

## FORM 18

**NOTICE OF REQUIREMENT FOR DESIGNATION  
TO BE INCLUDED IN PROPOSED PLAN  
WITH MODIFICATION**

**TO:** Queenstown Lakes District Council

**FROM:** Queenstown Airport Corporation  
Private Bag 50072  
**QUEENSTOWN**

**NOTICE:** In accordance with Clause 4 of Schedule 1 to the Resource Management Act 1991 (the **Act**), the Queenstown Airport Corporation (**QAC**) gives notice that requires Designation 2 – Aerodrome Purposes to be included in the proposed Queenstown Lakes District Plan (**Proposed Plan**) with modification.

The existing Designation 2 – Aerodrome Purposes is as confirmed by the Environment Court in Decisions numbered [2012] NZEnvC 206 and [2013] NZEnvC 95, and as shown on the plan entitled Aviation Precinct Concept Detail (Optimised) Code C Taxiway Separation 93m (dated 9 November 2012), which is attached as **Appendix A**.

QAC requires modification of Designation 2 – Aerodrome Purposes to extend the area of land subject to the designation to include all of that land shown on the plan attached as **Appendix B**.

**1. INTRODUCTION**

- 1.1 Designation 2 is currently in the District Plan (the **Plan**) to enable the safe and efficient operation of Queenstown Airport by providing for the activities undertaken by the Requiring Authority, the QAC.
- 1.2 In December 2010, the QAC lodged with the Environmental Protection Authority (**EPA**) a notice of requirement to alter Designation 2 in the District Plan in a manner that extended the Designation to include part of the land within Lot 6 DP304345 (**Part of Lot 6**).
- 1.3 One of the objectives for that notice of requirement was *“to provide for the expansion of Queenstown Airport to meet projected growth while achieving the maximum operational efficiency as far as is practicable”*. Other objectives and goals were contained in the QAC’s mission statement (as contained in QAC’s Statement of Intent for the years ending 2011, 2012 and 2013) and the 2010 Annual Report.

1.4 The notice of requirement was directly referred to the Environment Court for a hearing and a decision. On 8 May 2013 the Environment Court issued its final decision (Decision No 2013 NZEnvC 95) with respect to QAC's notice of requirement. This decision confirmed the notice of requirement, subject to modification as to the extent of land the designated, and subject also to conditions. The Court determined that the requirement was to be modified by excluding land required for works associated with the operation of Code D aircraft and protection for a precision approach runway. The extent of the Designation confirmed by the Court is shown on the attached plan entitled *Aviation Precinct Concept Detail (Optimised) Code C Taxiway Separation 93m*, dated 9 November 2012 (**Appendix A**). Following appeals, the High Court directed the Environment Court to reconsider its decision in respect of QAC's notice of requirement to alter Designation 2. The Environment Court has since issued its decision concerning two of the three matters referred back by the High Court (Decision No 2014 EnvC 244, attached in **Appendix A**). A hearing, and the final decision on the outstanding matter, is scheduled to occur in 2015.

1.5 QAC gives notice that this designation is required to be included in the proposed District Plan in a manner generally consistent with the decision of the Environment Court, with modification to include an additional 7.89ha of land within Lot 6 DP304345 as shown on the attached plan in **Appendix B** and as further described and for the reasons set out below.

## **2. THE SITE TO WHICH THE REQUIREMENT APPLIES IS AS FOLLOWS:**

2.1 The land to which the requirement (including the modification) applies is legally described as Part of Lot 6 DP304345.

2.2 The Environment Court decision confirmed an area of 8.07ha being designated as shown on the plan attached as **Appendix A**.

2.3 QAC requires this designation to be included in the Proposed Plan, and modified to include an additional approximately 7.89 ha of Part of Lot 6 DP304345, as shown on the plan attached as **Appendix B**.

## **3. THE NATURE OF THE PROPOSED WORK AND MODIFICATION AND REASONS:**

3.1 The purpose of the existing designation is to provide for the operation, maintenance, expansion, and development of the airport known as Queenstown Airport, including the works set out in the Schedule to the Resource Management (Approval of Queenstown Airport Corporation Limited as Requiring Authority) Order 1992.

3.2 The purpose of the existing designation as confirmed by the Environment Court includes providing for a General Aviation Precinct (**GAP**) which includes:

- General aviation operations, including private aircraft traffic, rotary wing and helicopter operations; and
- Hangars, including those for Code C aircraft; and

- Associated activities, aircraft servicing, fuel supply and storage, maintenance, buildings, signage and infrastructure, navigational aids and lighting, vehicle access, car parking and landscaping.

3.3 The reasons why Queenstown Airport Corporation Limited considers it reasonably necessary to modify the designation in the manner sought include enabling the above GAP activities to be located parallel to and with adequate separation from main runway 23/05 and a future Code C taxiway. "Adequate separation" means separation that is consistent with any relevant Civil Aviation rules and advisory circulars and ICAO rules and compliance requirements.

**4. THE EFFECTS THAT THE MODIFICATION WILL HAVE ON THE ENVIRONMENT AND THE WAYS IN WHICH ANY ADVERSE EFFECTS WILL BE MITIGATED ARE:**

4.1 Conditions relating to landscaping, traffic and other matters have been imposed by the Environment Court in its final decision (Decision No 2013 NZEnvC 95, refer **Appendix A**). These conditions are intended to ensure that the landscape, visual amenity, and traffic effects resulting from the newly designated land are suitably mitigated. The QAC does not seek to alter these conditions, although if the modification is confirmed they will apply to activities in a slightly different location (i.e. a location approximately 80m southwards on the additional 7.89ha the subject of the modification) than those confirmed by the Environment Court.

4.2 The additional part of Lot 6 that is the subject of this notice insofar as it relates to the modification of the Designation is within the Remarkables Park Zone - Activity Area 8. Within this Activity Area only activities of a commercial-recreational nature or farming are provided for. Other activities that might attract visitors or a usually resident population to the land are generally non-complying activities. In addition there is a restrictive covenant in favour of QAC limiting the use of the land to recreational and/or rural uses and utilities not of a noise sensitive nature. The land is currently largely undeveloped with buildings, with the exception of an electricity substation. Modification of the Aerodrome Purposes Designation in the manner proposed will not result in adverse environmental effects on existing or foreseeable future development of the land adjacent to the designated area.

4.3 The Airport's existing facilities are under increasing pressure as a consequence of growth in aircraft and passenger movements and demands to locate additional facilities and activities at the Airport. Facilitating the expected growth in passenger demand and changes in operational requirements will create benefits in economic and social terms as well as enabling the Queenstown Airport to be used in an efficient manner.

4.4 There are significant positive effects arising from the proposed modification including that the Airport is able to grow to meet projected passenger growth and future operational and safety requirements. The land area subject to the notice represents the superior locational option for expansion of the aerodrome facilities including the GAP.

**5. THE PROPOSED MODIFICATIONS TO THE DESIGNATION ARE REASONABLY NECESSARY FOR ACHIEVING THE OBJECTIVES OF THE REQUIRING AUTHORITY BECAUSE:**

5.1 The objectives of the QAC in managing the Queenstown Airport are set out within the Queenstown Airport Corporation Statement of Intent for the Years 2015-2017 – attached as **Appendix C**. These objectives seek to:

- *Generate improved business returns over the forecast period sufficient to:
 
  - *Support the funding of growth capital*
  - *Provide a dividend that meets shareholder expectations.**
- *Strive for Operational Excellence through continuous improvement programmes.*
- *Diversify revenues to de-risk the business.*
- *To be actively involved in route development focusing on new services or increased capacity from Australia, Pacific Island and New Zealand. This includes adding capacity and frequency to existing routes.*
- *Make Queenstown Airport easier to get to with better improved connectivity at hub airports.*
- *Assist selected local events as far as possible by allowing promotion within and around the terminal.*
- *To be well informed of airport and aviation trends and drivers of passenger volumes that will positively or negatively impact demands on our infrastructure.*
- *Develop plans for continued growth so as not to impede the region's growth.*
- *To expand the approved window for airlines to arrive and depart ZQN, taking advantage of ZQN's consented operating hours of 6am to 10pm.*
- *Ensure expansions to the Airport Infrastructure and facilities are delivered in a timely manner to balance the risks of over-capitalisation with the risks of turning away passengers and aircraft.*
- *Provide a superior experience for people using the airport from access roads, parking, and in-terminal experience.*
- *Ensure people flow through the terminal is efficient such that:
 
  - *Congestion in the terminal and overcrowding in the departure lounges is minimised.*
  - *Congestion for international passengers is reduced.**
- *The region understands the diversity of businesses and jobs at the Airport.*
- *Businesses serving passengers are professional and successful. They employ people that embrace the QAC's vision for the travelling public.*
- *The benefits from growing passenger numbers flow through to all businesses operating in the Airport.*
- *Reduce our impact on Council's infrastructure with a particularly focus on water and waste management.*
- *Manage the noise impact of the airport on the surrounding residential and business areas.*
- *Engage with the community, keeping them informed on developments at the airport and future plans.*

- 5.2 These objectives are accompanied by a number of measureable outcomes. Those of particular relevance to this notice seek to:
- *Growth in passenger numbers<sup>1</sup>.*
  - *Increase in scheduled airline capacity being flown into ZQN<sup>2</sup>.*
  - *Master Plan review completed with Board and shareholder representatives<sup>3</sup>.*
  - *Evening flight airfield developments completed for winter 2016 flights. <sup>4</sup>*
  - *Construction commenced for terminal expansion for international passenger areas by September 2014.*
  - *QLDC's District Plan adopts a specific Airport Zone<sup>5</sup>.*
- 5.3 A number of goals contained within the Statement of Intent are also relevant. Relevant goals include:
- *Promote the Airport and Queenstown Lakes District to grown visitor numbers.<sup>6</sup>*
  - *Develop the airport infrastructure and facilities to support the District's economic growth, while maximising use and avoiding over-capitalisation<sup>7</sup>.*
  - *Operate as a socially and environmentally responsible part of Queenstown Lakes District community.*
- 5.3 The additional land is required to provide for the continued safe and efficient functioning of Queenstown Airport to meet projected passenger and operational growth at the Airport.
- 5.4 The additional land is required to enable general aviation and helicopter activities to relocate from the south-western area of the Airport to a location parallel to and south of the main runway 23/05 and with adequate separation (as defined in paragraph 3.3 above) from that runway and a future Code C taxiway to provide for essential growth in airport operations and activities including:
- (i) expansion of the passenger terminal;
  - (ii) provision of additional apron areas around the terminal for scheduled aircraft;
  - (ii) provision of additional carparking for public, staff and rental vehicles.
- 5.5 The additional land is required to enable the provision of additional grass and paved apron areas and space for hangars for general aviation and helicopter activities.

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<sup>1</sup> Statement of Intent, Queenstown Airport Corporation Limited, 2015-2017 page 10.

<sup>2</sup> Statement of Intent, Queenstown Airport Corporation Limited, 2015-2017 page 10.

<sup>3</sup> Statement of Intent, Queenstown Airport Corporation Limited, 2015-2017 page 13.

<sup>4</sup> Statement of Intent, Queenstown Airport Corporation Limited, 2015-2017 page 13.

<sup>5</sup> Statement of Intent, Queenstown Airport Corporation Limited, 2015-2017 page 16.

<sup>6</sup> Statement of Intent, Queenstown Airport Corporation Limited, 2015-2017, page 10.

<sup>7</sup> Statement of Intent, Queenstown Airport Corporation Limited, 2015-2017 page 11.

**6. CONSULTATION:**

- 6.1 Consultation has not been undertaken in the preparation of this notice. The designation has already been through a public Environment Court process and as modified will be available for public submissions when the District Plan is publicly notified.

**7. ALTERNATIVE METHODS:**

- 7.1 Queenstown Airport Corporation Limited has assessed a number of alternative locations for the above activities and has identified the land the subject of this notice to require inclusion in the Proposed Plan of Designation 2 with modification as the most preferable for a number of reasons including reasons of safety and operational efficiency. This includes the proximity and accessibility to runways in order to minimise runway occupancy times, Airport expansion flexibility, separation between fixed wing and helicopter types in the air and road access to the GAP. This has been confirmed by the Environment Court in Decision No. [2013] NZEnvC95, and in its earlier interim Decision No. [2012] NZEnvC 206.

Signed for Queenstown Airport Corporation by its Chief Executive:

Signature:   
S Paterson

Date: 30 March 2015

**Address for Service:**

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# **APPENDIX A**

**Designation 2 – Aerodrome Purposes  
As determined by Environment Court Decisions No. [2012]  
NZEnvC 206, [2013] NZEnvC 95 and [2014] NZEnvC 244**

**Aviation Precinct Concept Detail (Optimised) Code C Taxiway  
Separation 93m (dated 9 November 2012)**

**BEFORE THE ENVIRONMENT COURT**

Decision No. [2013] NZEnvC 95

**IN THE MATTER** of the Resource Management Act 1991 (the Act) and of an application under section 149T of the Act

**BETWEEN** QUEENSTOWN AIRPORT CORPORATION LIMITED

(ENV-2011-WLG-41)

Applicant

Resumed Hearing: at Christchurch on 6 and 7 December 2012

Court: Environment Judge J E Borthwick  
Environment Commissioner R M Dunlop  
Environment Commissioner D J Bunting

Final Submissions: April 2013

Appearances: D A Kirkpatrick and R M Wolt for Queenstown Airport Corporation Ltd  
J G A Winchester for Queenstown Lakes District Council (regulatory)  
Dr R J Somerville QC and R A Davidson for Remarkables Park Ltd

Date of Decision: 8 May 2013

Date of Issue: 8 May 2013

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**FINAL DECISION OF THE ENVIRONMENT COURT**

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A: The notice of requirement is modified by excluding land required for works associated with either the operation of Code D aircraft or the operation of a precision approach instrument runway. The extent of the Designation is shown in Figure 1 *Aviation Precinct Concept Detail (Optimised) Code C Taxiway*





*Separation 93m*, dated 9 November 2012, attached to and forming part of this decision.

- B: Subject to the modification of the notice of requirement and the conditions attached to this decision, the notice of requirement to extend Designation 2 is otherwise confirmed.

## REASONS

### Introduction

[1] This is the Final Decision of the court in respect of Queenstown Airport Corporation Limited's notice of requirement to extend Designation 2 (the Aerodrome Designation). The court released its Interim Decision<sup>1</sup> on this proceeding in September 2012 and the hearing was resumed for the purpose of determining the conditions on the Designation and the lapsing period that is to apply.

[2] Notwithstanding the fact that the Interim Decision has been appealed, all parties are agreed that the court should release its final decision and, in the circumstances, we also consider this an appropriate course. And so in this decision we address the conditions that are to apply to the designation extension, the lapsing period for the designation and a legal issue raised by Remarkables Park Ltd during the resumed hearing, namely the cancellation of the designation.

### The cancellation in part of the notice of requirement

[3] During the course of the resumed hearing on conditions, RPL submitted that the court did not have jurisdiction to confirm the notice of requirement; it submitted that the court could only cancel the notice of requirement because of the wording of Order A in the court's Interim Decision. As all other parties were caught by surprise with this submission, directions were made that counsel identify the issues to be determined in relation to the scope of the court's powers and file further submissions.

[4] The issues identified for the court's determination are as follows:



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<sup>1</sup> *Queenstown Airport Corporation Ltd* [2012] NZEnvC 206.

- (a) does the Environment Court have jurisdiction to part confirm, modify or impose conditions in respect of the balance land?
- (b) can the word “cancellation” in Order A be read to mean “modification”?
- (c) can Order A be recalled and amended to read “modified” under the slip rule?<sup>2</sup>

[5] Submissions were filed by Queenstown Airport Corporation (QAC), Remarkables Park Ltd (RPL), Queenstown Lakes District Council (QLDC) and Air New Zealand Ltd (Air New Zealand).

#### Context of the legal arguments

[6] QAC has given notice of its requirement to extend Designation 2 (the “Aerodrome Designation”). The location of the extension is described in the notice and its attachments (Figure 1 and Appendix 1).<sup>3</sup> The notice of requirement states that it is “required to ensure the continued safe and efficient functioning of the Queenstown Airport through expansion of the Aerodrome to meet projected growth”.<sup>4</sup> Secondly, the requirement to expand the Designation is the result of growth projections for aircraft operations and operational requirements over the next 30 years.

[7] The objective for the notice of requirement is found in Annexure 2 and states “...this NOR is to provide for the expansion of Queenstown Airport to meet projected growth while achieving the maximum operational efficiency as far as practicable”.<sup>5</sup> The nature of the works within the aerodrome designation is described in the notice; these works do not include those associated with either the operation of Code D aircraft from Queenstown Airport or the operation of a precision approach instrument runway.<sup>6</sup> The parties will recall their submissions on this matter, RPL drawing the court’s attention to the fact that these activities were not included within the scope of works.<sup>7</sup>

[8] In the Interim Decision the court found (relevantly):

<sup>2</sup> District Court Rules 2009, rule 1.15 and RMA section 278.

<sup>3</sup> Notice of Requirement dated 21 December 2010 at [1.2].

<sup>4</sup> Notice of Requirement dated 21 December 2010 at [1.3].

<sup>5</sup> Notice of Requirement dated 21 December 2010. Annexure 2 at [2.1.4].

<sup>6</sup> Notice of Requirement dated 21 December 2010 at [3.1].

<sup>7</sup> RPL Opening submissions at [4.2].



