects of aircraft operations on activities sensitive to aircraft noise (ie. the obligations placed on QAC) and conversely, seek to manage reverse sensitivity effects on the airport (i.e. the obligations on new activities establishing within the ANB and OCB).</td>
</tr>
<tr>
<td>Environmental, Cultural, Economic, Social and Cultural Benefits</td>
<td>Environmental, Economic, Social and Cultural Costs</td>
<td>Effectiveness & Efficiency</td>
</tr>
<tr>
<td>• The amendments will enable a greater range of mechanical ventilation options to be implemented, within the parameters specified by the standards.

• The amendments will enable more cost effective systems to be implemented, maintained and operated.

• The systems enabled by these provisions will reduce the number of mechanical ventilation units required, reducing the potential amenity impacts resulting from multiple large units being located within a residential context.

• The amendments will ensure a suitable level of amenity is maintained within critical listening environments, including noise generated by the systems and the heating and cooling functions provided.</td>
<td>• QAC is obliged, via its Aerodrome Purposes Designation to provide mechanical ventilation to some existing dwellings containing activities sensitive to aircraft noise within the 60dB noise contour. Some costs may accrue for QAC, as the provisions now contain cooling requirements which were not previously required as part of their Designation requirements.</td>
<td>• The amendments are effective at addressing the implementation issues associated with the mechanical ventilation systems implemented in accordance with Table 5 of the PDP, as identified by Mr Roberts and QAC.

• The amendments are efficient as they continue to provide developers with discretion around whether to build to the specified revised mechanical ventilation requirements, or obtain an acoustic certificate which demonstrates compliance with the required indoor design sound levels (as specified in the zone rules).</td>
</tr>
</table>

than 25°C and no less than 18°C. At the same time, the sound of the system must not exceed 35 dB LAeq(30s) when measured 1 m away from any grille or diffuser.	(i) cooling that is controllable by the occupant and can maintain the temperature within the Critical Listening Environment at no greater than 25^{0}C; and (ii) heating that is controllable by the occupant and can maintain the temperature within the Critical Listening Environment at no less than 18^{0}C; and (iii) the sound of the system when in heating or cooling mode must not exceed 35 dB LAeq(30s) when measured 2m away from any grille or diffuser. (c) A relief air path must be provided to ensure the pressure difference between the Critical Listening Environments and outside is never greater than 30Pa. (d) If cooling is provided by a heat pump then the requirements of (a)(ii) and (c) do not apply. Note: Where there is an existing ventilation, heating and/or cooling system, and/or relief air path within a Critical Listening Environment that meets the criteria stated in the rule, the existing system may be utilised to demonstrate compliance with the rule. ~~i. Ventilation must be provided to meet clause G4 of the New Zealand Building Code. At the same time, the sound of the system must not exceed 30 dB LAeq(30s) when measured 1 m away from any grille or diffuser.~~ ~~ii. The occupant must be able to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour. At the same time, the sound of the system must not exceed 35 dB LAeq(30s) when measured 1 m away from any grille or diffuser.~~ ~~iii. The system must provide cooling that is controllable by the occupant and can maintain the temperature at no greater than 25°C and no less than 18°C. At the same time, the sound of the system must not exceed 35 dB LAeq(30s) when measured 1 m away from any grille or diffuser.~~			

Before the Queenstown Lakes District Council

In the Matter of	**the Resource Management Act 1991**
And	
In the Matter of	**the Queenstown Lakes District Proposed Plan (Chapter 36)**

Statement of Evidence of Sheridan Scott Roberts for Queenstown Airport Corporation Limited (Submitter 433 and Further Submitter 1340)

Dated: 2 September 2016

QUE912172 5159736.1 Lane Neave
Level 1, 2 Memorial Street
PO Box 701
Queenstown
Solicitor Acting: Rebecca Wolt
Email: rebecca.wolt@laneneave.co.nz
Phone: 03 409 0320

lane neave.

Table of Contents

INTRODUCTION **3**
Qualifications and Experience 3
Code of Conduct 3
SCOPE OF EVIDENCE **3**
EXECUTIVE SUMMARY **5**
BACKGROUND OF INVOLVEMENT AND QAC'S SUBMISSION ON PDP **5**
RECOMMENDED AMENDMENTS TO NOTIFIED RULE 36.6.3 AS PER QAC'S SUBMISSION **7**
RESPONSE TO SECTION 42A REPORT, EVIDENCE AND SUBMISSIONS **10**
POINTS OF DIFFERENCE/FURTHER RECOMMENDED AMENDMENTS TO RULE 36.6.3 .... **11**
CONCLUSION **14**

INTRODUCTION

Qualifications and Experience

1. My name is Sheridan Scott Roberts.

2. I am a professional Building Services Engineer, and I am employed by, and a director of, Jackson Engineering Advisers Ltd. I hold a Business and Technology Education Council Higher National Diploma in Heating Ventilation and Air Conditioning gained in the United Kingdom. I am a full member of IPENZ, a Chartered Professional Engineer (CPEng), registration number 155746, and I am a full member of the Chartered Institution of Building Services Engineers. I have over 30 years' experience in the building services industry, 27 of which have been in New Zealand. I have been practicing as a professional engineer since 2006.

3. I have formerly been a full member of the Institute of Refrigeration, Heating and Air Conditioning Engineers New Zealand (IRHACE), and have served a governance role for 12 months on the IRHACE Council, being Councillor for Membership. Prior to this I also held office as Chair for the Hawke's Bay branch for several years.

