

Before the Hearing Panel, QLDC Proposed District Plan: The Aircraft Owners and Pilots Association of New Zealand

Response to Submission by Counsel Seeking to strike our part of a submission and to a Minute from the Hearing Panel Chair.

Introduction.

1. This submission is prepared from a layman's perspective, bearing in mind our understanding that district plans and the processes involved with them should be capable of being interpreted by the average person.

Response to Notification.

2. In paragraph 10 Counsel suggests that our submission is misleading in its introduction We do not agree with this for the following reasons :
3. The provision for informal airports was well signalled when the stage one proposals were notified. A fact sheet was prepared and a comprehensive S32 report was produced. At that time the stage one proposals for informal airports in the Rural Zone included the Wakatipu Basin. The association made submissions and was later heard by the panel. At that time and indeed up until August this year we were unaware that different provisions were contemplated for the basin. Over 20 other parties made similar submissions to the association regarding the stage one proposals. As far as we can ascertain no private group or individual who made submissions on informal airports in Stage One understood the need to submit on Stage Two.
4. There appears to have been no fact sheet about the Informal Airport proposals in stage two and no S32 report. We understand that a S32 report is required by the Act. Had one been prepared we would likely have become aware of the stage two proposals and would have been in a position to make a better considered, informed and more timely submission. Without a S32 proposal we are severely disadvantaged especially as Council, for reasons unknown to us, considers the Basin issues to be different. This was conveyed to us in a response to our suggestion that our appeal re stage one should be delayed until stage two had been determined. It has also become evident to the association, in preparing its stage 2 submission in respect of the Basin, that in addition to there being no specific S32 report for Informal Airports the section 32 report specifically relevant to Chapter 24 does not at all address informal airports, or why these would have different provisions / activity status as compared to other rural and rural living zones.
5. On 23 November 2017 QLDC counsel issued a memorandum relating to stage two of the proposed plan. The memorandum's purpose was to provide information on what would be notified on stage two and to relate that to submissions received on stage one. The memorandum had attached schedules which we took to be indicative of parties who made submissions on stage one that would be affected by stage two proposals. There was nothing mentioned regarding informal airports or the association's submission.
6. Although over 20 parties made similar submissions to the associations on stage one it appears that none have submitted on stage two. Discussions with some member submitters have revealed that this is because they also were unaware that for the Basin the matter had been reopened in stage two.

7. The Association has appealed the stage one informal airports determination. To do this we engaged legal counsel. We only became aware of the stage two proposals at that stage as our counsel had been closely following the entire planning process.

On Point.

1. The Motor Machinists Case. Both Counsel for QLDC and the Chair refer to this case although there is a slight difference in emphasis. QLDC Counsel, in paragraph 4.2 poses one of the questions to be asked as “whether there is a real risk that people affected by the plan change (if modified by the submission) would be denied an effective opportunity to participate in the process.” With respect we submit that this is exactly what has happened to the association and others who submitted on stage one. We simply thought that was the end of the process for the entire district and were not made aware that stage two contained further separate proposals requiring submission.
2. Furthermore, the changes sought by the association to objectives, policies and standards applicable to the rules of informal airports in Chapter 24 do not risk the denial of other persons in the participatory plan process given there is an opportunity for further submissions to be made. The association has in fact been vocal in its submission to potentially interested parties who were not otherwise aware of these proposed changes.
3. The Chair helpfully sets out further guidelines from the Machinists case. Item (b) states that variations to the proposal which have not been evaluated in a S32 analysis are unlikely to be addressing the pre existing status quo and item (d) states that incidental or consequential extensions of zoning changes are permissible provided that no substantial S32 analysis is required etc ---. The problem we have here is that there has been no S32 analysis with respect to rule changes for informal airports in Chapter 24 at all, and this places submitters at a disadvantage. It is therefore impossible to apply the Motor Machinists' rationale of whether a submission requires substantial 'further' section 32 analysis or not in this instance because there is no starting point for this from which submitters can understand the proposal in more detail.
4. Leaving that aside, we submit that by commenting on the proposals for the Lifestyle Precinct as well as the Amenity Zone, we are on point. We consider the issues from the perspective of informal airports to be similar for both and indeed similar to those pertaining to the Rural Zone. There are a significant number of rezoning requests across the Basin which seek to change / upzone or downzone Precinct and Amenity Zones, and some submissions which seek to oppose the Basin Variation in its entirety such that the zoning would then revert to the Stage 1 proposed zonings of Rural Zone and rural living zones. Furthermore, there are areas within the Basin boundary which have been excluded from the Variation (e.g. Ladies Mile) such that these areas remain a stage 1 zone and subject to stage 1 rules. Given this complexity of zoning, and the unknown resulting outcomes, the association submits that a strict interpretation of scope should be applied more cautiously. It does not make planning sense that different areas across the basin (which in itself is not a vast size) could end up being regulated by different rules relating to the same activity of informal airports, only because of administrative reasons from the Council's choice of a staged plan review. The association considers that a proposed rule which controls activities across different zones as opposed to rules which control effects should be treated differently in terms of scope because the consequences and the subject matter are broader. A S32 report on stage two