- (a) the objective of the notice of requirement is “to provide for the expansion of Queenstown airport to meet growth while achieving maximum operational efficiency as far as possible”;
- (b) there is insufficient land within the aerodrome designation to develop an instrument precision approach runway, southern parallel taxiway for Code D aircraft and to develop a general aviation/helicopter precinct;
- (c) Queenstown Airport is, and will remain, an instrument non-precision approach runway;
- (d) airline manufacturers will respect the existing Codes when planning new and upgraded aircraft so that aircraft can continue to operate within the constraints of existing airport infrastructure.<sup>8</sup> The evidence tended against the proposition airlines would seek to operate Code D at Queenstown Airport;
- (e) the court noted that the traffic witnesses appeared to have identified a smaller area of land required for carparking, circulation and landscaping than had been required under the notice of requirement. The parties were directed to file memoranda addressing whether this land was surplus to the requirement. This particular land requirement was to be considered together with the court’s general directions on landscaping;
- (f) pursuant to section 171(1)(c) the court held that a general aviation/helicopter precinct south of the main runway is reasonably necessary in order for the notice of requirement’s objective to be achieved.<sup>9</sup> However, there is no nexus between this objective and the enablement of Code D aircraft operating at Queenstown Airport. And likewise, there is no nexus between this objective and the provisioning for an instrument precision approach runway. Therefore, these works and designation are not reasonably necessary for achieving QAC’s objective.<sup>10</sup> Of the original 19.1 hectares of land proposed to be designated, approximately 9.75 hectares of land was not required.<sup>11</sup>



<sup>8</sup> Interim Decision at [134].

<sup>9</sup> Interim Decision at [115].

<sup>10</sup> Interim Decision at [139-140].

<sup>11</sup> Interim Decision at [141].

[9] The court was unable to make a final decision in relation to the balance of the land and reserved its decision. As noted above, pursuant to section 171(1)(c) the court held that a general aviation/helicopter precinct south of the main runway is reasonably necessary in order for the notice of requirement's objective to be achieved.<sup>12</sup> However, on the evidence, the court found the proposal inconsistent with relevant provisions of the District Plan in that the proposed traffic management arrangements for the western access created risk to the safety of pedestrians and to the motoring public. The court presented a solution for the consideration of the parties, with leave reserved for the parties to call further evidence addressing this topic.<sup>13</sup> The court also found that QAC had prioritised its operational requirements without giving adequate consideration to how development of the precinct would address the surrounding landscape and urban context. Because of that the court was unable to conclude that confirming the notice of requirement would achieve the purpose of the Act.<sup>14</sup> In relation to the topic of landscape the Court directed that the parties confer and propose an Integrated Design Management Plan. Confirmation of the requirement was contingent upon QAC satisfactorily addressing the court's concerns.<sup>15</sup>

[10] This decision has been delayed as the conditions proposed by the parties following the resumed hearing were unworkable and did not adequately address the court's concerns in relation to the management of access to the new precinct.

#### **Appeals to the High Court**

[11] While QAC and RPL have appealed the Interim Decision the court understands QAC's position to be that the notice of requirement's objective can be achieved notwithstanding the court's decision that land is not required for works associated with either Code D aircraft or the operation of a precision approach instrument runway.

[12] With this background outlined, we turn next to the three issues posed for the court's determination.



<sup>12</sup> Interim Decision at [115].

<sup>13</sup> Interim Decision at [165-180].

<sup>14</sup> Interim Decision at [202-205].

<sup>15</sup> Interim Decision at [238].

**Issue:** *Does the Environment Court have jurisdiction to part confirm, modify or impose conditions in respect of the balance land?*

RPL's position

[13] RPL submits that section 149U(4)(b)(iii) is clear; while a notice of requirement can be confirmed with or without modifications and conditions being imposed, the modifications and conditions must relate to the confirmation of the requirement and not a confirmation of part of a requirement. As the court did not confirm approximately 9.75 hectares of a total 19.1 hectares of land, the requirement has been effectively cancelled. Alternatively, the decision not to confirm the 9.75 hectares alters the essential nature or character of the requirement such that the requirement must now be cancelled. RPL submits that the proper course now is for QAC to lodge a new notice of requirement in relation to the balance of the land.<sup>16</sup>

[14] As to whether the essential nature or character of the requirement has been altered as a consequence of the court's findings, RPL referred to, and we have considered, the line of authorities proceeding from *Quay Property Management Ltd v Transit New Zealand Ltd*<sup>17</sup> which interpreted "modification" in section 174(4) of the Act to mean "an act of making changes to something without altering its essential nature or character". We have noted, in particular, the *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project*, Ministry for the Environment, Board of Inquiry, 4 September 2009 where the Board accepted in relation to the power to modify that:

[174] The Board accepts that its power to modify the requirement is limited to modifications that do not render the requirement inconsistent with what was notified; and that applying this limitation calls for comparison between the substance of the notified requirement and the requirement as it would be modified. A judgement of fact and degree in the specific case is needed to decide whether modifying a requirement to mitigate adverse effects is within the statutory limit.



<sup>16</sup> Submissions dated 6 December 2012 at [6.12-6.15].

<sup>17</sup> Decision No W28/2000 at [167].

[175] Judgements on the plausibility of someone lodging a submission if the modified proposal had been notified can only be relevant if they assist in deciding the test set by the Act, whether a modification is not inconsistent with the requirement as notified.

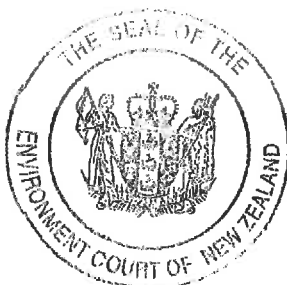
[15] RPL did not address the authorities referred to in the Interim Decision for reducing the extent of a requirement, by modifying the requirement, and referred instead to two High Court decisions of *Takamore Trustees v Kapiti District Council*<sup>18</sup> and *Waikanae Christian Holiday Park v Kapiti District Council* which are concerned with the cancellation of a requirement. We turn to these authorities next in the context of the replies of the other parties.

Replies of the other parties

[16] QAC, QLDC and Air New Zealand regard the issue raised by RPL to be one of semantics, rather than substance. All were of the view that the reduction of the area of the designation is a modification, rather than cancellation. If it were necessary to avoid confusion, then the Interim Decision could be recalled and amended to read “modified” under the slip rule.<sup>19</sup>

[17] QAC, QLDC and Air New Zealand submit that the two High Court authorities relied on by RPL are distinguishable on their facts. Both High Court proceedings are concerned with the construction of a proposed link road on the Kapiti Coast. The objective of the designation for a road corridor appears to be the provision of a number of linkages convenient for local road users along existing roads, and to provide the principal north-south arterial route for local traffic within the district. A minority of the Environment Court held that a section of the notice of requirement should be withdrawn.<sup>20</sup> On appeal the appellants in *Takamore Trustees v Kapiti District Council* claimed that the Environment Court could have modified or withdrawn part of the intended route.

[18] In *Takamore Trustees v Kapiti District Council* Justice R Young at [36-37] found that the Environment Court did not have power to cancel part of a requirement “in the way proposed” (we assume Young J is referring here to the proposed modification or



<sup>18</sup> High Court Wellington CIV-2003-485-1764.

<sup>19</sup> District Court Rules 2009, rule 1.15 and RMA section 278.

<sup>20</sup> *Te Runanga O Ati Awa Ki Whakarongotaia v Kapiti District Council* (2002) 8 ELRNZ 265.

withdrawal of part of the requirement). Secondly, the cancellation of what Young J considered a significant part of the notice of requirement was not a modification of the overall scheme. Moreover, the court could not confirm part of the requirement and still achieve the objective for the notice of requirement. The court's task was to refuse or confirm the notice of requirement. The court had no power to substitute its own alternative route.

[19] The same notice of requirement was considered on appeal in the High Court proceedings of *Waikanae Christian Holiday Park v Kapiti District Council*. Justice MacKenzie, referring to the decision of *Takamore Trustees v Kapiti District Council*, held at [142] that the Environment Court is required to determine, having regard to all relevant factors, including those under Part II, and those in section 171, whether to confirm the NOR, or to cancel the NOR, in its entirety. The court could not modify the proposal by making changes which would require further steps to comply with RMA procedures.

#### Discussion and findings

[20] It is our view that *Takamore Trustees v Kapiti District Council*<sup>21</sup> and *Waikanae Christian Holiday Park v Kapiti District Council* are concerned with quite different factual circumstances.

[21] In this case:

- (a) while the extent of the land required for certain works is not confirmed, QAC is able to achieve its objective for the requirement;
- (b) the court's modifications do not render the requirement inconsistent with what was notified; and
- (c) the court has not modified the proposal by making changes that would require QAC to take further steps to comply with RMA procedures.

[22] While we agree with counsel that the two cases relied upon by RPL have different facts, it does not necessarily follow that the legal principles enunciated by the High Court are of no application. We follow the High Court's decision that a notice of



<sup>21</sup> High Court Wellington CIV-2003-485-1764.

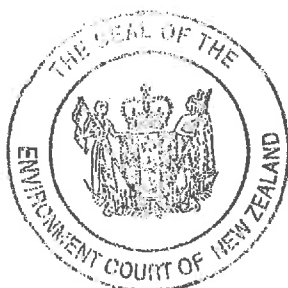
requirement cannot be cancelled in part. Section 149U(4) requires that the court must either cancel or confirm the notice of requirement. If it confirms, then it may modify or impose conditions.

[23] In the Interim Decision the court held that on a direct referral the Environment Court may consider the extent to which the work is reasonably necessary for achieving the requiring authority's objectives and may limit the extent of the designation accordingly.<sup>22</sup> It found support for this proposition in the decisions of Judge Sheppard: *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project*, Ministry for the Environment, Board of Inquiry, 4 September 2009 at [204] and secondly, *Bungalo Holdings Ltd v North Shore City Council* Decision No A055/01 at [67] and [70].

[24] As noted earlier, frustratingly, at the conclusion of the hearing, the court was unable to make a final decision on the evidence presented. Instead it made the findings that were open to it, amongst other matters directing Figure 1 showing the extent of the designation be amended. In so doing it has infelicitously employed the term "cancelled" to record in Order A and elsewhere, its findings in relation to the extent of land required for the enablement of Code D aircraft and the operation of an instrument precision approach runway. In particular, the court ordered "[t]hat part of the NOR required for [an] instrument precision approach runway and Code D parallel taxiway is cancelled".<sup>23</sup>

[25] RPL's submissions about whether the court intended to cancel or modify the requirement are subtle. In particular, RPL conflates the quite separate concepts in section 171(1)(c) of "work and designation" – that is the works and designation associated with Code D aircraft and the precision approach instrument runway, with the "objectives" of the requiring authority. It does so in the following submissions:

- at paragraph [2.13] that the "objective covered in Order A was actively pursued by the Queenstown Airport";



<sup>22</sup> Interim Decision at [52].

<sup>23</sup> Order A.



- at paragraph [2.17] it says “[t]he QAC elected to seek the requirement of a specified area of Lot 6 for a particular purpose and it has not succeeded”; and
- at paragraph [2.20] where RPL states that “[t]he power to modify has not been used where over 50% of the land is to be removed from the requirement because a principal objective has not been reasonably necessary”.

[26] In making these submissions RPL has not addressed either the notice of requirement which is to extend Designation 2 or the objective for the requirement set out in the notice of requirement - namely “to provide for the expansion of Queenstown airport to meet growth while achieving maximum operational efficiency as far as possible”.<sup>24</sup> The notice of requirement to extend the Aerodrome Designation is not for the objective of enabling either Code D aircraft or a precision approach instrument runway, but rather it is to meet projected growth while achieving the maximum operational efficiency.

[27] It is plain from reading the Interim Decision that Order A concerns the extent of land required and not the notice of requirement per se. This is confirmed at [237] where the court specifically refers to the land required for a precision approach runway and Code D taxiway. That the outcome of this Order is a modification to the notice of requirement is expressly stated at [242]. When the decision is read as a whole, and its words are not considered in isolation from their context, that is the only possible meaning of Order A. Some parties suggested that if the Orders did not properly express what was decided (and intended) then the decision could be recalled and corrected by amending Order A to read [instead] “modified”. However, we do not consider that recalling is necessary.

[28] As QLDC rightly submits, the court cannot be said to be *functus officio* in terms of Order A because it could not know with any certainty what precise area of land was not to be confirmed and therefore cancelled or modified. This is self-evident given Direction B(1)(a) requires QAC to amend by reducing the area of the Aerodrome



<sup>24</sup> At clause 2.1.4 of Annexure 2.

Designation by excluding provision for an instrument precision runway and Code D parallel taxiway and secondly, any land no longer required for carparking, circulation and landscaping.

[29] Nor do we accept RPL's submission that limiting the extent of the designation cannot be said to be a modification as it would alter the essential nature or character of the requirement.<sup>25</sup> The works proposed at the hearing to achieve this objective include, inter alia, those associated with the operation of Code D aircraft at the airport or operation of a precision approach instrument runway. The court has found that the objective may be achieved without these works.

[30] Finally, we do not accept RPL's submission to the effect that a submitter could not have anticipated the outcome of these proceedings.<sup>26</sup> We observe a modification of a notice of requirement is an outcome allowed under section 149U.

### Outcome

[31] It is an inefficient and costly exercise to require QAC to lodge a new notice of requirement where the court has a power to modify the notice by reducing the extent of land required and where the court is satisfied that the modification does not render the requirement inconsistent with what was notified. More particularly, the issues for determination are answered as follows:

- (a) does the Environment Court have jurisdiction to part confirm, modify or impose conditions in respect of the balance land?

Court's finding: Pursuant to section 149U(4) the court may confirm the requirement, and modify it or impose conditions as the court thinks fit. A modification to the requirement may include limiting the extent of the designation where the proposed works and designation are found not to be reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.



<sup>25</sup> RPL submissions dated 14 December 2012 at [2.13-2.20].

<sup>26</sup> RPL submissions dated 14 December 2012 at [2.21].

- (b) can the word “cancellation” in Order A be read to mean “modification”?

Court’s finding: Yes. When the decision is read as a whole, and its words are not read in isolation from their context, that is the only possible meaning of Order A.

- (c) can Order A be recalled and amended to read “modified” under the slip rule?

Court’s finding: Yes. However, we consider that Order A, when read together with the other Orders and reasons given in the Interim Decision, is only capable of being understood this way, and therefore a recall is not necessary.

[32] We turn next to the designation’s conditions.

*Issue: What is the lapsing period of the designation?*

[33] QAC seeks a lapsing period of 10 years by which the extension to the Aerodrome Designation is to be given effect. RPL prefers a five year lapsing period as is consistent with section 184 and submits that no case has been made out by any party for a longer or shorter period.<sup>27</sup> This submission is mostly correct – as the only evidence on this topic came from QAC planner, Mr J Kyle, in response to the court’s questions. While he was unable to recall QAC’s reasons for the 10 year lapse period, he thought that as the precinct would likely be developed in stages this period was reasonable, particularly if there would be a progressive relocation of existing general aviation/helicopter businesses from their current site within the existing Aerodrome Designation.

[34] A designation will lapse on the expiry of five years after the date on which it is included in the District Plan (s 184) unless one of subsections 1(a) – (c) apply. In *Beda Family Trust & Ors v Transit New Zealand*<sup>28</sup> Judge Whiting considered a request for a lapse period of 20 years for a designation for the Hamilton Bypass. At [112] he said:

<sup>27</sup> RPL memorandum dated 19 December 2012 at [7].

<sup>28</sup> Environment Court A139/04.



(112) No guidance is given as to the principles that are to be applied in determining a period different to the 1-5 year period mentioned in the Statute. To extend the period beyond 5 years a territorial authority, and this Court, is thus given a wide discretion.

(113) The discretion has to be exercised in a principled manner, after considering all of the circumstances of a particular case. There may be circumstances where a longer period than the statutory 5 years is required to secure the route for a major roading project. Such circumstances need to be balanced against the prejudicial effects to directly affected property owners who are required to endure the blighting effects on their properties for an indeterminate period. The exercise of the discretion needs to be underlain by fairness.

[35] In *Heron & Ors v Vector Gas Limited* [2010] NZENVC 203 Judge Smith applied *Beda* to an application by Vector to extend the lapse period to 10 years. He summarised the principles to be applied and considered as follows:

[26] The particular issues raised in *Beda* supporting a longer term related to:

- [a] The time frame in which the project is likely to be constructed;
- [b] Safeguarding the alignment from inappropriate use and development;
- [c] Certainty for affected landowners and the local community; and
- [d] The ability to implement the designation in due course.

[36] Mr Kyle did not know QAC's reasons for the 10 year lapse period, therefore his evidence was only speculative at best. In the absence of any cogent evidence addressing these matters, the statutory lapse period of five years is confirmed.

**Issue:** *Which version of the designation's purpose statement accurately records the works permitted within the extended designation?*

[37] At the court's direction the parties have proposed an additional purpose statement for Designation 2, but are not agreed on its wording (clause 1(f)). Moreover, QAC and RPL differ on whether the purpose statement and related conditions of the designation should refer to a "General Aviation Precinct" or "Aviation Precinct". RPL points out that QAC has agreed to the term "General Aviation Precinct" in the traffic and access conditions. Both parties agree whatever its label the precinct would accommodate general aviation, helicopters and aircraft hangars, including hangars for Code C aircraft, which is consistent with the evidence.



[38] While QLDC says this particular argument does not address any matter of substance, given the fact that the argument is made we wonder whether this is correct. Fundamentally we agree with RPL's submission that the purpose statement should accurately reflect the work for which the designation is sought. We have amended clause 1(f) to record that Lot 6 is required for a General Aviation Precinct and includes hangars for Code C aircraft.

*Issue: Which version of the landscape conditions is to be approved?*

[39] To provide context, we briefly recap the Interim Decision (the relevant parts of which are set out at [181-204]). While we found that the effects of development of the precinct, its land and buildings, on the surrounding environment could be satisfactorily managed, we were not satisfied with the proposed conditions. QAC's proposed conditions listed tools available to manage visual and amenity effects but without stating the objective to be achieved by this work. The court made clear that it was not seeking the content of any landscape plan, and doubted this would be possible without knowing the final layout of the precinct. Rather, the QAC was directed to prepare an Integrated Design Management Plan which would state the landscape and visual amenity objectives for building and infrastructure design and location and that this was to be done for a number of variables that were specified. QAC was also to propose assessment matters for the future outline plans of work.

RPL/QAC condition 1(a)

[40] The wording proposed by RPL and QAC for condition 1(a) is similar, save that QAC seeks to ensure that "intermittent views to the mountains" are maintained. In contrast RPL and the QLDC would have "key views" to the mountains maintained.