Code of Conduct

4. I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses and have prepared my evidence in accordance with it. Specifically, I confirm that the issues addressed are within my area of expertise. I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

SCOPE OF EVIDENCE

5. My evidence will address the following:

   (a) Detail the background of my involvement with and QAC's submission on Rule 36.6.3, Table 5 of the Proposed District Plan;

   (b) Describe the amendments sought to Proposed Rule 36.6.3, Table 5, as per QAC's Submission;

   (c) Address the Section 42A Report, Dr Chiles' evidence and other submissions;

(d) Set out my recommendations and conclusions.

References

6. In preparing my evidence, I have reviewed the following:

   (a) Appendix 13 of the QLDC Operative District Plan (as amended by Plan Change 35);

   (b) QLDC Proposed District Plan, in particular Proposed Chapter 36 (Noise), specifically Rule 36.6.3 Table 5, (Ventilation Requirements for Queenstown and Wanaka Airports);

   (c) Section 42A Hearing Report dated 17 August 2016, in particular paragraphs 8.62 – 8.64 of this report;

   (d) Statement of Evidence of Dr Stephen Gordon Chiles, Acoustic Engineer, dated 17 August 2016, in particular paragraphs 14.8 – 14.12;

   (e) The submission of QAC dated 23 October 2015;

   (f) The submission of David Jerram (Submitter 80);

   (g) New Zealand Building Code, in particular clause G4 'Ventilation, Acceptable Solutions and Verification Methods', Third Edition;

   (h) New Zealand Standard NZS4303:1990 'Ventilation for Acceptable Indoor Air Quality';

   (i) Australian Standard AS1668.2:2002 and 2012 'The use of ventilation and air conditioning in buildings - ventilation design for indoor air contaminant control';

   (j) IRHACE / AIRAH Joint Handbook (Second Edition), in particular Section 9, Recommended Design Sound Levels for Areas of Occupancy in Buildings, reproduced from AS2107:1987;

   (k) The evidence of Christopher Day, dated 2 September 2016 (in draft form).

EXECUTIVE SUMMARY

7. The key findings from my evidence are that:

   (a) QAC, QLDC and Submitter 80 agree that notified Rule 36.6.3 is unsatisfactory and requires amendment;

   (b) There is general agreement as to how Rule 36.6.3 should be redrafted, subject to matters of detail;

   (c) I generally support the recommendations of Dr Chiles, including his re-formatting of the Rule, as set out in his evidence and Appendix 1 of the Section 42A Report, but consider some additional refinements are required, to ensure the rule is clear, unambiguous, and practical to implement;

   (d) The further refinements I consider are required relate to:

      (i) the minimum and maximum air change requirements;

      (ii) ensuring the ventilation system heats as well as cools;

      (iii) ensuring the ventilation system includes an air relief path; and

      (iv) ensuring the rule clarifies that existing plant may be used to achieve compliance;

      (v) other minor matters of clarification.

BACKGROUND OF INVOLVEMENT AND QAC'S SUBMISSION ON PDP

8. I was engaged by Queenstown Airport Corporation Limited (**QAC**) during 2014 to review the ventilation requirements contained within Appendix 13, Table 2, of the Operative District Plan (**ODP**) (as amended by PC35). I understand Appendix 13 of the ODP is replicated in Rule 36.6.3, Table 5 of the PDP.

9. I understand the purpose and intent of Appendix 13 in the ODP, and similarly, of Rule 36.6.3, Table 5 of Chapter 36 in the PDP, is to describe the requirement to provide a heating and ventilation system to provide for a comfort amenity that is similar to that which could be experienced if the home owner was free to open their windows and doors.

10. From my review of Appendix 13 it became apparent that there are a number of practical difficulties with implementing, and financial implications with using, a mechanical system in accordance with the Appendix.

11. More particularly, from my review work, and, I understand, from QAC's implementation of mechanical ventilation in accordance with its obligations under the designation, it has become apparent that in a climate such as Queenstown, strict compliance with Appendix 13 may result in the need for large ventilation systems with multiple fans and heating systems.

12. Specifically:

    (a) The range in airflow rates of 1-15 air changes per hour cannot be achieved by a single fan. A fan capable of delivering 15 air changes per hour cannot readily achieve 1 or even 2 air changes per hour, so multiple fans would likely be required.

    (b) Since high and low settings for Bedrooms and other Critical Listening Environments are different by a factor of 3, in order to strictly comply with Table 5, separate systems are required for each.

    (c) Table 5 indicates a requirement of heating the air supplied by 18^0C above the prevailing outdoor air temperature. The specified heating may not warm the incoming air sufficiently in winter. If it is -5^0C outside, as it can be in the Queenstown Basin, the ventilation air could be supplied into the home at 13^0C, which is insufficient without other forms of room heating.

    (d) The high setting airflow requirement of 15 air changes per hour in living areas may result in large / noisy fans with similarly large ductwork and grilles. These may be costly and difficult to conceal.

    (e) Supply air only (with no balanced exhaust air) may pressurise the house, and may detrimentally affect the operation of other flued combustion appliances, such as wood burners etc.

    (f) Such ventilation systems require bespoke design for every home to which they are applied, ideally from persons more qualified than typical contractors, which may result in additional cost.

(g) The need for 15 air changes per hour is unnecessary in Queenstown's climate. The minimum ventilation requirements for homes as referenced under Clause G4 of the NZ Building Code is 0.35 air changes per hour, all year around. This requirement is aimed at minimising condensation and removing odours. My assumption is that the requirement in Appendix 13 (and Proposed Rule 36.6.3, Table 5) for 15 air changes per hour is intended to provide some thermal comfort by introducing a larger volume of potentially cooler air from outdoors into a room which may at times become overly warm due to the closure of windows and doors. However. even with this elevated air change rate, there may be a limited quantity of "cooling" available, for example during a hot Queenstown summer, when the outdoor air delivered to inside is warm, so it will provide little cooling, if any, no matter what the air change rate.