informal airports may have caused us to think differently but we don't have the benefit of one.

5. The ability to submit on a rule and its activity status naturally lends itself to the ability to submit on directly applicable standards, objectives and policies which go with the interpretation of that rule. A rule like that applicable to informal airports in the Precinct cannot be severed from or considered in isolation to its applicable standards. Without those standards and higher order provisions the rule (particularly with a discretionary status) is almost meaningless because there is no understanding as to how the rule will be applied. By analogy the association could have chosen to seek that new provisions be inserted for standards applicable specifically to the discretionary informal airports rule in the Precinct, and this would unlikely have been challenged for want of scope in the same unreasonable way. It is not justifiable that the same outcome could have been reached through technical wording differences in the submission, and this is supported by the approach directed in case law to not consider scope issues with 'undue legal niceties'.
6. This position is also justified in Environment Court case law, where previously submissions which referred to rules, but not supporting objectives and policies, were nevertheless contemplated as an entire relief package. This case law allows for 'necessary modifications' to associate objectives and policies as a result of submissions to rules:

Although it is true that no new objectives and policies were actually formulated in either referrers' submission, there can be little doubt that both submissions signalled that the relief package was intended to include such modification to the objectives and policies as might be necessary to support the proposed rules. In my opinion the "workable" approach discussed by Panckhurst J required the Environment Court to take into account the whole relief package detailed in each submission when considering whether the relief sought had been reasonable and fairly raised in the submissions. Given the nature of the proposed rules I cannot conceive that anyone could have been under any illusion that the submissions were seeking not only a reduction in lot size (and associated relaxation in relation to dwellings) but also any necessary modification to the objectives and policies. In other words, I do not think that anyone could justifiably complain that they would have lodged a submission if they had been aware that the referrers were seeking amendments to the objectives and policies. They were on notice that such amendments were contemplated.¹

7. Clearly a submission on a rule anticipates associated and necessary modification to specific standards, objectives, and policies relating to the interpretation of that rule. As in the case above, other submitters are on notice as to the association's submission and have the ability to now further submit. There is no prejudice to the proposal or submitters. We understand that at this stage stream 14 hearings have adjourned and not closed, and decisions have not yet been issued. The provisions the subject of late notification in this submission round will need to be reconsidered in full by the stream 14 hearings panel in any event and parties have the same ability to be involved as they were the first time around.

¹ JG & H Shaw and Halswater Holdings Limited and Applefields Limited v Selwyn District Council, AP41/00, at [31].

8. If the matter proceeds as it is proposed by Counsel for QLDC, the practical position is that the Panel will be considering provisions for the Precinct but not the Amenity Zone. If the association's submissions were accepted in full or in part this could lead to the Precinct having different more liberal provisions than the Zone which would be somewhat silly.

Summary

1. The association submits that the current position is very messy.
2. This has been brought about by the lack of a S32 report and by those who submitted regarding informal airports at Stage One not being aware of the Stage Two proposals.
3. Should the Chair think it desirable the association is prepared to enter into discussions with council regarding the process going forward.

A handwritten signature in black ink that reads "Vance Boyd". The signature is written in a cursive, slightly slanted style.

Vance Boyd

For The Aircraft Owners and Pilots Association of New Zealand.

21 September 2018.