[41] When addressing this issue, all counsel overlooked the purpose of the Integrated Design Management Plan which is to provide a structure plan showing, inter alia, areas of landscaping, open space and, we emphasise, key view corridors. What is meant by "intermittent views" or "key views" will be interpreted in light of the purpose of the Integrated Design Management Plan. The words proposed by all of the parties for condition (1)(a) have the potential to confound the purpose of the Plan – as counsel's submissions demonstrate.

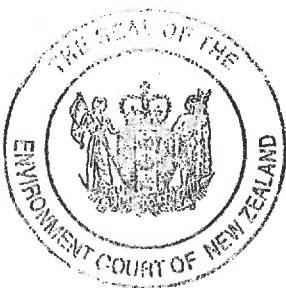


[42] It is sufficient that condition (1)(a) refers to views to the surrounding mountains, including outstanding natural landscapes. In practice what views are afforded of the landscape cannot be known until the Integrated Design Management Plan is developed with the layout of the precinct's buildings and infrastructure shown in broad terms. What is important is that the Integrated Design Management Plan addresses views through the General Aviation Precinct to the surrounding mountains, including outstanding natural landscapes, and this will be achieved by the Plan identifying key view corridors. It is reasonable to assume that views over the precinct will not be impeded, save to the degree allowed, through the bulk and height of buildings to be located within it.

[43] In the context of the Remarkables Park Zone the District Plan identifies important landscapes and features and has as an objective that urban development is to be in a form which protects and enhances the surrounding landscape and natural resources (objective 2). The landscapes mentioned in the introduction to the Zone<sup>29</sup> and secondly, the Explanation and Principal Reasons for adoption<sup>30</sup> include:

- views of The Remarkables mountains to the south-east;
- views of Coronet Peak to the north;
- views of the Crown Range; and
- views of all other local hills and mountains.

[44] We agree with all of the parties that there should be specific reference to the Remarkables Park Zone in this condition as it is difficult to understand how the General Aviation Precinct could be developed appropriately without having regard to the outcomes anticipated for the neighbouring Zone. Indeed, the proposed objective for the design and location of buildings is that they appear recessive and integrate with the surrounding landscape – including the Remarkables Park Zone which is specifically mentioned.



<sup>29</sup> Section 12, clause 12.10.1 Resources, Activities and Values.

<sup>30</sup> Section 12, objective 2.

[45] QLDC seeks to remove RPL's reference in the condition to "the District Plan" as it says the District Plan does not actually identify outstanding natural landscapes. We found this submission perplexing and we were not assisted by any explanation for QLDC's position in this regard.<sup>31</sup> We put this issue aside as we are not required to determine the matter of whether the Queenstown Lakes District Plan identifies outstanding natural landscapes. We hold that the words "in the District Plan" may be omitted from the condition as the matter is adequately addressed by referencing the Remarkables Park Zone in the condition.

RPL condition 1(c)(iii)

[46] RPL and QAC's wording of this condition is similar, save that RPL qualifies the condition by adding the prefix "mid" to the range of colours.

[47] We agree with QLDC that the qualification is unnecessary. We expect, as does QLDC, that the colour palette and reflectivity tools are well understood within the District and that the prefix "mid" could add confusion and uncertainty to the condition.

RPL/QAC condition 1(c)(iv)

[48] We agree with QLDC that RPL and QCL's proposed condition 1(c)(iv) should be amended so that consistent wording as with (iii) is employed.

QAC condition 1(b)(i) and (ii)

[49] It is not clear what QAC intends with conditions 1(b)(i) and (ii) which read in turn "...and where possible practicable..." and "...where necessary appropriate...". The editing of the conditions appears to be remiss.

[50] Consequently we approve the final wording proposed by QLDC and RPL for these conditions.

Condition 1(d)(i)

[51] RPL and QAC differ on whether the wording of this condition should refer to the matter at hand being significantly impractical or just impractical. QAC's specific issue

<sup>31</sup> QLDC memorandum dated 20 December 2012 at [4].



with the phrase “significantly impractical” includes lack of certainty – what is meant by significant is unclear and the proposed wording uncertain due to grammatical expression.

[52] We agree with QAC that the use of the word “significantly” is not insightful, particularly where it is applied as it is here to an adjective such as “impractical”.

[53] Furthermore, the court does not understand why the parties use practicality as a metric when deciding whether infrastructure should be integrated into the development by appropriate landscape measures. The practicality of a measure imports a discretion on the part of QAC which is not readily amenable to examination and may include considerations such as efficiency or cost.

[54] If it is possible to integrate infrastructure into the development then this should be considered. In many instances it may not be possible due, say, to Civil Aviation Authority regulations. However, where such considerations do not preclude integration then QAC is to address this possibility in the Integrated Design Management Plan. We have amended condition 1(d)(i) accordingly.

RPL proposed condition 2

[55] Notwithstanding that the court’s finding at [198] of the Interim Decision was not to impose the additional requirement upon QAC to consult with QLDC or any other interested person before lodgment of an outline plan of works, RPL has again come back on this matter by proposing a condition to that effect. The issue of a condition requiring QAC to consult was decided in the Interim Decision and we are not revisiting our decision.

[56] The statements made out at paragraph [4.3] of RPL’s memorandum dated 19 December 2012, some of which we do not wholly agree with, would not have been capable of changing our view on this matter. What is important is that the objective of the Integrated Design and Management Plan is clearly articulated and we are satisfied that has now been done.





RPL proposed condition 3

[57] RPL proposes a condition requiring that the Integrated Design Management Plan include a report by a suitably qualified and experienced landscape architect addressing how the design achieves the objectives for outstanding natural landscapes, landscaping, buildings and signage and finally infrastructure. The condition is opposed by QAC which considers the requirement would merely repeat the process of formulating the conditions for the designation. QLDC also considers this condition unnecessary.

[58] The placement of the proposed condition by RPL in the suite of conditions is unfortunate as it appears unrelated to the outline plan process. The wording of the condition talks about “how the design achieves the objectives...including how the design achieves good interface with surrounding areas...”. In practice this cannot be known until the precinct is developed.

[59] In the Interim Decision at [201(2)] we directed QAC propose conditions which require QLDC at the outline plan of works stage to consider, inter alia, the extent to which the outline plan of works gives effect to the Integrated Design Management Plan and achieves the relevant objectives. We have noted QAC’s advice that it is highly likely it will engage a landscape architect at this stage. It is our view that a report from a landscape architect is an important step in establishing achievement of these objectives and that the requirement to produce a report should be tied to the relevant condition. We have amended and repositioned RPL’s proposed condition accordingly.

QAC condition 3/RPL condition 5

[60] Because the wording of the “Integrated Design Management Plan” adds clarity to the condition these words are approved, as proposed by QLDC and RPL.

**Issue: Which version of the conditions relating to traffic and access arrangements is to be approved?**

[61] In our Interim Decision,<sup>32</sup> we set out our concerns over safety issues arising from traffic wishing to turn right when exiting the western access. Once Hawthorne Drive has been formed with a raised central median, this traffic would be required to turn left

<sup>32</sup> Interim decision at [165-167].



onto Hawthorne Drive, drive some 70 metres east to the intersection with Red Oaks Drive and then do a U-turn at this intersection. In addition to road traffic, we were told that this intersection would be a busy crossing point for pedestrians including children from the future secondary school.

[62] Given our concerns over safety, in our Interim Decision, leave was reserved for all parties to call expert evidence addressing the management of traffic using this western access. The parties did call expert traffic evidence, but agreement was not reached between them on traffic management conditions. In response to the court's concerns on the enforceability of some of the conditions which had been proposed, later in December 2012 the parties submitted a set of five traffic management conditions agreed in all respects except for two matters in condition 5 as follows:

- (a) QLDC (supported by QAC) seeks that provision be made for the future Hawthorne Drive/Red Oaks Drive intersection to have either a roundabout or be signal controlled. This is not supported by RPL which seeks that this be restricted to signal control only; and
- (b) RPL seeks that QAC be made responsible for installing pre-signals at the western access. This is not supported by QLDC or QAC.

[63] QLDC/QAC also proposed an Advice Note to the effect that all intersections and roading improvements are to be designed and constructed to QLDC standards and approval as the road controlling authority. All of the parties agree with QLDC's proposed Advice Note, as do we.

[64] For the Hawthorne Drive/Red Oaks Drive intersection, QLDC argues that flexibility should be maintained to provide for either a roundabout or traffic lights. We see no good reason for not providing for this flexibility and uphold QLDC on this matter. For the pre-signals, it is QLDC's view that these conditions are intended to respond to the management of the roading network with responsibility for funding being left until the implementation stage.<sup>33</sup> We agree.



QLDC Closing submission at [6].

[65] Apart from these three matters, in the December 2012 conditions, we had difficulty in distinguishing the difference intended between condition 4 and condition 5 and the related Figures 2 and 3. It appears that the parties and their experts had become stuck on the trigger that determines the level of mitigation required in the vicinity of the General Aviation Precinct. Figure 2 shows Hawthorne Drive extending past Red Oaks Drive as does Figure 3. Condition 4 refers to Hawthorne Drive extending “...*beyond its current termination...*” while condition 5 refers to Hawthorne Drive extended “...*east to or beyond the intersection with Red Oaks Drive...*”. In response to the court’s concerns, the three parties proposed that condition 5 be amended by replacing the words “...*east to or beyond the intersection...*” with “...*formed and operational east to and beyond the intersection...*”.<sup>34</sup> Even with this proposed amendment we continued to have difficulty in distinguishing the difference between the two conditions (and their related figures) as we conveyed to the parties in our minute of 15 March 2013 and elaborated on in the teleconference of 22 March 2013.

[66] Following the telephone conference, QAC proposed a condition which would allow full ingress and egress at the western access including both left and right turns until such time as signals are installed at the Red Oaks Drive intersection.<sup>35</sup> This is on the basis that prior to these traffic signals being required, traffic volumes will be sufficiently low so as to not compromise safety. We do not agree with this condition. In effect, if Hawthorne Drive was extended to Red Oaks Drive then prior to the installation of the signals, the condition would allow full turning movements at two intersections within about 70 metres of each other. Further, QAC appears to have discounted that condition 5 requires as a minimum that a roundabout be constructed from the outset at the Red Oaks Drive/Hawthorne Drive intersection.

[67] On the other hand, RPL’s amended conditions has merit to the extent that it identifies a trigger that could be applied to determine the level of safety mitigation required as vehicle and pedestrian movements increase, as they are expected to, in the vicinity of the General Aviation Precinct.<sup>36</sup> The trigger being (perhaps unlikely) where Hawthorne Drive is extended past the western access but not as far as Red Oaks Drive in order to provide access to land between the western access and Red Oaks Drive. In

<sup>34</sup> Joint memorandum of counsel dated 3 March 2013.

<sup>35</sup> Memorandum dated 12 April 2013.

<sup>36</sup> Memorandum dated 12 April 2013.



circumstances where the Red Oaks Drive intersection has yet to be constructed we accept that the volume of traffic will unlikely be at a level that warrants additional safety mitigation measures. As this is an appropriate workable trigger, condition 4 (as amended by the court) is approved:

If development within the GAP occurs prior to the construction and operation of an eastern access, and Hawthorne Drive has been extended eastwards beyond its current termination past the western access but not as far as Red Oaks Drive, then full ingress and egress will be allowed at the western access.

It follows from this that proposed Figure 2 will no longer apply, and because of that it will be necessary to renumber Figure 3 as Figure 2 and to amend condition 5 to suit.

[68] We have presumed that condition 5 includes the wording "*...and Hawthorne Drive is extended to or beyond the intersection with Red Oaks Drive (which is either a roundabout or signal controlled)...*" (underlining is our emphasis). It is quite clear from this wording that from the outset Hawthorne Drive/Red Oaks Drive is to have either a roundabout or signals irrespective of whether it is formed as a T-junction or an intersection. As for a roundabout at Red Oaks Drive it is our assumption that a roundabout would be designed to safely accommodate the required weaving movements for U-turning westward bound vehicles exiting from the GAP. For clarity, in condition 5 the words "*...which is either a roundabout...*" should be replaced with "*...which is to be either a roundabout...*". It is not for this court to determine what might be required to provide safe pedestrian conditions for future land use activities.

[69] With these amendments to the conditions, our concerns on traffic safety have been satisfactorily addressed. As such, we have found it unnecessary to respond to the detail of RPL's proposed conditions.

[70] To summarise the traffic conditions are to read as follows:

- (1) In the event that the Eastern Access Road (EAR) is formed and operational from Hawthorne Drive through to Glenda Drive, and access from the EAR to the eastern end of the General Aviation (including helicopters and Code C aircraft hangers) Precinct (the GAP) is constructed and operational then the eastern access shall become the primary



access to the GAP. The eastern access shall have a controlled intersection with the EAR approved by the road controlling authority and allow all movements from all approaches. Any access arrangement at the western (Hawthorne Drive) access shall revert to left-in access only.

- (2) In the event that a connection to the GAP is constructed and operational from a northern extension of Red Oaks Drive, then the western access from Hawthorne Drive shall be closed and full access and egress to the precinct shall be made from the Red Oaks Drive connection, irrespective of whether an eastern access to the precinct is constructed and operational.
- (3) If development within the GAP occurs prior to the construction and operation of an eastern access, and no extension from the current termination of Hawthorne Drive toward the western access has occurred, then access to the GAP shall occur through an extension of Hawthorne Drive by the QAC to the western access point, in a manner generally consistent with Figure 1.
- (4) If development within the GAP occurs prior to the construction and operation of an eastern access, and Hawthorne Drive has been extended beyond its current termination past the western access but not as far as Red Oaks Drive, then full ingress and egress will be allowed at the western access.
- (5) If development within the GAP occurs prior to the construction and operation of an eastern access and Hawthorne Drive is extended to or beyond Red Oaks Drive (which is to be either a roundabout or signal controlled at the discretion of the road control authority) then the western access at the connection with Hawthorne Drive shall operate on a left in and left out basis with pre-signals controlling traffic travelling east on Hawthorne Drive to enable egress from the western access in a manner generally consistent with Figure 2.

Lot 6 NOR Parking

[71] Attached to Mr Munro's rebuttal evidence of 23 April 2012 was *Table 1 Assessment of Area Requirements for Aviation Precinct*. This table detailed the make-up of the amended 18.4 hectares of land applied for by QAC under the NOR.

[72] In its memorandum of 9 November 2012, QAC submitted an updated version of Table 1 which excluded the instrument approach runway, the Code D parallel taxiway and land no longer required for car parking, circulation and landscaping. The reduction in the land requirement from 18.4 hectares to 8.07 hectares was based on a further attachment to this same memorandum titled *Aviation Precinct Concept Detail (Optimised) Code C Taxiway Separation 93m* dated 9 November 2012.



[73] At the resumed hearing on 6 and 7 December 2012, Mr Penny, the traffic expert for RPL, provided evidence in support of a yet further reduction in QAC's hectare requirement from 8.07 hectares to 6.27 hectares. He proposed that this could be achieved through a combination of realigning the access road to the north of the substation and a tighter configuration of parking around the aviation buildings.<sup>37</sup> We understand that this plan was developed by Mr Penny from the plans attached to Mr Williams' supplementary statement of evidence dated 19 November 2012.

[74] We accept QAC's advice that the building layout shown on Mr Williams' plans is at best indicative and that these documents have been prepared for planning purposes only. We also accept that QAC must be provided with reasonable flexibility to make adjustments to their indicative General Aviation Precinct layout when the time comes for it to develop final details of this at the outline plan of works stage. This is particularly important if the objectives for the Integrated Design Management Plan are to be achieved.

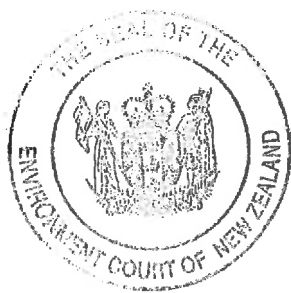
[75] We therefore direct that the land requirement for the General Aviation Precinct is to be 8.07 hectares as shown on the attachment to QAC's memorandum dated 9 November 2012, titled *Aviation Precinct Concept Detail (Optimised) Code C Taxiway Separation 93m* dated 9 November 2012, and that Figure 1 is to be amended accordingly.

#### **Final Comments**

[76] We have made minor word changes to some conditions that are not discussed above. This is not to change the meaning of those conditions, but to improve sense. In the case of the landscape conditions we have used RPL's conditions as our base document. All changes are tracked.

#### **Outcome**


[77] The notice of requirement is confirmed, subject to modification described below and secondly, the conditions **attached** to this decision.



<sup>37</sup> As shown on a plan titled *RPL NOR Designation* included as Attachment C to RPL's memorandum dated 18 December 2012.

[78] The requirement is to be modified by excluding land required for works associated with either the operation of Code D aircraft or the operation of a precision approach instrument runway. The extent of the Designation is shown in Figure 1 *Aviation Precinct Concept Detail (Optimised) Code C Taxiway Separation 93m* attached and dated 9 November 2012.

For the Court:

  
\_\_\_\_\_  
**J E Borthwick**  
**Environment Judge**



Issued:<sup>38</sup> - 8 MAY 2013

<sup>38</sup> JEB/DDALot 6 NOR Final Decision May 2013.doc



**Annexure A**  
**Conditions of the extension to designation 2**

**A. Purpose of the Designation**

[1] Insert into Designation 2 clause 1(f) the following statement of activities permitted within the Aerodrome Designation:

Within the General Aviation Precinct located on Part Lot 6 DP 304345:

- general aviation operations, including private aircraft traffic, rotary wing and helicopter operations, and
- hangars, including those for Code C aircraft; and
- associated activities, offices, aircraft servicing, fuel supply and storage, maintenance, buildings, signage and infrastructure, navigational aids and lighting, vehicle access, car parking, and landscaping.