13. In summary, Appendix 13 of the ODP/Proposed Rule 36.6.3, Table 5 of the PDP appear to have been modelled upon earlier specifications developed for a more temperate climate such as Auckland, rather than specifically designed for the more extreme climate of Queenstown. The specifications stated in the Rule are now outdated, noting at the time the rule was written, it was more normal for homes to include heating and ventilation, but not cooling. With the advent of domestic heat pumps, it is becoming much more usual to see heating and cooling installed into homes.

14. Given my findings, as summarised above, in 2015 QAC requested my advice as to how the mechanical ventilation rule should be amended to address the issues identified. I understand my advice formed the basis of QAC's submission on Rule 36.6.3, Table 5 of the PDP.

RECOMMENDED AMENDMENTS TO NOTIFIED RULE 36.6.3 AS PER QAC'S SUBMISSION

15. Based on the findings of my review, my recommendations were that, to provide adequate ventilation and thermal comfort all year round, the mechanical ventilation system needs to encompass the following:

(a) The ability to provide low air volume of ventilation particularly during winter;

(b) The ability to increase the ventilation rate to provide some passive cooling when required, although this should be optional;[1]

(c) The ability to provide some heating such that cold incoming air does not cool down the spaces it serves, (a potential issue particularly in the winter);

(d) The ability to provide some cooling so that warm incoming air does not heat up the spaces it serves;

(e) Achieve all of the above safely, bearing in mind there may be combustion appliances contained within the home; and

(f) Achieve all of the above within specific noise level criteria.

16. In addition, I consider it is appropriate to clarify in any rule that heating, ventilation or cooling systems need not be duplicated, where they are already present and satisfy above stated requirements.

17. Accordingly, my recommendation was that Rule 36.6.3, Table 5 of the PDP be amended so to:

(a) Reduce the high setting air changes so that there is no difference between Bedrooms and other Critical Listening Environments, for the purposes of rationalising the type, physical size and quantity of separate ventilation systems required to comply, and that those ventilation systems can readily achieve the difference between high and low setting air flow rates;

(b) Provide the ability to use more modern and efficient plant, including heat pump air conditioning units; and

(c) Simplify the system design in order that it can be readily designed to comply by local contractors.

18. In accordance with my recommendations, QAC's submission on the PDP (specifically, Annexure D) presents two alternative solutions which are intended to meet the above criteria.

[1] This is because the cooling function will be provided by the heat pump, so elevated ventilation rates will not need to be relied on for such purposes. In fact, introducing a higher air change rate of warm outdoor air will increase the load on the air conditioning system, make it work harder and use more energy.

19. The presentation of two options is aimed at providing flexibility to designers/homeowners, and the ability to choose a number of modern technologies to meet the objectives.

20. The key differences between notified Rule 36.6.3, Table 5 and Annexure D of QAC's submission include:

 (a) A maximum air change rate of 5 air changes per hour. As explained earlier in my evidence (refer paragraph 12(a)), I consider this is appropriate because any requirement for a greater range of air delivery rate (between low and high setting) will be difficult to achieve efficiently by a single fan, with currently available technology. To further explain, if the required low ventilation rate is less than 1 air change per hour, and the required maximum ventilation rate is greater than 5 air changes per hour, it is likely that a second fan per ventilation system, or a complex air flow control system will be required, with attendant maintenance and operating costs.

 (b) A low setting air change rate of 0.5 air changes per hour, which is appropriate in that it minimises the amount of additional heating and associated costs to the homeowner.

 (c) Clarification that if the home is provided with an air conditioning heat pump, there is no need to provide a high setting air flow into the space(s) served. This is because the cooling function will be provided by the heat pump, so elevated ventilation rates will not need to be relied on for such purposes. In fact, introducing a higher air change rate of warm outdoor air will increase the load on the air conditioning system, make it work harder and use more energy.

 (d) The introduction of a second option for providing ventilation (Option 2 in Annexure D of QAC's submission). Option 2 can be satisfied by the provision of a ducted type heat pump which will deliver the low setting air change rate, whilst simultaneously allowing it to be heated or cooled, or neither. This system provides minimum outdoor air to satisfy the low setting requirements, yet will have increased air circulation rate which more closely approaches the high setting requirements. The ducted heat pump distributes air to

the critical areas via a series of grilles. The occupier has the option of three operating modes:

(i) Ventilation only – this provides outside air to a space (i.e. Critical Listening Environment), supplied at a low setting rate, with a higher circulation rate;

(ii) Heating mode – the occupier sets the heat pump into heating mode and this will increase the supply air temperature to provide heating of the supply air, and targets a minimum room temperature of 18^{0}C; and

(iii) Cooling mode – the occupier sets the heat pump into cooling mode and this will decrease the supply air temperature to provide cooling of the supply air, and targets a minimum room temperature of 25 ^{0}C.

RESPONSE TO SECTION 42A REPORT, EVIDENCE AND SUBMISSIONS

21. Dr Chiles, on behalf of QLDC, has recommended that Rule 36.6.3, Table 5 of the PDP be amended in response to submissions, albeit it in a manner different to that sought by QAC in Annexure D of its submission.

22. In making his recommendations, Dr Chiles relies on the recommendations contained in Beca's 2014 report[2] prepared for NZTA. I note, this report was not specifically written for the Queenstown environment and climate.

23. Accordingly, while I agree that the recommendations contained within the Beca report (as applied in Appendix 1, Rule 36.6.3 of the Section 42A Report) are of general relevance presently, I consider some further amendments are required to the Rule to ensure the characteristics of the local environment are appropriately recognised and addressed.

24. I address these, and some other amendments I consider are necessary, below.

---

[2] Ventilation Systems Installed for Road-traffic Noise Mitigation – Prepared for NZ Transport Agency by Beca Ltd, 26 June 2014.

POINTS OF DIFFERENCE/FURTHER RECOMMENDED AMENDMENTS TO RULE 36.6.3

25. Rule 36.6.3 in Appendix 1 of the Section 42A Report includes three clauses, ((i), (ii) and (iii)), which I understand are derived from the recommendations set out in Dr Chiles' evidence.

26. I accept that the revised rule appears, on the face of it, generally more straightforward to apply, whilst at the same time providing some flexibility in terms of compliance than both the notified rule, and QAC's modified version in Annexure D of its submission. I am therefore generally supportive of the Section 42A revisions, excepting the following:

    (a) The reference to clause G4 of the NZ Building Code, which I do not consider is appropriate;

    (b) The requirement for the ventilation system to achieve at least 6 air changes per hour, as opposed to the 5 air changes sought in Annexure D of QAC's submission;

    (c) The omission of a heating requirement;

    (d) The omission of a requirement to provide an air relief path; and

    (e) The omission of other points of clarification as set out in QAC's Annexure D.

27. I address each of these below.

Reference to NZBC

28. In my opinion, the ventilation rates stated in the Rule 36.6.3 should not be linked to the provisions of the New Zealand Building Code, since the intent of these two documents is different. The NZBC clause G4 is in place to control mould and moisture within buildings, whereas Rule 36.6.3 of the PDP is intended to provide ventilation and thermal comfort within buildings in circumstance where windows must remain closed to mitigate external noise. Whether new construction or alteration of an existing dwelling, NZBC G4 has to be met by law in any event.

29. I also note that clause G4 NZBC presents two options for achieving compliance: providing ventilation as stated in the clause, or opening windows.[3] Reference to clause G4 NZBC in Rule 36.6.3 therefore has the potential to cause confusion, in circumstances where ventilation is required for the very reason that windows can not be opened.

30. Accordingly, I consider it preferable to expressly state in the Rule the low air change rate that must be achieved, in a similar manner to that stated in clause (ii) of the revised Rule. I recommend that it this be specified within the range of 0.35 to 0.5 air changes per hour. The lower bound (0.35 air changes) allows an existing ventilation system designed to comply with clause G4 of NZBC to be utilised for the purposes of satisfying this rule. The upper bound (0.5 air changes) provides some flexibility for a slightly higher ventilation rate, without creating a draughty environment (which is important in cooler weather).

High Air Change Rate

31. I note that the air flow rate stated in Appendix 1 of the Section 42A Report is 6 air changes per hour, which is similar to the 5 air changes per hour in my recommendation (as per QAC's Annexure D). As noted in paragraph 20(a) above, 5 air changes per hour is recommended to avoid the need for additional equipment, and increased operating costs.

32. As also noted in paragraph 20(a), based on current technology, where ventilation is required to be provided across a wide range of air change rates, such as the 1 – 6 air changes per hour recommended by Dr Chiles/in the section 42A Report, it is likely that a second fan, or a complex air flow control system will be required, with attendant maintenance and operating costs. These costs are disproportionate to any benefit, in my view.

33. As noted in paragraph 20(c) above, if a heat pump cooling system is provided, there is no need to provide the high setting air change rate. This should be stated in the Rule. To further explain, I agree that cooling is required for the provision of thermal comfort during summer conditions. However, in the situation where air conditioning is provided, then the

[3] For compliance the window opening area must be greater than 5% of the floor area for each space.

elevated ventilation rate is not required and may actually reduce the cooling effect.

34. These two provisions (high air change rate and cooling) could be presented as either/or options for the designer/homeowner, but should not not go hand in hand.

Omission of Heating Requirement

35. Clause (iii) of the Section 42A revised Rule does not specifically state that in addition to cooling, a heating function is required for any ventilation system. I assume this is an error, as heating is required under the notified Rule, which I consider is appropriate to ensure appropriate thermal comfort amenity is achieved. Refer paragraphs 12(c) and 15(c) for my reasons.

Omission of Air Relief Path Requirement

36. The revised Rule (as set out in Appendix 1 of the Section 42A report) does not address the issue of the proper operation of combustion appliances contained within the home, as previously discussed in my evidence (refer paragraph 12(e) and 15(e)).

37. In order to ensure that combustion appliances can operate safely under the high air change requirement, additional passive relief venting is required to allow air to pass out of the home, rather than pressurise the home or be forced up chimneys or flues. This will also ensure the ventilation system operates with the intended air flow rates.

Recognition of Existing Systems

38. I consider there is no need to duplicate heating, ventilation or cooling systems where they are already present and satisfy the requirements of the Rule. This should be stated in the Rule.

Summary of Differences

39. Provided that all of the above are addressed, Rule 36.6.3 as set out in Appendix 1 of the Section 42A Report is not dissimilar to Option 2 in Annexure D of QAC's submission, and with the further amendments discussed above, would be a preferable alternative, in my opinion. Option 1 in Annexure D of QAC's submission could be deleted since the revised

Rule as discussed above and in paragraph 40 below would encapsulate both Option 1 and Option 2.

40. I understand that Kirsty O'Sullivan will present a revised Rule, which addresses the issues I have just outlined, by incorporating further amendments as necessary. I have reviewed these further amendments in draft form and consider them to be appropriate.

CONCLUSION

41. In the interests of keeping Rule 36.6.3 simple and unambiguous, I consider there is merit in deleting Option 1 from Rule 36.6.3, Table 5 as set out in Annexure D to QAC's submission, and instead adopting the approach recommended by Dr Chiles, as set out in Appendix 1 to the Section 42A Report, subject to incorporating the further amendments detailed in my evidence above.