**B. Approved conditions for Traffic/Access Arrangements to Lot 6**

- [1] In the event that the Eastern Access Road (EAR) is formed and operational from Hawthorne Drive through to Glenda Drive, and access from the EAR to the eastern end of the General Aviation Precinct (the GAP) is constructed and operational then the eastern access shall become the primary access to the GAP. The eastern access shall have a controlled intersection with the EAR approved by the road controlling authority and allow all movements from all approaches. Any access arrangement at the western (Hawthorne Drive) access shall revert to left-in access only.
- [2] In the event that a connection to the GAP is constructed and operational from a northern extension of Red Oaks Drive, then the western access from Hawthorne Drive shall be closed and full access and egress to the precinct shall be made from the Red Oaks Drive connection, irrespective of whether an eastern access to the precinct is constructed and operational.
- [3] If development within the GAP occurs prior to the construction and operation of an eastern access, and no extension from the current termination of Hawthorne Drive



toward the western access has occurred, then access to the GAP shall occur through an extension of Hawthorne Drive by the QAC to the western access point, in a manner generally consistent with Figure 1.

[4] If development within the GAP occurs prior to the construction and operation of an eastern access, and Hawthorne Drive has been extended beyond its current termination past the western access but not as far as Red Oaks Drive, then full ingress and egress will be allowed at the western access.

[5] If development within the GAP occurs prior to the construction and operation of an eastern access and Hawthorne Drive is extended to or beyond Red Oaks Drive (which is to be either a roundabout or signal controlled at the discretion of the road control authority) then the western access at the connection with Hawthorne Drive shall operate on a left in and left out basis with pre-signals controlling traffic travelling east on Hawthorne Drive to enable egress from the western access in a manner generally consistent with Figure 2.

Advice Note: all intersections and roading improvements shall be designed and constructed to Council standards and be subject to Council approval as road controlling authority.

### **C. Approved Landscape and Design Conditions**

[1] Not less than three (3) months prior to an outline plan for the GAP being submitted to the territorial authority pursuant to section 176A of the Act, the requiring authority shall prepare and submit to the territorial authority for certification an "Integrated Design Management Plan". The purpose of the Integrated Design Management Plan shall be to provide a structure plan showing the general configuration of roading, parking and areas of landscaping, open space and key view corridors and to determine the approach to be adopted to for the design and development of buildings and infrastructure (including signage). No outline plan shall be submitted by the requiring authority until such time as the territorial authority has certified that the Integrated Design Management Plan achieves the following objectives:

Outstanding Natural Landscapes:



- (a) Identify and maintain ~~key~~ views to the surrounding mountains ~~including and Outstanding Natural Landscapes identified in the District Plan, and~~ including those referred to in the Remarkables Park Zone. This may be achieved by:

- (i) providing sufficient separation between buildings and infrastructure to ensure that identified views to the mountains from neighbouring land to the south and north of the GAP are maintained;
- (ii) Interspersing ~~earparking and/or open space with~~ buildings and infrastructure with carparking and/or open space;
- (iii) Clustering of buildings.

Landscaping:

- (b) Provide landscaping within the GAP that achieves a high level of onsite and offsite amenity and ensures that any adverse effects on neighbouring land arising from development of the GAP are appropriately mitigated. This may be achieved by:

(i) landscaping of buildings, infrastructure and carparking areas that softens, integrates and where possible screens built form when viewed from neighbouring land and from the airport passenger terminal;

(ii) where necessary, planting along the boundary of the GAP to provide for the screening of buildings and infrastructure within the site and/or visual integration within the surrounding landscape;

(iii) a planting palette with sufficient range to enable the creation of character areas, but with elements that remain consistent throughout the GAP so as to create a consistent theme;

(iv) a hard landscaping element palette including paving, retaining structures, drainage grates, kerb profiles, bollards, fencing, light standards and any other ~~public~~ GAP infrastructure. More than one paving type may be included to enable the creation of character areas but all other hard elements should be consistent so as to create a consistent theme;



(v) a consistent carpark design, including soft and hard landscaping in all locations but allowing for some variation to enable the development of character areas.

**Buildings and Signage:**

(c) Design and locate buildings so they are recessive and integrated within the surrounding landscape (including the immediately adjoining Remarkables Park Zone), whilst recognising and providing for the buildings' function and use. This may be achieved by:

- (i) avoiding linear arrangements of buildings where practicable;
- (ii) varied rooflines that avoid uniformity, particularly when viewed from the south and elevated viewpoints;
- (iii) limiting roof colours to ~~mid~~-browns, ~~mid~~-greens and ~~mid~~-greys with a reflectivity of less than 36%, with no signage permitted on the roofs of buildings;
- (iv) limiting the external colour of the material used for walls of reflectivity of ~~all external colours and materials used on buildings to a natural range of browns, greens and greys with a reflectivity of~~ ~~to~~ less than 36%, with the exception that the trims, highlights and signage totalling up to 10% of the façade area may exceed this level and be of contrasting colours in order to add visual interest;
- (v) ensuring variation in the bulk, form and scale of buildings;
- (vi) providing interesting detailing and articulation of building facades, particularly when viewed from the south;
- (vii) the identification of signage platforms on buildings.

**Infrastructure:**

(d) Mitigate any adverse visual and amenity effects of infrastructure for visitors to the airport and users of neighbouring land. This may be achieved by:

- (i) locating aviation related infrastructure on the airside part of the GAP land where practicable and where possible ~~not significantly impractical~~, ensuring such infrastructure is integrated into the development by appropriate landscaping measures;



(ii) providing details of methods for managing stormwater and earthworks for the purpose of avoiding, remedying or mitigating any relevant adverse effect.

[2] The Integrated Design Management Plan shall allow for staged implementation of development within the GAP. If staged development is provided for then an overall plan showing the ~~various~~ likely stages and the method for ensuring a consistency of design and landscaping approach across the development of the entire GAP shall be included in the Integrated Design Management Plan. If the development is to be staged then the development of a precinct accessway ~~the road corridor~~ shall be part of Stage 1.

[3] The requiring authority shall ensure that all outline plans submitted pursuant to section 176A of the Resource Management Act 1991 ~~shall~~ demonstrate that the works subject to it are to be developed in a manner that achieves the objectives of the Integrated Design Management Plan. Outline plans shall contain a detailed landscape design plan including planting and maintenance plans to achieve objectives (a) and (b) of the Integrated Design Management Plan on an on-going basis. Each outline plan shall also contain details of buildings, signage, parking, and other built infrastructure to demonstrate how objectives (c) and (d) of the Integrated Design Management Plan are to be achieved. Each outline plan shall be accompanied by a report from a suitably qualified and experienced landscape architect addressing how the outline plan achieves the objectives of the Integrated Design Management Plan.

[4] The requiring authority may seek the approval of the territorial authority to make any necessary amendment to the Integrated Design Management Plan, without an application under the Resource Management Act 1991 to make such a change, provided that such amendments do not result in changing the purpose, or derogating ~~0~~ from the purpose and the objectives of the Integrated Design Management Plan set out in condition [1]. ~~without an explicit application to make such a change.~~

[5] If a review of the Integrated Design Management Plan is undertaken by the requiring authority then that review shall be undertaken in consultation with the consent authority.



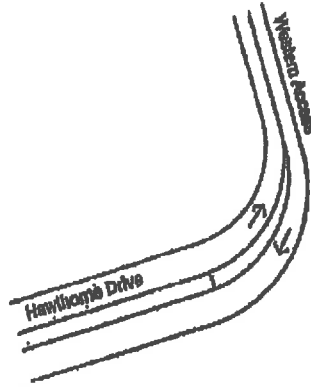


Figure 1

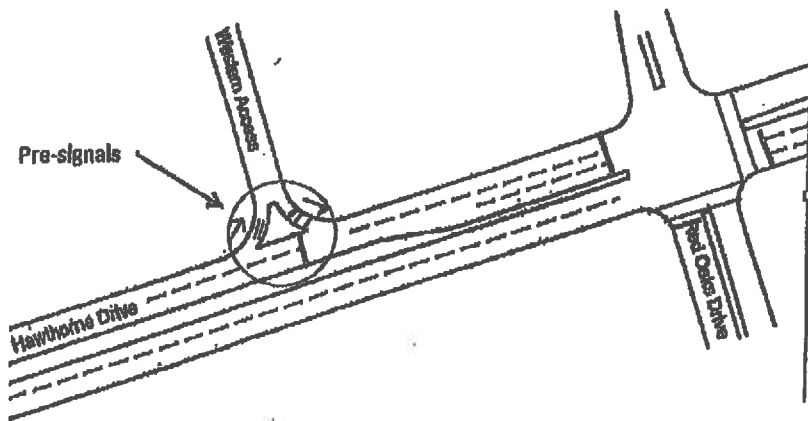


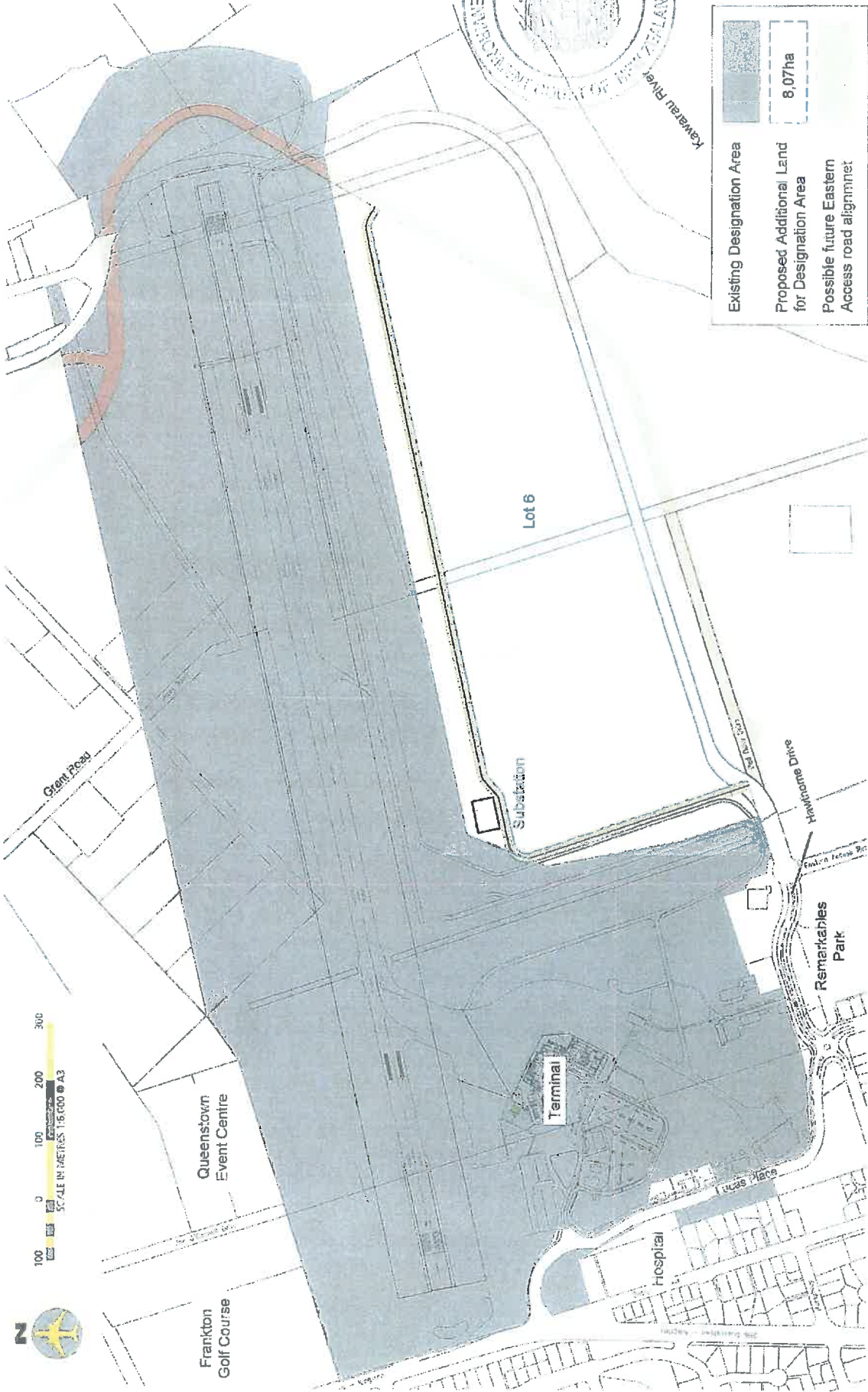
Figure 2

**Traffic Management Conditions**





0 100 200 300  
SCALE IN METRES 1:6 000 @ A3



[Dark Blue Shaded Area]	Existing Designation Area
[Dashed Line]	Proposed Additional Land for Designation Area
8.07ha	Possible future Eastern Access road alignment

**BEFORE THE ENVIRONMENT COURT**

Decision No. [2012] NZEnvC 206

**IN THE MATTER** of the Resource Management Act 1991 (the Act) and of an application under section 149T of the Act

**BETWEEN** QUEENSTOWN AIRPORT CORPORATION LIMITED

(ENV-2011-WLG-41)

Applicant

Hearing: at Queenstown on 16-20 July, 23-26 July 2012  
at Christchurch on 30 and 31 July 2012

Court: Environment Judge J E Borthwick  
Environment Commissioner R M Dunlop  
Environment Commissioner D J Bunting

Appearances: D A Kirkpatrick and R Wolt for Queenstown Airport Corporation Ltd  
D A Nolan and M M E Wikaira for Air New Zealand Ltd  
J G A Winchester for Queenstown Lakes District Council (regulatory)  
J E Macdonald for Queenstown Lakes District Council (non-regulatory) – present on 16 July 2012  
Dr R J Somerville QC and J D Young for Remarkables Park Ltd

Date of Decision: 25 September 2012

Date of Issue: 25 September 2012

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**INTERIM DECISION OF THE ENVIRONMENT COURT**

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A: That part of the NOR required for instrument precision approach runway and Code D parallel taxiway is cancelled. The court reserves its decision on the balance of the NOR.

B: By 5 October 2012 QAC is to file and serve:



- (1) an amended Figure 1 to the NOR reducing the extent of the requirement to exclude provision for a instrument precision runway and Code D parallel taxiway and any land no longer required for carparking, circulation and landscaping.
- (2) proposed conditions for inclusion in Designation 2 which give effect to the court's decision at [200]. These are to require:
  - (a) the preparation of an integrated design and management plan which states:
    - (i) the landscape and visual amenity objectives for building and infrastructure design and location and outcomes in relation to:
      - landscape planting, staging and maintenance plan;
      - the management of signage;
      - management of stormwater (including if relevant earthworks, retention ponds and landscaping); and
      - the standards for an acceptable range of building materials, colour, tones and reflectivity.
    - (b) the proposed assessment matters for outline plan(s) of works.
- (3) subject to [E]:
  - (a) a condition for inclusion in Designation 2 restricting the use of the western access to entry only access;
  - (b) a cross-section for inclusion in Designation 2 of the proposed western access;
  - (c) a condition for inclusion in Designation 2 requiring QAC to form access connecting with Red Oaks Drive, in the event that Red Oaks Drive is extended to the boundary of the designation (yet to be confirmed) and to close the entrance to western access.
- (4) a condition that requires consideration at the outline plan of works stage of whether noise attenuation is required in addition to measures in the District Plan.





- (5) an additional purpose statement for Designation 2 (to be included in the District Plan) that land shown in amended Figure 1 is to be used for a general aviation/helicopter facility, and associated air and landside buildings, infrastructure and landscaping.
- (6) the extent of land not required for carparking, circulation and landscaping and whether land previously required for this purpose is to be cancelled in part is to be confirmed.
- C: QLDC (regulatory) is to file and serve a memorandum responding to QAC at [B] by **12 October 2012**.
- D: If any party takes a different position to QAC or QLDC (regulatory) then they are to file and serve a memorandum by **19 October 2012**. Further directions will then likely follow.
- E: Leave is reserved for the parties to call expert evidence addressing the management of traffic at the western access. If further evidence is to be called the parties are to file a memorandum by **19 October 2012** advising the court. The hearing will be reconvened on **7 December 2012** in Christchurch.
- F: The requirement for an outline plan of works is not waived under section 176A of the Act.

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## REASONS

### Introduction

[1] This proceeding concerns Queenstown Airport Corporation Limited's notice of requirement to alter an existing designation in the Queenstown Lakes District Plan. The notice of requirement was referred to the Environment Court by the Minister for the Environment.

[2] Quite simply, the notice of requirement seeks to alter Designation 2 of the District Plan by extending the aerodrome at Queenstown Airport by 19.1 hectares. The activities enabled by Designation 2 are to remain the same.

[3] Queenstown Airport is owned by the Queenstown Lakes District Council and the Auckland International Airport Ltd.<sup>1</sup> It is one of the busiest airports in New Zealand, and is the country's largest regional airport. Each year, there are on average 40,000 aircraft movements and over 1 million scheduled and non-scheduled passenger movements through the Airport. The airport controllers handle upwards of 400 aircraft (domestic and international) movements per day, with growth in aircraft movements projected to increase over the next 25 years.

[4] To accommodate growth the existing passenger terminal and associated airside and landside facilities will be expanded. While the expansion of the passenger terminal and associated facilities can occur within the existing designation this will displace the general aviation from its present location.



<sup>1</sup> These companies own 75.1% and 24.9% of shares respectively.

[5] The notice of requirement facilitates the relocation of general aviation to enable the expansion of the passenger terminal and its associated facilities. The notice of requirement is also important, as it will determine the final location of the air noise boundary and outer control boundary that are the subject of Plan Change 35.

***Attached documents to this decision***

[6] Attached to this decision as Annexure 1 is a copy of a plan showing the subject land. While this plan records the total requirement of 19.08 hectares, at the commencement of the hearing counsel for QAC corrected this requirement to 18.4 hectares, the adjustment being made following the re-survey of the site and minor boundary adjustments.<sup>2</sup>

[7] Technical terms and abbreviations used in this decision are set out in Glossaries attached as Annexures 2 and 3.

**The parties**

[8] Four parties gave notice to be heard in relation to the proceeding. They are:

- Air New Zealand Ltd (ANZL);
- Remarkables Park Ltd (RPL);
- Queenstown Lakes District Council (in its regulatory capacity); and
- Queenstown Lakes District Council (in its non-regulatory capacity).