42. I consider this will address the difficulties encountered with operative mechanical ventilation requirements (Appendix 13 of the ODP), and hence notified Rule 36.6.3, whilst at the same time providing residents with an appropriate level of comfort and amenity.

43. I consider the alternative options (being the notified Rule and the Section 42A revision of it) will likely be more costly to implement, with no real additional benefit, and will be less efficient and effective.

Sheridan Scott Roberts
2 September 2016

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 36 (Noise)

Summary Evidence of Scott Roberts (Submitter 433 and Further Submitter 1340)

Dated: 13 September 2016

QUE912172 5187693.1

lane neave.
Level 1, 2 Memorial Street
PO Box 701
Queenstown
Solicitor Acting: Rebecca Wolt
Phone: 03 409 0321
Fax: 03 409 0322
Email:
rebecca.wolt@laneneave.co.nz

INTRODUCTION

1. My name is Sheridan Scott Roberts. I am a Senior Building Services Engineer and Director of Jackson Engineering Advisers Ltd.

2. I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses and have prepared my evidence in accordance with it. Specifically, I confirm that the issues addressed are within my area of expertise. I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

SUMMARY OF EVIDENCE

3. The Queenstown Airport Corporation (QAC) has lodged submissions on Chapter 36. My evidence is in connection with Proposed Rule 36.6.3, Table 5.

4. The submissions seek amendment to Proposed Rule 36.6.3, Table 5) because it is unsatisfactory in its notified form.

5. As notified, Proposed Rule 36.6.3, Table 5 is the same as Appendix 13, Table 2, of the Operative District Plan (**ODP**).

6. From my review work of the requirements of Appendix 13, Table 2 of the ODP it has become apparent that there are a number of practical difficulties with implementing, and financial implications with using, a mechanical ventilation system in accordance with the operative (and hence notified) rule.

7. More particularly, it has become apparent that in a climate such as Queenstown, strict compliance with the rule may result in the need for large ventilation systems with multiple fans and heating systems, and it does not satisfactorily address thermal comfort in summer.

8. There is general agreement between QAC and QLDC as to how Proposed Rule 36.6.3, Table 5 should be redrafted, subject to matters of detail.

9. I generally support the recommendations of Dr Chiles, including his re-formatting of the Proposed Rule, as set out in his evidence and Appendix 1 of the Section 42A Report, but consider some additional refinements are

required, to ensure the Rule is clear, unambiguous, and practical to implement.

10. The further refinements I consider are required relate to:

    (a) the minimum and maximum air change requirements;

    (b) ensuring the ventilation system heats as well as cools;

    (c) ensuring the ventilation system includes an air relief path;

    (d) ensuring the Rule clarifies that existing plant may be used to achieve compliance; and

    (e) other minor matters of clarification

11. Proposed Rule 36.6.3 as set out in Appendix 1 of the Section 42A Report is not dissimilar to Option 2 in Annexure D of QAC's submission, and with the further amendments summarised above, and detailed more fully in my primary evidence1, would be a preferable alternative, in my opinion. Provided all of my recommended amendments are made, Option 2 in Annexure D of QAC's submission could then be deleted.

12. I consider my recommended amendments to the Rule will address the difficulties encountered with operative mechanical ventilation requirements (and hence the notified Rule), whilst at the same time providing residents with an appropriate level of indoor comfort and amenity.

13. I consider the alternative options (being either the notified Rule or the Section 42A revision of it) will likely be more costly to implement, with no real additional benefit, and will be less efficient and effective.

14. I have read the evidence summaries of Ruth Evans (the Section 42A Report Writer) and Dr Chiles and briefly comment as follows:

    (a) I agree with Dr Chiles' recommendation for a low setting airflow of 0.5 air changes per hour, and note it is consistent with my original recommendation, as per Annexure D of QAC's submission. However, I do not agree that 0.5 air changes per hour should be

---

[1] Dated 2 September 2016.

stated as a minimum requirement (as suggested by Mr Chiles' words "at least 0.5 air changes…") because the high setting of 5 air changes per hour would achieve that. The point of the low setting is to enable the building occupier to turn the ventilation down.

(b) In respect of Ms Evans' point at paragraph 8(b) of her summary, I note the purpose of my recommendation for a heating function is to address the circumstance where a homeowner uses ventilation in an otherwise unheated space, thus driving the indoor space temperature downwards below recommended minimums (particularly an issue in the winter). To address this, the recommendation in my evidence is that the system be required to maintain the temperature of the ventilated room at 18°C, as distinct from heating the room or entire building to a higher temperature. I maintain this is appropriate, particularly in a climate such as Queenstown.

(c) In his point 8(d) Dr Chiles appears to have misunderstood the point of my recommendation. To clarify, I have stated in my evidence that in the event that summer cooling is provided by the ventilation system, (which would most likely be a heat pump), then a higher ventilation rate is not desirable because it is the heat pump which is providing the cooling function. Whenever the outdoor temperature is greater than the indoor temperature, the incoming hot outdoor air will be working against the heat pump cooling and reducing its effect. To avoid this situation from arising I have recommended the rule clarify that where a heat pump is provided, the required ventilation rate remains at the low ventilation rate of 0.5 air changes per hour. This does not avoid ventilation requirements but limits the rate of ventilation as it is not necessary.

S Roberts

Before the Queenstown Lakes District Council

In the Matter of **the Resource Management Act**

And

In the Matter of **of the Proposed Queenstown Lakes District Plan (Chapter 36)**

Statement of Evidence of Christopher William Day for Queenstown Airport Corporation Limited (Submitter Number 433 and Further Submitter 1340)

Dated: 2 September 2016

QUE912172 5159763.1 Lane Neave
Level 1, 2 Memorial Street, PO Box 701
Queenstown
Solicitor Acting: Rebecca Wolt
Email: rebecca.wolt@laneneave.co.nz
Phone: 03 409 0320

lane neave.

Table of Contents

INTRODUCTION **3**
Qualifications and Experience 3
Code of Conduct 4
References 4
SCOPE OF EVIDENCE **4**
EXECUTIVE SUMMARY **5**
NEW ZEALAND STANDARD NZS 6805 .... **5**
Queenstown Airport Noise Contours 7
LAND USE PLANNING **8**
SOUND INSULATION AND VENTILATION **9**
Proposed Rule 36.6.3 Table 5 10
Proposed Rule 36.6.2 Table 4 11
OTHER ISSUES **11**

INTRODUCTION

Qualifications and Experience

1. My full name is Christopher William Day. I am a founding partner and Direector of Marshall Day Acoustics Limited.

2. I have the qualification of Bachelor of Engineering (Mechanical) from Monash University in Melbourne, Australia. For the past 40 years I have worked in the field of acoustics, noise measurement and control in England, Australia and New Zealand, specialising in transportation noise and acoustics for the performing arts. My work over the last 35 years has included noise control engineering and town planning work for various major corporations and City Councils within New Zealand, and I have been engaged on numerous occasions as an expert witness before the Environment Court.

3. I have been significantly involved with airport noise at all the three major airports in New Zealand as well as many of the smaller regional airports, including Queenstown Rotorua, Whangarei, Dunedin, Invercargill, Wanaka, Ardmore, Hamilton, Tauranga, Nelson, Omaka, Paraparaumu, Gisborne, Masterton, and Taupo.

4. At Auckland Airport my firm has been engaged by the Manukau City Council and the Airport Company, at Wellington by the Board of Airline Representatives of New Zealand (**BARNZ**) and Wellington International Airport Limited (**WIAL**), and at Christchurch by Christchurch International Airport Limited (**CIAL**). Our work has involved noise predictions, computer modelling, noise boundary development and automated noise monitoring.

5. I have been engaged by Queenstown Airport Corporation (**QAC**) since 1992 to advise on various noise issues including the preparation of the original noise contours to form the basis of the airport noise provisions in the District Plan in the 1990s. MDA has carried out periodic noise monitoring at Queenstown Airport over the last five years, and carried out the recalculation of the noise contours for PC35, which involved a remodelling of future operations and subsequent noise contour modelling.

Code of Conduct

6. Although this is not an Environment Court hearing, I note that in preparing my evidence I have reviewed the code of conduct for expert witnesses contained in part 7 of the Environment Court Practice Note 2014. I have complied with it in preparing my evidence. I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

References

7. In preparing this evidence I have reviewed the following:

   (a) Section 42A Hearing Report 17 August 2016 and Appendix 1;

   (b) Evidence of Dr Stephen Chiles 17 August 2016;

   (c) Evidence of Mr Scott Roberts 2 September 2016;

   (d) New Zealand Standard NZS 6805:1992 "Airport Noise Management and Land Use Planning";

   (e) New Zealand Building Code Clause G4 "Ventilation".

SCOPE OF EVIDENCE

8. My brief by QAC for this hearing has been to review the mechanical ventilation and sound insulation requirements in Chapter 36 of the Proposed District Plan (**PDP**). Accordingly, my evidence will deal with the following:

   (a) Background and role;

   (b) Summary of NZS 6805 and land use planning controls;

   (c) Review of the airport related mechanical ventilation provisions;

   (d) Review of airport related sound insulation provisions;

   (e) General comments on the noise rules.

EXECUTIVE SUMMARY

9. Inappropriate land use planning around airports allowing residential encroachment exposes communities to the adverse effects of aircraft noise and exposes the airport operator to onsequential reverse sensitivity effects.

10. The Operative Queenstown Lakes District Plan (**ODP**) has included land use planning controls and noise controls from NZS 6805:1992 "Airport Noise Management and Land Use Planning" for many years.

11. The District Plan Review proposes to update various airport related provisions and this evidence comments on some of these;

    (a) I agree with the proposal to upgrade the airport related ventilation requirement to include air conditioning;

    (b) I agree with Mr Roberts recommendation to remove the reference to Clause G4 of the Building Code;

    (c) I recommend the measurement distance for noise from these mechanical systems should be confirmed as 2m.

    (d) I agree the table of standard sound insulation constructions should be upgraded to included double glazing;

    (e) I have made a number of comments on drafting ambiguities in the Chapter 36 noise rules.

NEW ZEALAND STANDARD NZS 6805

12. Worldwide, the lack of appropriate land use planning around airports has historically caused significant numbers of people to be exposed to the adverse effects of airport noise and has initiated operational constraints on airports due to reverse sensitivity effects.

13. In 1992, the Standards Association of New Zealand published New Zealand Standard NZS 6805:1992 "Airport Noise Management and Land Use Planning" with a view to providing a consistent approach to noise planning around New Zealand airports with a goal to minimise these adverse effects. The Standard has been used by virtually every district

council since 1992 and it is one of the few noise standards that has not been put up for revision or amendment.

14. The Standard uses the "Noise Boundary" concept as a mechanism for local authorities to:

    (a) "establish compatible land use planning around an airport"; and

    (b) "set noise limits for the management of aircraft noise at airports."

15. The Noise Boundary concept involves fixing an Outer Control Boundary (**OCB**) and a smaller, much closer Airnoise Boundary (**ANB**) around an airport. Inside the ANB, new noise sensitive uses (including residential) are recommended to be prohibited. Between the ANB and the OCB, the Standard recommends new noise sensitive uses should also be prohibited unless a district plan permits such uses, subject to acoustic insulation. The Standard also recommends noise controls to ensure an airport doesn't exceed the noise levels that the ANB and OCB have been based upon.