***Air New Zealand Ltd (ANZL)***

[9] ANZL filed a submission opposing the notice of requirement (NOR). ANZL supports the objective of the NOR, but submits the NOR does not, in its present form, achieve that objective.<sup>3</sup>

[10] ANZL has five areas of concern. These are:

- (a) the proposal to designate part of Lot 6 to accommodate a Code D parallel taxiway has no foundation;



<sup>2</sup> QAC Opening submissions at [7].

<sup>3</sup> ANZL Opening submissions at [2.1].

- (b) the proposal underlying the NOR that forward planning be based on a 300m main runway strip width, likewise has no foundation;
- (c) there has been inadequate consideration of alternatives, especially off-airport sites (other than Lot 6);
- (d) there has been an omission to consider, or the inadequate consideration of, economic aspects of the NOR;
- (e) there is already sufficient land available within QAC's existing designation to accommodate the relocation of the helicopters and general aviation.<sup>4</sup>

[11] ANZL submits that the NOR objective can be met within the existing designation and seeks that the NOR be cancelled.

*Remarkables Park Ltd (RPL)*

[12] RPL accepts that general aviation will need to move from its present location.<sup>5</sup> In common with ANZL, RPL contends that the objective of the NOR can be met within the existing designation and likewise seeks that the NOR be cancelled. More generally, RPL submits the location of the work on its land is contrary to sections 149U and 171(1)(a)-(c) of the Act.

[13] Pursuant to section 171(1)(d), RPL submits the court should have particular regard to two matters which it says are reasonably necessary in order for the court to make a determination on the requirement. They are:

- (a) against the earlier background of extensive land dealings between RPL and QAC, RPL's legitimate expectation that QAC would not seek to remove the benefits conferred to RPL under the contractual arrangements arising from these dealings; and
- (b) in the context of those contractual arrangements RPL alleges a cause of action in estoppel.



<sup>4</sup> ANZL Closing submissions at [1.3(b)].

<sup>5</sup> RPL Closing submissions at [4.1].

***QLDC (regulatory)***

[14] QLDC in its regulatory capacity (**QLDC (regulatory)**) sought leave to become a party late in the proceeding. Counsel for QLDC (regulatory) describes its role “as assisting the court to ensure that the notice of requirement (**NOR**), if approved, achieves the purpose of the RMA and results in an appropriate environmental outcome”.<sup>6</sup> (We note that the NOR cannot be approved if it does not achieve the purpose of the Act).

[15] QLDC (regulatory) called evidence on the topics of landscape/amenity, statutory planning, traffic and noise. Its witnesses supported additional conditions required to address effects on the environment of allowing the requirement. Subject to those conditions, QLDC (regulatory) did not raise any issue that would support the cancellation of the NOR.<sup>7</sup>

***QLDC (non-regulatory)***

[16] QLDC in its non-regulatory capacity (**QLDC (non-regulatory)**) filed a submission in support of the NOR, which we have considered. While counsel for QLDC (non-regulatory) entered an appearance on the first day of the hearing, it took no further part in the hearing.

**Description of the Queenstown Airport and the surrounding area**

[17] Queenstown Airport is located at Frankton, some 7 kilometres by road to the centre of Queenstown. The Airport is situated in Frankton Flats which is bordered by The Remarkables to the south-east, Lake Wakatipu and Peninsula Hill to the west. More distant is Queenstown Hill, Sugar Loaf and Ferry Hill to the north-west, Slope Hill to the north-east and Queenstown Range to the north.<sup>8</sup>

[18] Immediately to the north of the Airport is the Frankton Golf Course (partly located within the aerodrome designation), the Event and Aquatic centres and outdoor playing fields (these facilities are partly located on land subject to two designations, including the earlier in time aerodrome designation), the Glenda Drive industrial area



<sup>6</sup> Winchester Opening submissions at [2].

<sup>7</sup> Winchester Closing submissions.

<sup>8</sup> General Aviation and Helicopter Precinct updated review report December 2010 at [2.1].

and land that is the subject of Plan Change 19 (PC19). To the north-west is the settlement of Frankton.

[19] In the south-west is the Remarkables Park zone with its town centre and residential areas. This partly developed zone provides for commercial, residential and visitor accommodation, community and recreational facilities. The land (part of Lot 6) which is the subject of the NOR is zoned Remarkables Park (RPZ) Activity Area 8, and is presently used for grazing. Within RPZ and south of the Airport, and including Lot 6, is a large area of open space extending from the confluence of the Kawarau and Shotover Rivers to the boundary of the aerodrome designation.<sup>9</sup>

[20] The Airport and its immediate neighborhood are situated within an urban environment albeit one that has retained visual connection to the outstanding natural landscapes of the surrounding mountains. It is an environment which is undergoing rapid change with the runway extension, approval of the eastern access road, approval of Plan Change 34, and with the continuing development of the RPZ. This is to say, nothing of the development that would be enabled through PC19.

#### **Description of the airfield**

[21] The Queenstown Airport's aeronautical business falls into two main categories – scheduled airline passenger service and non-scheduled aircraft operations. Non-scheduled aircraft operations include helicopters, flightseeing and training, and smaller fixed wing aircraft and also private and military aircraft operations. Presently, scheduled airline services account for approximately 82% of overall passenger traffic.<sup>10</sup>

[22] The Airport operates a two runway system. The main runway, for most of its 1909m length, is 30m wide and has a runway strip width of 150m. This runway is used by scheduled airlines and non-scheduled operators. The main runway is an instrument non-precision approach runway which can accommodate up to Code C aircraft. A parallel chip sealed taxiway to the south of the main runway is not able to be used by Code C aircraft.



<sup>9</sup> There is a single building, a substation in Lot 6. It is not known whether this building will remain.

<sup>10</sup> General Aviation and Helicopter Precinct updated review report December 2010 at [2.2].

[23] Nearly all general aviation and helicopter operations are located in the grass area south of the passenger terminal. Referred to as the “general aviation zone” it accommodates both fixed wing and helicopter operators with facilities and associated flight operations occurring in close proximity, and interspersed with each other. There is a second smaller general aviation precinct immediately north of the passenger terminal. The shorter 994m cross-wind runway is used by general aviation (up to Code B) and helicopters.

[24] We understand that the accommodation of corporate jets is an informal arrangement.

#### **Description of existing designations**

[25] Three designations relevant to airport operations were drawn to our attention and these are:

- (a) Designation 2 (the Aerodrome designation);
- (b) Designation 3 (Air Noise Boundary designation); and
- (c) Designation 4 (Approach and Land Use Controls).

[26] The purpose of Designation 2 is given in the District Plan as being:

... to protect the operational capability of the Airport while at the same time minimising adverse environmental effects from aircraft noise on the community at least to the year 2015.

[27] The extent of the aerodrome designation is shown on planning map 31a, and it is proposed in separate proceedings before the court (PC35) to amend this map.

[28] The purpose of Designation 3 is to identify the area of airport operations where noise sensitive activities are prohibited. QAC intends to uplift Designation 3 upon approval of PC35. A final decision on PC35 is to be released in conjunction with these proceedings.

[29] Designation 4 limits the construction of any structure or facility which may inhibit the safe and efficient operation of Queenstown Airport. The designation describes the obstacle limitation surfaces in place for the Airport, which consist of an





approach and takeoff surface, a transitional surface, an inner horizontal surface and a conical surface.

### **Description of the works**

[30] While the exact configuration of development on land the subject to the NOR has not been finalised (and there is nothing unusual in this), the key elements of the NOR are:

- a helicopter facility;
- a general aviation (fixed wing) facility for up to Code B aircraft;
- a private and corporate jet facility for up to Code C aircraft;
- a fixed based operator (to service jets and possibly general aviation);
- a Code D parallel taxiway adjacent to main runway;
- a Code B parallel taxiway adjacent to cross-wind runway;
- a precision approach runway with a 300 metre width runway strip;
- ancillary activities, including landscaping, car parking, and an internal road network which includes two access roads to connect with Hawthorne Drive at the western end of the designation area and the Eastern Access Road (EAR) at the eastern end.

[31] These works are to meet QAC's objective for the NOR which is:

... to provide for the expansion of Queenstown airport to meet projected growth while achieving the maximum operational efficiency as far as possible.<sup>11</sup>

[32] As presented to the court the layout for the general aviation precinct occupies approximately 1 kilometre frontage of the existing aerodrome south and parallel with the main runway.<sup>12</sup>

[33] Access to the NOR area is off Hawthorne Drive at the western most end of Lot 6, adjacent to the boundary of QAC land. A second access is proposed at the eastern most end of Lot 6 to the proposed Eastern Access Road (EAR), although the timing of this



<sup>11</sup> NOR Annexure 2, Clause 2.1.4.

<sup>12</sup> NOR, Annexure 3.

depends upon the construction of the EAR.<sup>13</sup> An internal road would link the new general aviation/helicopter precinct to the passenger terminal.<sup>14</sup>

[34] In evidence QAC proffered three new conditions for the aerodrome designation, addressing the protocol for archaeological discovery, a landscape plan and building design control. Otherwise, no other changes are made to the aerodrome designation.

[35] Forecasting of growth in scheduled airline operations was given in the NOR documentation and updated in the evidence of QAC's airport planner, Mr I Munro. This evidence was uncontested and we accept it, as we do the evidence that in order to accommodate growth the passenger terminal and associated facilities will need to be expanded. The appropriate location for the expansion of the passenger terminal and its associated facilities is south of the current terminal, and includes part of the area where general aviation/helicopters presently operate. Growth entails also the need to expand airside facilities including a parallel taxiway for scheduled airline passenger services, at a location south of the main runway. Because of this we accept that the general aviation/helicopter precinct will need to be relocated; remaining in-situ is not an alternative.

#### **The area of the requirement for the designation**

[36] The area for the requirement is located adjacent to the aerodrome's main and cross-wind runways with access to the area off Hawthorne Drive (in the west) and secondly, the eastern access road (to be formed). Designation 2 (**the aerodrome designation**) is to be altered to include part of Lot 6, DP 304345 and a portion of an unformed road adjacent to the south-western corner of Lot 6, DP 304345.<sup>15</sup> Planning map 31a of the District Plan would also be amended.<sup>16</sup>

[37] The Airport's southern boundary and the extent of the existing aerodrome designation adjacent to Lot 6 is located 201m south of the main runway centerline.<sup>17</sup>

<sup>13</sup> The EAR is an extension of Hawthorne Drive.

<sup>14</sup> NOR, Form 18 at [2.5-2.6].

<sup>15</sup> Kyle, Supplementary evidence 18 May 2012 Appendix H, clause D. The NOR does not require any proposed amendment to the designation. These changes were proffered in Appendices E and H of the supplementary evidence of Kyle dated 18 May 2012.

<sup>16</sup> NOR Appendix U.

<sup>17</sup> Munro BiC at [45].



The requirement is for a strip of Lot 6 approximately 160m in depth, lying parallel to the entire 1 kilometre length of the common boundary of the QAC and RPL land.<sup>18</sup>

### The law

[38] The NOR was referred to the Environment Court by the Minister for the Environment pursuant to section 147(1)(b) of the Act. Section 149U requires the Environment Court to consider certain matters, being:

- (a) the Minister's reasons for making the direction;
- (b) the information provided by the EPA; and, as this case requires
- (c) to act in accordance with subsection (4).

[39] Section 149U(4) provides:

- (4) If considering a matter that is a notice of requirement for a designation or to alter a designation, the Court-
  - (a) must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority; and
  - (b) may –
    - (i) cancel the requirement; or
    - (ii) confirm the requirement; or
    - (iii) confirm the requirement, but modify it or impose conditions on it as the Court thinks fit; and
  - (c) may waive the requirement for an outline plan to be submitted under section 176A.

[40] Section 171(1A) and (1) provides:

- 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-



<sup>18</sup> Kyle, EIC at [4.2]. In NOR, Appendix N: General Aviation and Helicopter Precinct Updated Review Report the depth of land is given as 160m.

- (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; ...
- (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.

[41] The relevant Part 2 provisions are the purpose of the Act (section 5) and section 7(b), (c) and (f). Section 7 provides that in achieving the purpose of the Act we are to have particular regard to:

- (b) the efficient use and development of natural and physical resources;
- (c) the maintenance and enhancement of amenity values;
- ...
- (f) the maintenance and enhancement of the quality of the environment ...

[42] We set out the law in relation to sections 168 and 171, as the meaning of these sections were the subject of submissions.

### ***Section 168***

[43] Section 168, notice of requirement to the territorial authority, relevantly provides:

- (2) A requiring authority [for the purposes] approved under section 167 may at any time give notice [in the prescribed form] to a territorial authority of its requirement for a designation-
  - (a) For a project or work; or
  - (b) In respect of any land, water, subsoil, or airspace where a restriction is reasonably necessary for the safe or efficient functioning or operation of such a project or work.

...



- (4) A requiring authority may at any time withdraw a requirement by giving notice in writing to the territorial authority affected.
- (5) Upon receipt of notification under subsection (4), the territorial authority shall-
  - (a) Publicly notify the withdrawal; and
  - (b) Notify all persons upon whom the requirement has been served.

[44] RPL urged upon us a definition of “requirement” under section 168(2) that means “essential” as opposed to “desirable, feasible, practicable or preferable”.<sup>19</sup> We do not accept this submission.

[45] The term “requirement” is not defined in the Act, but in context it appears in section 168 as a noun - the term given to a proposal for a designation.<sup>20</sup> In subsections (2)(a) and (b) of section 168, the full term is given as “a requirement for a designation”. In subsection (4) this term is abbreviated to “a requirement”. Our interpretation is consistent with the definition of designation in section 166; designation means a provision made in the district plan to give effect to a requirement made by a requiring authority under section 168 or section 168A or clause 4 of Schedule 1. Moreover, if RPL’s interpretation were correct this would render section 171(1)(c) otiose.

[46] Finally, we do not accept RPL’s submission that the term “requirement” in section 168 RMA should be construed in light of section 40 Public Works Act 1981 (PWA). The matter and subject of these provisions are not, as submitted, *in pari materia*.<sup>21</sup> While the meanings of terms in one Act may sometimes be held to apply to the same terms used in another Act on the same subject, as the learned author of *Statute Laws in New Zealand* observes this is by no means an inevitable conclusion: “It is always dangerous to assume that words bear the same meaning in different Acts: the contexts and purposes may be different enough to make such analogies inapplicable”.<sup>22</sup> In this case neither the relevant term nor subject matter addressed in section 168 RMA and section 40 PWA are the same and we do not accept RPL’s submission that “a requirement” has the same meaning as “required” for the reasons we gave in [45] above.



<sup>19</sup> RPL Opening Submission at [4.3].

<sup>20</sup> See also *Ferrum Engineering Ltd v Otago Regional Council* [2008] NZMA 233 at [15].

<sup>21</sup> RPL Opening submissions at [18] on the same matter.

<sup>22</sup> J F Burrows *Statute Law in New Zealand*, 4<sup>th</sup> edition at p 249.

[47] We comment next on section 171(1)(b), (c) and (d), but before doing so, we note that section 171(1A) is not relevant to these proceedings.

***Section 171(1)(b)***

- (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

[48] As QAC does not own an interest in the subject land section 171(1)(b) is relevant. Indeed a central issue in this case is whether QAC gave adequate consideration to alternative sites, routes or methods.

[49] The *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* summarises the principles derived from case law interpreting this section 171(1)(b). We adopt what is said there as follows:

- a) the focus is on the process, not the outcome: whether the requiring authority has made sufficient investigations of alternatives to satisfy itself of the alternative proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate consideration does not mean exhaustive or meticulous consideration.
- b) the question is not whether the best route, site or method has been chosen, nor whether there are more appropriate routes, sites or methods.
- c) that there may be routes, sites or methods which may be considered by some (including submitters) to be more suitable is irrelevant.
- d) the Act does not entrust to the decision-maker the policy function of deciding the most suitable site; the executive responsibility for selecting the site remains with the requiring authority.
- e) the Act does not require every alternative, however speculative, to have been fully considered; the requiring authority is not required to eliminate speculative alternatives or suppositious options.<sup>23</sup>



<sup>23</sup> *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* Ministry for the Environment, Board of Inquiry, 4 September 2009 at [117] and [186].

[50] Furthermore, section 171(1)(b) does not confer authority on us to substitute our own choice amongst the alternative sites, routes or methods for undertaking the work of the requiring authority.<sup>24</sup> The territorial authority (or on direct referral the Environment Court) is not required to test each alternative against Part II.<sup>25</sup> It is sufficient for QAC to show that it did not act arbitrarily in its selection of alternatives.<sup>26</sup> We keep in mind the warning given by Judge Kenderdine in *Quay Property Management Ltd v Transit New Zealand* – the territorial authority (here the Environment Court) should not cross the line into the adjudication of the merits, determining the best use of the alternatives and, by that measure, deciding whether the chosen alternative was reasonable.<sup>27</sup>

***Section 171(1)(c)***

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

[51] Again, we respectfully adopt the summary given in the *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* as to relevant considerations arising under section 171(1)(c) of the Act. These are:

- a) The consideration is limited to the requiring authority's objectives for which the designation is sought, rather than an enlarged examination of alternatives (the subject of section 171(1)(b)).
- b) In paragraph (c), the meaning of the word 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.
- c) The paragraph does not impose some higher threshold or standard of proof that would require a requiring authority to demonstrate that the project and designation would better achieve its objectives than an alternative project or means of seeking authorization; nor that they absolutely fulfil its objectives.
- d) The Act neither requires nor allows the merits of the objectives themselves to be judged by the territorial authority.
- e) On whether a designation is the preferable planning method to be used, the relevant factors may include that a designation signals potential for future changes; provides a



<sup>24</sup> *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* ibid at [183].

<sup>25</sup> *Auckland Volcanic Cone Society v Transit New Zealand* [2003] NZRMA 316 at [60-61].

<sup>26</sup> *Quay Property Management Ltd v Transit New Zealand* Decision No. W028/2000, Kenderdine J. at [152].