16. The Standard uses the Day/Night Sound Level (L_{dn}) parameter for the assessment of noise. L_{dn} is a measure of noise exposure and uses the cumulative 'noise energy' that is produced by all flights during a typical day with a 10 decibel penalty applied to night flights to allow for the increased sensitivity to noise at night (see Appendix A for a full list of terminology). L_{dn} is used extensively overseas for airport noise assessment and it has been found to correlate reasonably with community response to aircraft noise.

17. The location of the ANB is usually based upon the projected 65 dB L_{dn} contour, and the location of the OCB is generally based on the projected 55 dB L_{dn} contour. These noise contours are normally calculated using the FAA Integrated Noise Model (INM) software and projections of future aircraft operations. In my evidence I generally refer to the ANB and the OCB as 'boundaries' and the INM predictions (e.g. 55 dB L_{dn}) as 'contours'. The Standard recommends that a minimum of a 10 year period be used as the basis for the projections.

18. In my opinion, land use planning is an important and effective way to reduce population exposure to noise around airports. Aircraft technology and flight management, although an important component in abating noise, will not be sufficient alone to eliminate or adequately control aircraft noise.

Uncontrolled development of noise sensitive uses around an airport can unnecessarily expose additional people to high levels of noise and can constrain, by public pressure as a response to noise, the operation of this significant regional and national resource.

19. The Standard (clause 1.4.1.1) recommends land use controls to *"avoid, remedy or mitigate any adverse effects on the environment, including effects on community health and amenity values whilst recognizing the need to operate an airport efficiently"*.

20. Tables 1 & 2 of the Standard (page 15) lay out in detail the recommended land use controls summarised earlier in paragraph 13 above.

21. In addition to land use controls, the Standard recommends maximum noise emission limits for an airport, but does not specify operational procedures or how these limits are to be achieved. This is consistent with the general approach to noise control in New Zealand, in that it is left to the airport operator to best decide how to manage its activities to comply with an agreed level of noise.

Queenstown Airport Noise Contours

22. In 1995 airport noise boundaries were introduced into the Queenstown Lakes District Plan with a view to establishing compatible land use planning around the Airport and to set noise limits for the management of aircraft noise in accordance with NZS 6805.

23. The noise boundaries were based on future levels of airport operations based on projected growth out to 2015 and noise predictions using the INM modelling tool. The process included significant debate over whether the planning horizon was too long and the consequential noise contours too large. A compromise was negotiated with reductions in the size of the contours in some areas.

24. Compliance monitoring was carried out at the Airport over the following years and it became apparent that the Airport had been operating for a number of years close to 'capacity' for the noise limits contained in the District Plan via the airport noise boundaries.

25. In 2007 MDA was engaged by QAC to assist its planning team to update the airport noise provisions in the District Plan. This 'updating' was

required as the Airport had reached the District Plan noise limits, new aircraft types had been introduced and the software used to calculate the noise contours had been updated several times since 1995.

26. Updating the noise boundaries involved new forecasts of airport operations projected out until 2037, a new aircraft fleet mix and the relocation of the General Aviation (GA)/Helicopter base.

27. As expected, the noise boundaries were larger than the existing boundaries in some areas, to accommodate growth in the scheduled aircraft operations at the Airport.

28. The contours were thus the best prediction of future airport noise levels that was available at that time. These contours were adopted in PC35 and PC35 was subsequently confirmed by the Environment Court (subject to the location of the noise boundaries in the vicinity of Lot 6, which I understand has been addressed by legal counsel previously).

LAND USE PLANNING

29. As discussed above, NZS 6805 lays out recommended procedures for land use planning around airports, in an effort to avoid the land use conflicts that result in people being exposed to the adverse effects of aircraft noise and airports experiencing reverse sensitivity effects from surrounding communities.

30. The various local authority district plans around New Zealand have implemented the land use planning recommendations in NZS 6805 in different ways. The process is influenced by a number of factors including the extent of existing residential development inside the noise contours and the availability of land elsewhere in the District for future residential development.

31. By way of example, in Christchurch a significant green belt has been established around the airport as there has been no shortage of residential land at other locations around Christchurch. The Christchurch City Plan rules discourage noise sensitive activities inside the 50 dB Ldn noise boundary. Wellington on the other hand has over 600 existing houses inside the ANB and a shortage of residential land in the area and thus very little is provided in terms of land use controls. The airport noise issue is

addressed at Wellington by sound insulation requirements and noise controls (on the airport).

32. Queenstown Airport is relatively well located in terms of avoiding the adverse effects of noise on the community. Apart from the Frankton residences to the west, the noise affected area (OCB) for Queenstown falls predominantly over Lake Wakatipu, the river flats to the east and generally non residential land to the north and south of the main runway. It is thus important that land use controls are implemented to avoid new noise sensitive activities becoming exposed to aircraft noise.

33. The Operative Queenstown Lakes District Plan (**ODP**) as amended by PC35 includes land use controls for a number of zones which are affected by aircraft noise associated with the OCB and ANB for Queenstown Airport. The ODP also specifies noise mitigation in the form of sound insulation and ventilation is certain situations.

SOUND INSULATION AND VENTILATION

34. Generally, any new noise sensitive activity (**ASAN**) seeking to establish within the airport noise boundaries, (where permitted to do so), must ensure that an indoor sound level of 40 dB L_{dn} can be achieved in all Critical Listening Environments. This necessitates the provision of sound insulation and/or mechanical ventilation, depending on the particular location of the new activity within the noise boundaries.