<sup>27</sup> *Quay Property Management Ltd v Transit New Zealand* at [152].

clear method for those changes to occur (including the outline plan procedure where applicable); provides a uniform approach through various territorial authority districts and that it may not otherwise be possible to 'freeze' the existing plan provisions.

- f) A designation may also be a desirable planning method to establish a clear corridor for mitigation of some effects; to restrict conflicting uses and structures pending completion of detailed design (especially for a long-term project); and a precursor to compulsory acquisition of land under the Public Works Act.<sup>28</sup>

[52] To this we add that the Environment Court on direct referral may consider the extent to which the work is reasonably necessary for achieving the requiring authority's objectives and may limit the extent of the designation accordingly.<sup>29</sup>

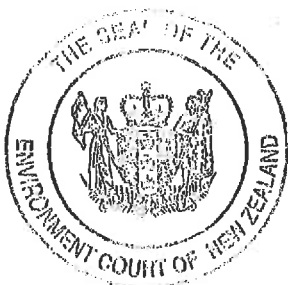
### Other legal issues

#### *Findings in relation to section 171(1)(d) and the Public Works Act*

[53] The PWA governs the acquisition of land for public works by local authorities. Pursuant to section 18(1) of the PWA, QAC gave notice to RPL and the District Land Registrar on 30 November 2011 of its desire to acquire part of Lot 6. No steps have been taken by QAC in relation to the compulsory acquisition process of the PWA.<sup>30</sup> The NOR has a direct bearing on the outcome of other proceedings before the Environment Court, including PC19, PC35 and the associated notice of requirement to alter Designation 2.

[54] We agree with counsel for QAC and QLDC (non-regulatory) that the compulsory acquisition process not having commenced, section 24 PWA is not directly relevant to our determination.<sup>31</sup> In particular, the three overlapping criteria<sup>32</sup> in section 24(7) of fairness, soundness and the reasonable necessity for achieving the objective of the local authority (here QAC) are not matters we need decide.

[55] We do not dismiss the opportunity yet open to the parties to reach agreement on the acquisition of land pursuant to sections 17-24 PWA or pursue other processes that



<sup>28</sup> *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* ibid at p [198].

<sup>29</sup> *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* ibid at p 204, *Bungalo Holdings Ltd v North Shore City Council* Decision No. A055/01 at [67] and [70].

<sup>30</sup> Lane Neave letter to the EPA dated 3 February 2011.

<sup>31</sup> QAC Closing Submission at [90-97].

<sup>32</sup> *Waitakere City Council v Brunel* [2007] NZRMA 235 at [47].



may be available to them. Even if we are wrong, and the issue of fairness (in particular) is relevant under section 171(1)(d), there is no evidence upon which we could find that QAC agreed, as submitted by RPL counsel, not to designate the land.<sup>33</sup> Apart from the fact that QAC and RPL entered into contractual arrangements we have no evidence from RPL as to its reliance on the contracts or any representation made by QAC when subsequently planning to develop its land or that it held a legitimate expectation its “buffer” ie. Activity Area 8, would not be reduced. (The contracts were handed up to the court as a bundle attached to counsel for RPL’s opening submissions, which we were told “not to read”).<sup>34</sup>

***Findings in relation to the best practicable option (section 16 RMA)***

[56] Referring to section 16 RMA, RPL criticises QAC for not using the best practical option as a method to assess the impact of alternate FATO locations.<sup>35</sup> *Ngataringa 2000 Inc v Attorney General*<sup>36</sup> was cited as authority that when seeking to achieve the best practical option this could include consideration of alternative sites, buffers to minimise noise emission, and the design of buildings or other works to incorporate the best practical option for noise mitigation features. A reading of the decision reveals that this was not the decision of the Planning Tribunal, but a submission of the applicant (for a declaration).<sup>37</sup>

[57] In *Ngataringa 2000 Inc* the Planning Tribunal held that those occupying designated land and responsible for activities on designated land are subject to section 16 of the Act.<sup>38</sup> Notwithstanding subsequent amendments to section 16, we accept that this interpretation remains correct. However, *Ngataringa 2000 Inc* is distinguishable from this case in that the requirement for a designation was confirmed and the requiring authority was in occupation of the land.

[58] We hold section 16 is not to be applied as if it were an additional criterion to subsection (1)(a)-(d) of section 171. In some cases adopting the best practicable option may be useful check for the decision-maker, particularly when assessing the adequacy of



<sup>33</sup> RPL Opening Submissions at [9.8].

<sup>34</sup> Transcript at [75].

<sup>35</sup> RPL Opening submissions at [7.5-7.10], RPL Closing submissions at [2.2.14-2.2.21].

<sup>36</sup> Planning Tribunal Auckland, Judge Sheppard, A16/94, 11 March 1994.

<sup>37</sup> At p [11].

<sup>38</sup> Decision at pp [16] and [28].

the alternatives under consideration, but not in every case. The effect of RPL's submission would be to require the Environment Court to determine the "best" alternative in respect of helicopter noise emissions. This approach is inconsistent with the scheme of the Act, but in any event belies the complexity of decision-making by QAC having regard to the competing alternatives. Subject to Part 2, the effects of noise on the environment of allowing the requirement are relevant as are a range of other environmental effects in contention in this proceeding.

### **Statutory Plans**

[59] We set out next the policy context relevant to this notice of requirement; in particular the Regional Policy Statement and the Queenstown Lakes District Plan (section 171(1)(a)).

### ***Regional Policy Statement (RPS)***

[60] The RPS contains the objective to promote the sustainable management of Otago's foreseeable needs of its communities (objective 9.4.2). Policies elaborate on what is meant by "sustainable" and importantly in this case policy 9.5.2 is:

To promote and encourage efficiency in the development and use of Otago's infrastructure through:

- (a) Encouraging development that maximizes the use of existing infrastructure while recognising the need for more appropriate technology; and

[61] The explanation for this policy emphasises sustainable use through consolidation and improved use of existing infrastructure prior to extensions or new development. This approach will "help reduce the costs to the community for providing and maintaining infrastructure and promote its more efficient use in the long term". In doing so, these provisions directly import considerations of efficient use and development of physical resources.

[62] Also relevant is the policy to maintain and where practicable enhance the quality of life for people and communities within Otago's built environment through, amongst other measures, the identification and provision of a level of amenity which is acceptable to the community (policy 9.5.5.).



*Queenstown Lakes District Plan*

[63] Frankton Flats is regarded as an important area in terms of providing for future urban growth. The Plan has a specific objective for Frankton in its District Wide Issues Chapter which is for:

Integrated and attractive development of the Frankton Flats locality providing for airport operations, in association with residential, recreation, retail and industrial activity while retaining and enhancing the natural landscape approach to Frankton along State Highway No. 6.<sup>39</sup>

[64] The related policy is broadly stated in terms of providing for the efficient operation of the Queenstown Airport and related activities in the Airport Mixed Use Zone (policy 6.1).

[65] The Transport Chapter contains an objective and policies addressing specifically air transport. In this chapter the Queenstown Airport is recognised as a physical resource important to the social and economic wellbeing of the community and secondly, an important factor in the rate of growth in the District. The explanation and reasons for the objectives and policies recognises that there is a balance between airport operations and the community needs that are to be achieved:

The District's airports must be able to operate effectively and in a manner which provides for the District's well being. At the same time any adverse effects on the community, particularly the resident community, must be mitigated. The Council is of the view that the operation of Queenstown Airport should not preclude opportunities for further development of activities in close proximity, provided that appropriate controls are implemented.<sup>40</sup>

[66] Responding to this, objective 8 provides that there are to be effective and controlled airports for the District, that are able to be properly managed as a valuable community asset in the long term.

[67] Several policies are relevant and include efficiency considerations relating to the use and development of the airport resource. These are:

<sup>39</sup> Chapter 4, District Wide Issues, Objective 6 at [4-56].

<sup>40</sup> Chapter 14, Explanation and principal reasons for adoption at [14-11].



- 8.1 To provide for appropriate growth and demand for air services for Queenstown.
- 8.2 To avoid or mitigate any adverse environmental effects from airports on surrounding activities.
- ...
- 8.6 To ensure buildings at both airports have regard for and are sympathetic to the surrounding activities, and landscape and amenity values by way of external appearance of buildings and setback from neighbouring boundaries.
- ...
- 8.8 To manage noise sensitive activities in areas with existing urban development surrounding the airport, while ensuring future noise sensitive activities in areas currently undeveloped and adjacent to airports are restricted.

[68] Relevant to these proceedings also is the underlying zoning for the land that is subject to the notice of requirement. Lot 6 is located within the RPZ's Activity Area 8. The RPZ is introduced as an area comprising "approximately 150 hectares of perimeter urban land in the vicinity of Frankton and occupies a strategic position".<sup>41</sup>

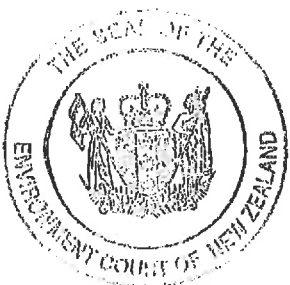
[69] Objective 1 for the zone is broadly stated as providing for the integrated management of the effects of residential, recreation, commercial, community, visitor accommodation, educational and Queenstown Airport activities.

[70] Several related policies address the relationship of the zone with the Queenstown Airport:

- (1) to require development to be undertaken in an integrated manner which maximises environmental and social benefits.
- ...
- (4) to ensure that development takes place in a manner complementary to the operational capability of Queenstown Airport.
- ...
- (5) to establish a buffer between the airport and noise sensitive activities in the Remarkables Park zone.

[71] Objective 2 provides for urban development to occur in a form which protects and enhances the surrounding landscape and natural resources. This is achieved through

<sup>41</sup> Chapter 12, Remarkables Park zone at [12-65].



a series of Activity Areas identified in the zone's Structure Plan including Activity Area 8 where Lot 6 is located. This Activity Area is described in the following terms:

**Activity Area 8**

- To enable the establishment of activities of a rural/recreational nature, infrastructural utilities and parking, which are not sensitive to nearby airport operations.

[72] The explanation and principal reasons for adoption of these objectives and policies states:

A significant "buffer" area of land formerly partly owned by Queenstown Airport Corporation Limited, this land is suitable for development for rural, recreational infrastructural facilities not of a noise sensitive nature. Much of it falls in close proximity to the airport and within higher noise control areas. As such residential activities, visitor accommodation and community activities are prohibited in this area within the Outer Control Boundary.

[73] While "buffer" is not explained in the District Plan, there was general agreement that these policies mutually benefited the RPZ and Queenstown Airport.

[74] Finally, an issue was raised by Mr Foster (RPL's planner) as to whether Designation 4's transitional surface provisions would need amending if provisioning for a 300m width runway strip was approved. While we agree with the interpretation of the relevant provisions given by Mr Kyle in response, there is no issue arising in relation to the transitional surfaces as it is our decision to cancel part of the NOR.

**Section 171 Evaluation**

***Introduction***

[75] In 2003 QAC initiated a review of its existing land and airside facilities at Queenstown Airport. Since then it has commissioned no less than eight reports from airport planning consultants Airbiz Aero, Woodhead and Landrun and Brown.<sup>42</sup>

[76] The reports produced in 2005, 2006, 2007 and 2008 consider sites for a new general aviation/helicopter precinct located within the existing aerodrome designation north of the main runway. In four of the eight reports produced, consideration was

<sup>42</sup> These reports are attached to the NOR Appendix G, N and S.



given to relocating the general aviation/helicopter precinct south of the main runway. However, in each case the site of the proposed southern precinct is different from that supported by QAC in its NOR, albeit part of Lot 6 is included.<sup>43</sup>

[77] When preparing the reports at no time prior to the NOR did QAC consult with scheduled operators, and then not at all with its principal operator ANZL.

***Master planning between 2005 and 2010***

[78] Up until the 2010 Master Plan, the airport planning parameters assumed that Code C aircraft were the design aircraft for the main runway and that Queenstown Airport would remain an instrument non-precision approach runway. In the first report produced by Airbiz (the 2005 Master Plan) Code D aircraft were considered but discounted due to the terrain and runway length constraints.<sup>44</sup> The retention of the 150m runway width strip was considered appropriate for Queenstown Airport as terrain would always be a limiting factor. Noting CAA's acknowledgement that due to significant terrain infringements to the Airport's obstacle limitation services, the report concludes that Airport would never be able to comply with the requirements for having an instrument runway.

[79] The 2005 Master Plan considered alternative locations for a general aviation/helicopter precinct within Lot 6 but these were dismissed because:

- (a) these options required protracted negotiations and change of designations without guarantee of outcome;
- (b) there were no significant operational benefits; and finally
- (c) the options were highly distracting to QAC management.<sup>45</sup>

***April 2007 South East Zone Planning Report***

[80] The South East Zone Planning Report is important in that it is the only report commissioned by QAC to consider possible uses of designated land south of the main

<sup>43</sup>See report dated April 2007 by Airbiz entitled *South East Zone Planning Report*; a report dated 11 February 2009 by Airbiz entitled *General Aviation and Helicopter Location Review*; A report dated 13 February 2009 by Landrun and Brown, entitled *General Aviation and Helicopter Location Review – Peer Review*;<sup>43</sup> and the Woodhead Master Plan produced 2008.<sup>43</sup> Woodhead Master Plan contains no text but is a single plan recording a southern general aviation precinct. The location of helicopter facility is not shown.

<sup>44</sup> NOR Appendix G pp [13-14] and Table 3.1.

<sup>45</sup> NOR Appendix G at p [35].



runway. The assumed planning parameters include a Code C aircraft design and a non-precision approach to the main runway.

[81] Airbiz concludes that within an area approximately 74m deep a range of developments were appropriate south of the main runway including corporate jets, private hangars, flightseeing and general aviation. However, there was likely to be insufficient land available to accommodate growth in helicopter businesses. For operational reasons associated with the interface of helicopters with other users of a proposed Code C parallel taxiway south of the main runway, Airbiz concluded the northern side was a better location for future helicopter facilities.<sup>46</sup> Airbiz also recommended that general aviation flightseeing operations be grouped north of the main runway.<sup>47</sup>

#### *2010 Master Plan*

[82] Finally, the 2010 Master Plan reports on five developments that had a significant bearing on the NOR provision for a general aviation/helicopter precinct on part of Lot 6. These being:

- (a) the protection of airfield runway/taxiway/object separation distances for a precision approach runway;
- (b) planning for a parallel taxiway;
- (c) consideration of protection for aircraft with wider wingspans;
- (d) accelerated traffic growth; and
- (e) the decision to consider Lot 6 as an option for the general aviation/helicopter precinct.

[83] Of these five developments, three (a-c) are critical in determining the spatial requirement for the designation.

[84] The 2010 Master Report evaluates two alternative locations for a general aviation/helicopter precinct:

<sup>46</sup>South-East Zone Planning Report, April 2007 at p [9].

<sup>47</sup> The reasons for this are given in the Helicopter and General Aviation Facilities planning report, dated November 2006.



- (a) a north-east option comprising 22 hectares of land owned by QAC situated north of the main runway and east of the cross-wind runway; and
- (b) a 19.1 hectares south-east option located on part of Lot 6.

[85] The Master Plan reports that as a consequence of adopting the revised planning parameters, land was no longer available for development within the existing aerodrome designation south-east of the main runway (as it had reported in the South East Zone Planning Report).<sup>48</sup>

[86] Finally the 2010 Master Plan also reports on on-going stakeholder consultation with the majority of tenants and operators at the airport (principally helicopter operators) and their concern that the new precinct not compromise operational safety and efficiency. A qualitative evaluation of the two alternative precincts is provided and in the executive summary Airbiz concludes that the north-east precinct is distinctively inferior.<sup>49</sup>

**Issue: Was adequate consideration given to alternative sites, routes or methods of undertaking the work (section 171(1)(b))?**

[87] RPL<sup>50</sup> and ANZL<sup>51</sup> identified five alternative sites or methods which they say were not adequately considered; these being:

- (a) locating the general aviation/helicopter precinct on land north of the main runway including on undesignated land owned by QAC and/or QLDC;
- (b) locating the general aviation/helicopter precinct on land north of the main runway within the aerodrome designation;
- (c) whether RPL land should have a building restriction strip placed on it for a distance of 15.5m from the common boundary to satisfy taxiway separation distance requirements for a new southern taxiway or whether CAA dispensation could be obtained for this;
- (d) the relocation of some or all of the general aviation and helicopter facilities off the Airport;



<sup>48</sup> 2010 Master Plan at p [13].

<sup>49</sup> NOR Appendix N 2010 Master Report at [1.6].

<sup>50</sup> RPL Opening Submissions at [7.4].

<sup>51</sup> ANZL Opening Submissions at [2.74].



- (e) consideration of individual components of the work being accommodated within the existing aerodrome designation.

[88] We consider (a), (c) and (e) to be entirely suppositious for reasons that we set out next. However this is not true for (b) and (d) which we consider in more detail.

***Locating the general aviation/helicopter precinct on land north of the main runway, including on undesignated land owned by QAC and/or QLDC***

[89] Conceptual plans prepared by RPL for a general aviation/helicopter precinct north of the main runway included undesignated land owned by QAC within the area of PC19.<sup>52</sup> Under these plans a general aviation/helicopter precinct would displace up to 4.52 hectares of industrial land within PC19. In proposing this option, RPL witnesses did not address the scarcity of industrial land within Queenstown (an important issue that PC19 *inter alia* seeks to address). There was some suggestion by the RPL planner, Mr M Foster, that aerodrome activities are industrial activities for the relevant activity areas within PC19.

[90] We doubt Mr Foster's interpretation is correct and in the absence of any evidence in this proceeding or PC19 addressing the implications of an aviation precinct within PC19, particularly in relation to the urban form and function, we do not consider that PC19 land should be available as part of an alternative location. Activities relating to an aviation precinct appear to be outside those contemplated by the District Council when promulgating PC19.