35. To further explain, a new dwelling of modern construction located between the OCB (which is based on the 55 dB L_{dn} noise contour) and the ANB (based on the 65 dB L_{dn} noise contour), will generally only require the windows to be closed to achieve the indoor sound level of 40 dB L_{dn}. The standard construction provides sufficient sound insulation. However, with the windows closed, some form of ventilation and/or cooling is required to maintain appropriate thermal comfort in the variable Queenstown climate.

36. Within the higher noise environment of the ANB (based on the 65 dB Ldn noise contour), both sound insulation and mechanical ventilation are required. Sound insulation is required in addition to mechanical ventilation in this location, as a standard house construction needs improved sound insulation in order to achieve the indoor design sound level of 40 dB Ldn.

Proposed Rule 36.6.3 Table 5

37. Appendix 13 of the Operative District Plan (as amended by PC35) sets out the requirements for mechanical ventilation systems (without air-conditioning). I understand these requirements are proposed to be carried over in the PDP as Rule 36.6.3, Table 5. I understand that QAC submitted on this rule to address practical and cost issues that have become apparent since the inception of the original rule.

38. I understand that in response to QAC and others' submissions, the Section 42A Report Writer, relying on the evidence of Dr Chiles, has recommended that Rule 36.6.3 be amended to more appropriately deal with the Queenstown climate by requiring air-conditioning in addition to a smaller amount of ventilation.

39. While this is outside the area of my immediate expertise, I agree with this move in concept – it provides a better opportunity for occupants to keep their windows closed and thus avoid the effects of airport noise.

40. More specifically, I have read the evidence of Mr Scott Roberts and agree with his recommendation to delete the reference to G4 of the Building Code in Rule 36.6.3. In my opinion, there is no need to specify compliance with G4 in this rule – the legislation requires compliance in any case. In addition, the reference to G4 could confuse the situation as it refers to openable windows as an option to mechanical ventilation – this is not an option in the airport situation.

41. Furthermore, G4 specifies a minimum air flow rate and thus the high flow rate setting specified in Rule 36.6.3 would comply with G4. The intention of the low flow setting in Rule 36.6.3 is to ensure occupants can turn the flow rate down during winter so they don't experience cold draughts.

42. I agree with Dr Chiles' recommendations in respect of the acceptable sound levels from the ventilation equipment itself. Specifically, that the ventilation system should not exceed operating noise levels of 35 dB $L_{Aeq(30sec)}$ on high speed and 30 dB $L_{Aeq(30sec)}$ on low speed.

43. The ODP specifies that these operating noise levels should be measured at 1-2 meters from the unit. Dr Chiles has modified this to 1m in his recommended Table. I agree that it should be specified at a single

distance as 1-2m is ambiguous, but recommend that it should be measured at 2m. This distance is more appropriate as people are not generally located closer than 2m to a high wall heat pump unit or to a ducted grille.

Proposed Rule 36.6.2 Table 4

44. Table 4 of Rule 36.6.2 in the Proposed Plan provides sound insulation 'acceptable solutions' for a standard construction located inside the ANB to achieve the agreed internal design level of 40 dB L_{dn}. Alternative constructions can obtain approval following calculations by an appropriately qualified acoustic engineer.

45. Table 4 needs minor updating and I agree with the evidence of Dr Chiles where he recommends (in response to a submission by QLDC) changing the glazing specified to thermal double glazing. Also, I affirm his comments that dispel the urban myth that thermal double glazing provides superior acoustical performance – it doesn't. However, the specified double glazing (4mm+12mm+4mm) should achieve the required performance.

OTHER ISSUES

46. When reviewing Chapter 36 of the PDP for the purposes of preparing my evidence, I noted numerous discrepancies, ambiguities and inconsistencies within the Chapter. I acknowledge that not all of these are addressed by QAC's submission, however, given my role as an independent expert, I consider it appropriate that I bring them to the Panel's attention, as set out below.

47. Rule 36.3.2.5 states:

> *In addition to the above, the noise from the following activities listed in Table one shall be Permitted activities in all zones (unless otherwise stated). For the avoidance of doubt, the activities in Table 1 are exempt from complying with the noise standards set out in Table 2.*

48. In my opinion, noise is not an 'activity' that can be classified as permitted or controlled or restricted discretionary etc, as the first part of the above rule

attempts to do. The intent of this clause is to exempt the noises listed in Table 1 from the noise standards in Table 2, as stated in the last sentence. I therefore recommend that the first sentence be deleted from the rule leaving only, *"The activities in Table 1 are exempt from complying with the noise standards set out in Table 2."*

49. Following the same reasoning, i.e. the sounds listed in Table 1 are not 'activities', I recommend that the right-hand column of Table 1 be deleted.

50. Rules 36.23.2.8 and 36.4.6 duplicate the requirement for noise from Queenstown Airport and Wanaka Airport to be excluded from the general noise rules in Table 2. One of these rules could be deleted.

51. In my opinion, the headings in Table 2 and the sound source descriptions are extremely confusing. I recommend this table be significantly redrafted.

52. The rules generally interchange the words 'noise' and 'sound' randomly throughout the Chapter. The rules would benefit from a consistent use of one or the other – as the heading for Chapter 36 is noise, possibly noise is the logical choice.

53. I have discussed these issues in a general sense with Ms O'Sullivan, and I understand she may address them further in her evidence.

Christopher William Day
2 September 2016

ATTACHMENT D

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

lane neave.
Level 1, 2 Memorial Street
PO Box 701
Queenstown
Solicitor Acting: Rebecca Wolt
Phone: 03 409 0321
Fax: 03 409 0322
Email:
rebecca.wolt@laneneave.co.nz

QUE912172 4766976.1

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 policies[56] 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 Remakables 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.