[91] The conceptual plans for a general aviation/helicopter precinct located partly on land designated for the Event Centre were not supported by Mr Foster. We agree with him that the presence of the Event Centre's designation would cause "serious trouble" and should be discarded.<sup>53</sup>

***Locating the aviation/helicopter precinct on land north of the main runway within the aerodrome designation***



<sup>52</sup> Sachman EIC at Appendix E, concept plans 1 and 1a, and Exhibits 11A-D.

<sup>53</sup> Transcript at [939].

[92] The crux of RPL's case is that if there is designated land on which QAC may develop a general aviation/helicopter precinct then it cannot be said this work or designation is reasonably necessary for achieving its objective (section 171(1)(c)). QAC responds submitting that "the existence of an alternative does not render a chosen option unnecessary and the choice of neighbouring land that is suitable can be reasonable where the requiring authority's land is less suitable."<sup>54</sup>

[93] The issue, and QAC's response to the issue, is framed in a way that concerns both the process (section 171(1)(b)) and secondly, the manner in which QAC's objectives are proposed to be given effect (section 171(1)(c)). It is practicable to respond to the issue in the manner it is framed, but in doing so we resist the invitation that is implicit in the evidence of RPL's aviation planner, Mr D Sachman, to adjudicate the merits of the alternative sites and, to paraphrase Judge Kenderdine in *Quay Property Management Ltd*, by that measure decide whether the chosen alternative is reasonable.

[94] The suitability or otherwise of existing designated land is a question of fact and degree and where suitable designated land exists there will be less tolerance around the issue of whether the work or designation is reasonably necessary to achieve the objective of the requiring authority. However, we do not go as far as to construe "reasonably necessary" to mean "essential" as submitted by RPL as this would ignore the qualification "reasonably" and secondly, it would necessitate the local authority (or Environment Court) to determine the best site for the works whereas this is a decision for the requiring authority (section 171(1)(b)).

[95] Before we commence our discussion of the central factual matter in contention, we give the following initial findings of fact:

- (a) there is insufficient land within the aerodrome designation to develop an instrument precision approach runway and southern parallel taxiway for Code D aircraft and to develop a general aviation/helicopter precinct; and



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<sup>54</sup> QAC Closing at [70].

- (b) QAC has no firm development plans for designated land north of the main runway.<sup>55</sup>

*Discussion and findings*

[96] RPL and ANZL submit QAC failed to give adequate consideration to a general aviation/helicopter precinct on land north of the main runway within the aerodrome designation.

[97] Mr Sachman gave conceptual evidence that reflected his comprehensive airport planning experience, but at times demonstrated a lack of local knowledge. He canvassed several possible permutations for a northern precinct and while we refer here only to his key points we have considered all of his evidence. Mr Sachman supported a northern precinct as it would separate scheduled and non-scheduled aircraft operations on either side of the main runway. In his opinion the separation of these services would have greater operational efficiency<sup>56</sup> and would entail less risk of foreign object debris on the taxiway.<sup>57</sup> We note that he was critical of the aircraft type selected as the basis of planning building and infrastructure requirements, and secondly the forecasting undertaken for components of the aeronautical businesses.<sup>58</sup>

[98] It was his evidence that use by general aviation, helicopter and corporate jets of the southern parallel taxiway would cause delays both to scheduled airlines and also to helicopters using the proposed southern FATOs. Delays would also be experienced as a consequence of:

- (a) 60% of all helicopter departures involving flight paths to the north and across the main runway;
- (b) the co-location of the helicopter facility within the fixed wing operating area;
- (c) the location of a second passenger terminal (FBO) between the general aviation and corporate jet facilities entailing complicated aircraft operations; and



<sup>55</sup> Transcript at [995] where QAC's former Chief Executive Officer, Mr S Sanderson discusses about maintaining the land for a buffer or perhaps to develop activities not sensitive to noise.

<sup>56</sup> Sachman EIC at [18-28].

<sup>57</sup> Sachman EIC at [35].

<sup>58</sup> Sachman EIC at [29-65].

(d) use by scheduled and non-scheduled operators of the new parallel taxiway.

[99] Finally Mr Sachman expressed the opinion that the proposed southern FATOs and parallel taxiway would not comply with the Civil Aviation Authority's advisory circulars. Because these allegations were not directly addressed by QAC in evidence or in the joint conferencing of expert witnesses, the Environment Court commissioned a report from the Civil Aviation Authority in response. A report was prepared by Mr M Haines, the manager of the Aeronautical Services Unit of CAA, who was then summonsed to attend the hearing.

[100] In his report Mr Haines confirmed that the proposed parallel taxiway complies with the separation distances in the CAA advisory circular (the advisory circulars being guidance materials). If simultaneous visual meteorological conditions operations are not allowed then the separation distance of a FATO from a runway or taxiway would not apply.<sup>59</sup> He foresaw no safety based reason which would prevent QAC from obtaining the appropriate certification should the southern precinct be developed.<sup>60</sup>

[101] Furthermore Mr Haines presented a quite different evaluation to that of Mr Sachman on certain key points of evidence. In his opinion locating general aviation north of the main runway could increase vehicle traffic across the main runway and could increase the risk of foreign object debris being deposited and separately the risk of runway incursions.<sup>61</sup> Air traffic controller, Mr B Macmillan, evidence was that helicopters departing the Airport in any direction from the southern and northern precincts would initially occupy the main runway.<sup>62</sup>

[102] While Mr Sachman gave detailed evidence comparing the flight paths for helicopters from northern and southern FATOs, we find this evidence to be of limited assistance as we have not accepted his concept plans for a precinct north of the main runway. All airport planners agreed that there are two peak periods of air traffic movement (early morning and mid to late afternoon). Outside of these periods there



<sup>59</sup> Report dated 9 July 2012 at [14-17].

<sup>60</sup> Transcript at [246].

<sup>61</sup> Report dated 9 July 2012 at [12-25].

<sup>62</sup> Macmillan Rebuttal (29 May 2012) at [15].

would be five to ten scheduled airline movements per hour during which helicopter operations could occur provided that there is no simultaneous use of the runway.<sup>63</sup>

[103] It is noteworthy that Mr Sachman (or RPL) does not give a substantive response to the operational reasons given by QAC for locating a helicopter facility south of the main runway.<sup>64</sup> Several issues present themselves against a northern precinct, including the transportation of dust into helicopter hangars carried by the prevailing westerly winds and the stronger lower frequency southern winds, increased exposure to the winds from the south and west during helicopter take off and landings, increased runway occupancy by helicopters to minimise or reduce exposure to prevailing winds; the geographical constraints north of the cross wind runway and the desirability for flight-paths over TALOs to be unobstructed by stacked (parked) helicopters.<sup>65</sup> All these are important factors which lead to the adoption by QAC of a southern precinct.<sup>66</sup>

[104] Having considered Mr Sachman's evidence, we gained no clear impression as to the relative operational efficiencies of locating a helicopter facility on either the north or south side of the main runway.

[105] For QAC we heard from Mr A Shaw of Oceania Aviation Ltd and Mr P West of Helicopters Queenstown Ltd who gave evidence as to why a northern helicopter facility was not suitable, and in Mr West's opinion, potentially unsafe.<sup>67</sup> The evidence Mr West gave in cross-examination impressed upon us the need not to over generalise when considering the operational efficiency of the two alternative precincts. Mr West's opinions were on matters well within his competence and experience as a helicopter pilot and on operational matters we prefer his evidence to that of Mr Sachman. (RPL did not call evidence from a helicopter operator).

***Restricting the use of RPL land for a 15.5m distance from the common boundary***

[106] While explored in cross-examination with QAC witnesses, no evidence was led on behalf of RPL as to what restrictions were proposed on this 15.5m strip of designated land including its intended purpose – although it is our understanding that this area would be to accommodate part of the obstacle clearance width for a Code D parallel

<sup>63</sup> Transcript at [357, 378].

<sup>64</sup> Sachman EiC at [76].

<sup>65</sup> West EiC and Rebuttal (in general).

<sup>66</sup> Morgan Rebuttal at [102-105].

<sup>67</sup> West EiC at [14], and Rebuttal in general.



taxiway. The relevance of this issue is moot given our decision is to cancel in part the NOR.

[107] That said, section 176 RMA would, subject to QAC approval, allow RPL to use designated land, although its use seems unlikely given Mr Morgan's advice that an airport security fence would be erected around the perimeter of the aerodrome as it is a security requirement of an international airport. And secondly, that a ring road, whether formed or not, is required for maintenance and inspection vehicles.<sup>68</sup>

***The relocation of some or all of the general aviation (including flightseeing) and helicopter facilities from the Airport***

[108] RPL and ANZL submit QAC failed to give adequate consideration to a possible relocation of general aviation (including flightseeing) and helicopter facilities from the Airport.<sup>69</sup> ANZL supports its submission relying on the evidence of Mr Morgan who said that the increased demand for scheduled passenger services would eventually constrain the airspace. ANZL did not identify any alternative locations for general aviation or a helicopter facility but said QAC should now consider any future land and airspace constraints and prioritise the elements of its business that it wishes to retain.<sup>70</sup>

[109] It was not suggested that the airspace constraints are such that there is an immediate need to relocate general aviation/helicopter facilities.<sup>71</sup> ANZL has not undertaken work to identify when any future airspace constraints may impact the operational efficiency of the Airport, rather it was Mr Morgan's "perception" that these constraints may arise.<sup>72</sup> We are not satisfied on the basis of his evidence that either the airspace is, or will be at some stage in the future, constrained. Airspace management is the responsibility of Airways New Zealand and we anticipate there could be a number of responses including, but not limited to, relocating elements of the aeronautical businesses from, or constraining their development at, Queenstown Airport. We do not consider QAC remiss for not exploring off-site locations for part of its aeronautical business.



<sup>68</sup> Transcript at [276-279, 325].

<sup>69</sup> RPL Opening Submissions at [7.4].

<sup>70</sup> Transcript at [218-219].

<sup>71</sup> Transcript at [220].

<sup>72</sup> Transcript at [223-4].

*Consideration of individual components of the work being accommodated within the existing aerodrome designation*

[110] Mr Munro's evidence was that the aeroclub and flight-training operators presently located on the northern side of the main runway have greater flexibility around where they locate and that these activities could operate on or off the Airport.<sup>73</sup> Their location would affect, to some small extent, the area required for the designation.<sup>74</sup> Mr Sachman gives similar evidence.<sup>75</sup> QAC does not appear to have given consideration in its NOR to whether the aeroclub and flight-training operators can locate within the existing aerodrome designation.

[111] Furthermore, there appears to be no consideration given by QAC as to whether the provisioning for a future instrument precision approach runway or Code D aircraft operations can be made within the existing aerodrome; no doubt this is because it considered these facilities in conjunction with the proposed southern precinct.

*Overall Conclusion*

[112] We conclude that there is an array of factors, including safety, which militate against a northern location for a helicopter facility. Of these cost (to the helicopter operator and other users of the Airport) is an important consideration, but it is not determinative. Section 171(1)(b) is satisfied as we find that adequate consideration was given to alternative location of the helicopter facility.

[113] Likewise we are also satisfied that adequate consideration was given by QAC to alternative locations for corporate jets and that it is operationally efficient to locate these adjacent to the proposed Code C taxiway south of the main runway.

[114] Apart from the April 2007 study, none of the studies looked at the option of splitting the various aeronautical businesses north or south of the main runway within the existing aerodrome designation. But in the absence of any contrary evidence we conclude, like corporate jets, it is operationally efficient to locate fixed wing operators adjacent to a proposed Code C taxiway.

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<sup>73</sup> Transcript at [338].

<sup>74</sup> Transcript at [338].

<sup>75</sup> Sachman EiC at [68].



[115] We are also satisfied that under section 171(1)(c) that a general aviation/helicopter precinct south of the main runway is reasonably necessary for achieving the NOR's objective.

**Issue: Is the work and designation reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought (section 171(1)(c))?**

[116] Two sub-issues arise:

- (a) the extent to which the work and designation are reasonably necessary for achieving the objective of QAC; and more generally
- (b) whether the works or designation are reasonably necessary for achieving the objective of QAC.

***Extent of works or designation***

***Introduction***

[117] The area of land required for the designation was influenced by two key decisions by QAC:

- (a) the type of runway (whether an instrument non-precision or instrument precision runway); and
- (b) the aircraft design parameters (whether Code D aircraft would operate at the Airport).

[118] We heard from Mr Morgan, for ANZL, who addressed, amongst other matters, the likelihood of Queenstown Airport runway becoming an instrument precision approach runway and of Code D aircraft operating at this Airport. His evidence is important in that it highlights QAC's assumptions that he says are wrong and, if he is correct in this, these assumptions may have had a significant bearing on the decision-making by QAC. QAC's 2010 Master Plan records:

However, on the basis of the recent recommendation that QAC should, in future, progressively adopt planning parameters for a precision approach runway, a recent decision has been made to revise the location for the future parallel taxiway to be at precision separation.





This greater separation (75m) will position the taxiway significantly closer to the airport boundary at the southern side, adjacent to Lot 6, consuming all of the potentially available land for a SE Zone (74m) shown in Figure 3-3, and negating any possibility for limited precinct development for fixed wing GA that was identified in the 2007 study.

[119] And later:

It is considered quite possible that some future [aircraft] types that develop from the current B737 and A320 families may be well suited to operate on the relatively short Queenstown runway but will have wider wingspans to improve lift and fuel efficiency, "creeping" beyond Code C dimensions into the next category, Code D.

Therefore, QAC has decided to adopt Code D precision runway separation and clearance distances for the taxiway, being:

- |                             |                     |
|-----------------------------|---------------------|
| • Runway-taxiway separation | 176.0m              |
| • Taxi-way-object clearance | 40.5m <sup>76</sup> |

[120] If, as ANZL contends, the appropriate main runway strip width is that for an instrument non-precision runway, that is 150m, then the separation distance between the runway centre line and the taxiway centre line for Code C aircraft is 93m, and for Code D aircraft, 101m.<sup>77</sup> Taken together with a taxiway object clearance of 26m or 40.5m for Code C or Code D aircraft respectively, the parallel taxiway for Code C or Code D aircraft can be located well within the existing aerodrome designation. In the case of a Code C parallel taxiway, an 82m wide strip of land would still be available outside of the taxiway and within the airport designation (and boundary) and for Code D there would be a 59.5m wide strip available.

[121] If Queenstown Airport's main runway were to become an instrument precision runway with a runway strip width of 300m, then the runway and taxiway separation distance including the object clearance for Code C aircraft would be 194m or 216.5 for Code D aircraft. As Lot 6 is situated some 201m from the main runway centerline, a

<sup>76</sup> 2010 Master Plan at p [13].

<sup>77</sup> Mr Morgan gave his supplementary evidence on 25 July 2012, after Messrs Morgan and Sachman. The line of cross-examination pursued by Mr Nolan in relation to Mr Munro proceeded upon a different understanding of the separation distance between the centreline of the main runway and taxiway (Transcript at [316-321]).



Code C parallel taxiway including the object clearance could be accommodated within the existing aerodrome designation. However, under a Code D parallel taxiway and object clearance scenario, the aerodrome designation would extend 15.5m into Lot 6.<sup>78</sup>

***Precision approach runway***

[122] Queenstown Airport is an instrument non-precision approach runway. CAA define a non-precision approach runway as being an instrument runway served by visual aids and a non-visual aid providing directional guidance adequate for a straight-in approach.

[123] A precision approach runway is an instrument runway served by (relevantly) Instrument Landing System (ILS) and visual aids intended for operations with a decision height not lower than 60m (200ft) and either a visibility of not less than 800m or a runway visual range not less than 550m.<sup>79</sup> An ILS controlled approach is a precision approach system and typically uses a combination of radio signals and high intensity lighting arrays to guide an aircraft approaching and landing on a runway.<sup>80</sup> This ground-based approach system requires a wider runway strip than a non-precision approach runway.<sup>81</sup>

[124] Three scheduled Queenstown Airport airline operators use the flight navigation system, Required Navigation Performance (RNP) technology. RNP is an aircraft based flight navigation system that is not designed to assist pilots during the landing phase and therefore cannot be described as a near precision technology.<sup>82</sup> Pilots, at the predetermined decision height establish visual contact with the runway when making their approach; if visual contact with the runway is not established the landing must be aborted.

[125] It was Mr Morgan's evidence for ANZL that Queenstown Airport would not become an instrument precision approach runway because of *inter alia* terrain constraints inhibiting ILS controlled approaches.<sup>83</sup> However, QAC is not suggesting

<sup>78</sup> Morgan Supplementary at [5.28]. All planning aviation witnesses agree that the Code D parallel taxiway and object clearance would extend 15.5m into Lot 6.

<sup>79</sup> Morgan EiC at [7.7] and supplementary evidence at [5.24].

<sup>80</sup> Morgan EiC at [7.14].

<sup>81</sup> Morgan EiC at [7.8].

<sup>82</sup> Morgan EiC at [7.24].

<sup>83</sup> Transcript at [199-200].



that an ILS controlled approach will be made operational at Queenstown Airport. Indeed, Mr Munro accepts Mr Morgan's description of RPN and ILS technology.<sup>84</sup> Rather it is his advice that QAC protect for the possibility of a precision approach runway in the future.<sup>85</sup> As Mr Munro considers a RNP approach to be a "near-precision" approach, he recommends that airports with RNP operations adopt standards equivalent to those for a precision approach runway (i.e. as if ILS were installed).<sup>86</sup> His evidence was that a recent CAA circulatory advice strongly supports the adoption of standards for an instrument precision runway.<sup>87</sup>

*Discussion and findings - precision approach runway*

[126] No evidence was adduced that the scheduled airline operators flying into Queenstown Airport using RNP technology would (or sometime in the future could) operate down to 60m (200ft) decision height – being the standard for a precision approach runway, (Category I).<sup>88</sup> As we have no evidence to the contrary we accept ANZL's submission that similar landing outcomes as would occur with ILS technology do not, and would not, occur at Queenstown Airport for safety reasons.<sup>89</sup> While the approved decision height for RNP is 300 feet, for its own operating procedures, Air New Zealand has decided to use 400 feet as an additional safety precaution which is well above the minima specified for instrument precision runways.<sup>90</sup> The introduction of RNP technology has not displaced what Mr Munro describes as the "long-standing practical reality" that flight operations in and out of Queenstown Airport are conducted with visual procedures due to the proximity of mountainous terrain.<sup>91</sup> It follows that we accept Mr Morgan's evidence that:

... because of the terrain constraints inhibiting ILS approaches the final stage of an approach needs to be conducted by assuming a visual approach at 400ft above ground level, which also means no more than a 150m runway strip width is needed.<sup>92</sup>

<sup>84</sup> Morgan Rebuttal at [156].

<sup>85</sup> Munro Rebuttal at [153].

<sup>86</sup> Munro EiC at [157].

<sup>87</sup> Munro EiC at [158-9] discussing CAA AC 139-6, Rebuttal at [76].

<sup>88</sup> Morgan Supplementary at [5.24], referring to AC139-6.

<sup>89</sup> Nolan, Closing Submissions at [4.41].

<sup>90</sup> Transcript at [200].

<sup>91</sup> Munro EiC at [151].

<sup>92</sup> Morgan Supplementary at [5.40].



*Code D aircraft*

[127] In QAC's application, the centerline separation distance between the main runway and the proposed southern taxiway is based on the largest Code D wingspan.

[128] Jet aircraft operating at Queenstown Airport fall into the Code C category, meaning that they have a wingspan of between 24 and 36m (but not including 36m). In his evidence-in-chief Mr Munro expands on the need to plan on the basis for aircraft with wider wingspans. He considers it plausible that future types of aircraft will be developed from the current Code C B737 and A320 families to aircraft that will have wider wingspans to improve lift and efficiency, thus "creeping" beyond the Code C dimensions into the next category, Code D.<sup>93</sup>

[129] Code D aircraft fall into two categories, those with smaller or larger wingspan between 36m to 52m. Code D aircraft with a larger wingspan would not likely operate at Queenstown Airport because of the physical size of the aircraft. However, Mr Munro considered it likely that at some time in the future a smaller Code D aircraft would operate and gave the timeframe for this to be towards the end of the 2020s or into the 2030s.<sup>94</sup>

[130] If planning is to consider not only what is known about the future, but also what is unknown but realistically possible, then Mr Munro recommended, and QAC adopted, precision runway separation and clearance distances for the Code D parallel taxiway.<sup>95</sup> In that regard Mr Munro emphasised the need to future-proof the Airport.<sup>96</sup>

[131] That said, Mr Munro agreed in response to the court that there is no nexus between the use of Code D aircraft and the attainment of the NOR objective.<sup>97</sup> Indeed "growth projections are, in the timeframes we are looking at, based on aircraft growth size, which is broadly expected to be achievable through aircraft up to a Code C size".<sup>98</sup>

[132] While it is not discussed in the NOR or evidence of QAC witnesses, the existing airside facilities would likely need to be upgraded to accommodate Code D aircraft.

<sup>93</sup> Munro EiC at [93-105, 167-173].

<sup>94</sup> Transcript at [330].

<sup>95</sup> Munro EiC at [171].

<sup>96</sup> Munro Rebuttal at [83].

<sup>97</sup> Transcript at [341].

<sup>98</sup> Transcript at [341-2].



This would include increasing both the width of the runway and its bearing capacity which would involve the reconstruction of the runway.<sup>99</sup> Code C aircraft operating at Queenstown Airport do so with CAA approval as the required runway width is 45m; not 30m as presently exists. Mr Morgan picks up on this also when answering the court's questions. For Code D aircraft to operate at Queenstown Airport the runway may need to be reconstructed, and possibly lengthened to accommodate the bigger planes.<sup>100</sup> He was unaware of any airport in the world where Code D aircraft operated on a 30m wide runway (with the exception of military aircraft) and at the very least the runway would need to be widened to 45m.<sup>101</sup> He said that in order to operate a Code D aircraft the runway would need to be widened and that, depending on the aircraft flying into Queenstown, the runway may also need to be lengthened and strengthened with fillets being provided at each end of the runway.<sup>102</sup> A reconfiguration of the terminal apron to accommodate the larger wingspan of these aircraft may also be required.

[133] Agreeing with Mr Morgan's evidence, RPL's aviation planner Mr Sachman recommended adopting Code C as the relevant planning parameter for aircraft design.<sup>103</sup> He noted the respect held by aircraft manufacturers for the Codes when designing airplanes in order to avoid impact on airport infrastructure.<sup>104</sup> He recommended planning for Code C aircraft, and if the use of Code D aircraft eventuates then to seek approval from CAA to operate the aircraft at this Airport.<sup>105</sup> Mr Munro accepted that it was one option to seek CAA approval, noting that if given, approval would involve restriction on the concurrent use of the runway and taxiway.<sup>106</sup>

*Discussion and findings – Code D aircraft*

[134] A smaller Code D aircraft of the type described by Mr Munro does not presently exist. (We exclude from our consideration the B757s which do not fly into Queenstown route and we were told are being phased out to be replaced by new generation Code C B737s and A320s).<sup>107</sup> Mr Munro's evidence proceeds very much on the basis that the

<sup>99</sup> Morgan EiC at [7.20-7.21].

<sup>100</sup> Transcript at [228-9].

<sup>101</sup> Transcript at [229].

<sup>102</sup> Transcript at [306].

<sup>103</sup> Transcript at [353].

<sup>104</sup> Transcript at [354].

<sup>105</sup> Transcript at [353-4].

<sup>106</sup> Transcript at [331].

<sup>107</sup> Transcript at [355].



Airport should plan for new generation aircraft which might emerge sometime in the future. While this might include airlines seeking to operate Code D aircraft at Queenstown Airport (and the evidence tends against the proposition), there is no suggestion of Code C aircraft being phased out – indeed the converse appears to be the case. On this matter we prefer the evidence of Mr Sachman that manufacturers will respect existing Codes when planning new and upgraded aircraft so that these can operate within the constraints of existing infrastructure at airports around the world, including Queenstown.

[135] If smaller Code D aircraft with improved lift and fuel efficiency were realistically possible, then we would have expected ANZL to support provision within the designation for this or at least explain why it could not. ANZL, while supporting within reason the need to “future proof” airports, does not consider it necessary (or appropriate) to provide for Code D aircraft at Queenstown.<sup>108</sup>

*Sub-issue - whether the works or designation is reasonably necessary for achieving the objective of QAC*

[136] The objective of the NOR is stated thus:

... QAC’s specific objective for the NOR is to provide for the expansion of Queenstown airport to meet projected growth while achieving the maximum operational efficiency as far as possible.<sup>109</sup>

[137] QAC’s planning witness, Mr J Kyle, gave evidence that the NOR has a single objective and we accept his evidence.<sup>110</sup> The objective is amplified upon in the NOR where it is stated that the NOR is required to ensure the continued safe and efficient functioning of the Queenstown Airport through expansion of the aerodrome to meet projected growth.<sup>111</sup> Growth means projected passenger and operational growth.<sup>112</sup>

[138] Mr Kyle conceded no connection was made by QAC’s airport planner with an instrument precision runway. The provisioning is made because it was considered

<sup>108</sup> ANZL Opening Submissions at [2.6].

<sup>109</sup> NOR Annexure 2, Clause 2.1.4.

<sup>110</sup> Counsel for QAC in closing submitted that there were two objectives; we do not accept this submission. Moreover the submission is not supported by the evidence or the NOR.

<sup>111</sup> NOR Form 18 at [1.3].

<sup>112</sup> NOR Form 18, Annexure 1, Clause 1.1.1.



“sensible” to do so.<sup>113</sup> While acknowledging that it fell to him to say how these works fit with the objective, we can find no considered evaluation of this matter. Expressed in general terms he concludes that the designation is reasonably necessary to “enable QAC to meet its stated objective”.<sup>114</sup>

### *Conclusion*

[139] On the issue of whether the works or designation is reasonably necessary for achieving the objective of QAC the evidence is clear; within the planning horizon under consideration there is no nexus between the NOR objective and enablement of Code D aircraft operating at Queenstown Airport.<sup>115</sup> The predicted growth is able to be achieved using Code C aircraft.<sup>116</sup>

[140] For the same reason we find that there is no nexus between the NOR’s objective and the provisioning for an instrument precision approach runway.

[141] The consequences of the findings are this: the provision of a instrument non-precision approach runway and Code C parallel taxiway would reduce the lateral extent of the land required by 97.5m along the approximately 1,000m length of the common boundary with RPZ, being a total land area of about 9.75 hectares. Put another way, the land required for the designation would be reduced from around 160m into the RPZ to around 60m. We are not, however, required to approve the Code C parallel taxiway. Land within the existing designation is available for this purpose and it is a matter for QAC to decide whether to construct the same.

[142] Subject to what we say at [164] in all other respects we conclude that the work and designation is reasonably necessary for achieving QAC’s objective. We prefer Mr Munro’s assessment of the comparison of area requirements for the northern and southern precincts as it comprehensively addresses the proposed building and infrastructure.<sup>117</sup> We found limited assistance in the area requirements produced by RPL’s witnesses as these do not include all components of the aviation precinct or use

<sup>113</sup> Transcript at [871].

<sup>114</sup> Kyle EIC at [7.72-7.76].

<sup>115</sup> Transcript at [340-1].

<sup>116</sup> Transcript at [342].

<sup>117</sup> Munro Rebuttal, Table 3.



different measurements to assess the components. When reconciled, as Mr Munro has done, we are satisfied that any difference between the witnesses' assessments is at best inconsequential.<sup>118</sup>

[143] Finally, we find the proposal to extend the designation to accommodate an instrument precision approach runway and Code D parallel taxiway is inconsistent with objective 9.4.2 and policy 9.5.2 of the RPS which encourages development that maximizes the use of existing infrastructure while recognising the need for more appropriate technology. Furthermore, QAC has land within its existing designation which, undeveloped, could accommodate a instrument precision approach runway and Code D parallel taxiway.

#### **Effects on the environment of allowing the requirement**

[144] Section 171 provides that 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 whilst having regard to the matters in subsection (1)(a-d).

[145] There are three categories of effects. These are:

- (a) noise;
- (b) landscape and amenity; and
- (c) traffic and transportation.

#### **Noise**

##### ***General aviation and helicopter noise***

[146] The noise generated by helicopters was the focus of evidence given by three very experienced noise experts – Mr Hunt who gave evidence on behalf of RPL, Mr C Day for QAC and Mr N Hegley for QLDC. While the noise model inputs used by the witnesses were agreed, Mr Hunt and Messrs Day/Hegley differed on the relevance of the model outputs when considering the degree and relative effect of helicopter noise if one or other of the general aviation/helicopter precincts are developed.

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<sup>118</sup> See Munro Rebuttal dated 29 April 2012 (in general).





[147] In his evidence-in-chief, Mr Day describes the Miedama and Oudshorn methodology used by the noise experts to compare the noise effects on local residents from three different precinct locations.<sup>119</sup> This methodology has been derived from a large number of studies undertaken to establish the relationship between aircraft noise levels and residential responses to this noise. The outcome of these studies is a graph which plots the percentage of people highly annoyed (over a range of 0 to 50%) against aircraft noise levels (over a range from 40 dBA Ldn to 75 dBA Ldn).

[148] The noise experts, assisted by the planners, arrived at agreed densities for the type of development proposed in each activity area around the Airport. They then applied predicted occupation levels for each type of development to calculate the number of people who would end up living in each area for the three bands of aircraft noise (50 – 55 dBA Ldn, 55 – 60 dBA Ldn and 60 – 65 dBA Ldn). In the final step, they used the Miedama and Oudshorn graph to predict the number of highly annoyed people in each band of each area.

[149] Following a number of iterations, Mr Day and Mr Hunt finally produced an agreed table of the numbers of people predicted to be highly affected within each noise band in the three precinct options.<sup>120</sup>

[150] Based on Mr Day's approach irrespective of the location of the general aviation/helicopter precinct, there will be people within the wider Frankton Flats area (in particular Frankton and PC19) predicted to be highly annoyed by noise. While the number of people who will be highly annoyed will be slightly less with a northern precinct, in his opinion the difference in those affected between the precincts is not significant.<sup>121</sup>

[151] Mr Hunt's evidence proceeded on the basis that noise would concentrate in the vicinity of the TALOs – the actual point that helicopters land and depart.<sup>122</sup> In contrast with Mr Day, Mr Hunt does not include the number of highly annoyed persons who will live in the 50-55 dBA Ldn noise band. He considers that the noise in this band will be dominated by the sound of aircraft from the main runway, and that these people would

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<sup>119</sup> Day EiC at [8.0].

<sup>120</sup> Exhibit 5.

<sup>121</sup> Day EiC at [61]. While the outputs in the EiC subsequently changed, we did not understand this to have affected Mr Day's opinion.

<sup>122</sup> Transcript at [796].



not be sensitive to the noise generated from the general aviation/helicopter precinct.<sup>123</sup> Mr Hunt finds it to be counter-intuitive that the number of highly annoyed persons in the 50 to 55 dBA Ldn noise band south of the main runway will increase if the general aviation/helicopter precinct is located north of the main runway. Again he says this points to the greater effect of noise from runway aircraft.<sup>124</sup> (Mr Day points out that the reason for this increase is that aircraft operations in the northern precinct result in a much wider 50 to 55 dBA Ldn band to the south and that as a result, more people are affected. This increase is offset by fewer people living in the much narrower 55 to 60 dBA Ldn band).<sup>125</sup>

[152] It is also Mr Hunt's opinion, that the noise generated by helicopters along agreed flight paths has an inconsequential effect on the overall shape of the 50 and 55 dBA Ldn noise contours<sup>126</sup> because helicopter noise is dispersed along the different flight paths.<sup>127</sup> Mr Day disagrees, pointing out that except for at the eastern border, the noise levels in the RPZ are being determined by the general aviation and helicopters using the cross-wind runway.<sup>128</sup>

[153] Taking a disaggregated approach and concentrating on RPZ, Mr Hunt concludes that if the general aviation/helicopter precinct was located south of the main runway, then more people would be highly annoyed within the RPZ than compared with those who would be highly annoyed in Frankton (if the precinct is retained in its present location) or PC19 (if the precinct was located north of the runway). On that basis, in his opinion, the southern precinct is the least preferable option.<sup>129</sup>

*Discussion and findings – general aviation and helicopter noise*

[154] The noise from helicopters travelling along the flight paths has been modelled and these levels are reflected in the noise contours in PC35.<sup>130</sup> The modelling includes with or without the Lot 6 option. The noise contours in the vicinity of the RPZ (including Lot 6), are a record of noise emanating from both the main runway and

<sup>123</sup> Transcript at [791, 798].

<sup>124</sup> Transcript at [791].

<sup>125</sup> Transcript at [800].

<sup>126</sup> Transcript at [794].

<sup>127</sup> Transcript at [797].

<sup>128</sup> Transcript at [800].

<sup>129</sup> Hunt EIC at [65].

<sup>130</sup> Transcript at [579].



general aviation and helicopters using the cross-wind runway.<sup>131</sup> Modelling includes, but is not limited to, the noise and energy levels generated at the proposed FATOs and TALOs. Noise levels increase in proximity to the FATOs and TALOs and the air noise boundary show this change to be relatively localised.<sup>132</sup> Irrespective of where the aviation/helicopter precinct is located noise will be generated from this source. When under or near a flight path persons within the Frankton Flats area generally will be exposed to noise from general aviation and helicopters; the effects of noise are not restricted to the FATOs or TALOs.

[155] The incidence of residents within the 50-55 dBA Ldn noise band who are predicted to be highly annoyed by noise, even if the percentage is less than those who live in the higher noise bands, is of no less relevance than those highly annoyed people who live in these higher noise bands. Irrespective of where they live a percentage of people will be highly annoyed by noise.

[156] Of relevance also are the differences between the numbers of people predicted to be highly affected from noise if the general aviation precinct was to be retained in its present location compared with the precinct being located at the two alternative locations. On Mr Day's approach for the total number of people highly annoyed with the precinct in its current location, a greater number of people within the RPZ are predicted to be highly annoyed than compared with the people located at PC19 or Frankton. But this would be the case irrespective of the location of the precinct. Messrs Day and Hegley's opinion is that when the total number of people who are highly annoyed are aggregated there is little difference where the precinct is located.

***Overall Conclusion – general aviation and helicopter noise***

[157] In PC35 (before this division of the Environment Court), RPL proposed, and the other parties agreed on mitigation measures for the attenuation of noise in defined areas inside of the 55 dBA Ldn contour in Activity Areas 6 and 7 of the RPZ to allow for residential and educational buildings. We are satisfied that with these measures in place, together with the amendments proposed by the Environment Court in the Interim Decision on PC35, the extension of the Airport will not preclude opportunities for future development within the RPZ. When compared with people living either now or in the

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<sup>131</sup> Transcript at [800].

<sup>132</sup> Transcript at [800].



future in Frankton or in residential areas north of the main runway, more people living within RPZ are predicted to be highly annoyed by noise as a consequence of growth in aircraft movements and this is so irrespective of the location of the general aviation/helicopter precinct. Overall we do not find this aspect of the NOR to locate the helicopter precinct on the southern side of the airport to be in tension with the planning instruments.

*Other noise matters*

*A single event level approach*

[158] RPL is also concerned with the amenity effects of single event noise levels from helicopters and fixed wing aircraft on short take off along the cross-wind runway. Through cross-examination counsel explored with Mr Day the usefulness of the single event level as an assessment method.<sup>133</sup> Mr Day's response was that while single event levels are used to assess sleep disturbance effects at night (and that is its purpose), it is not a tool employed by noise experts to evaluate either the effects of noise on amenity nor is it an appropriate response to amenity effects. Mr Day did not support RPL's proposition that it could or should be used for this purpose and he did not see it assisting the evaluation of the best practicable option to mitigate noise.<sup>134</sup> Mr Hunt did not give evidence supporting the use of the single event levels for these purposes.

[159] In the absence of evidence to support the proposition that single event levels may be used as an alternative method to assess the effects of daytime noise, we accept the evidence of Mr Day.

*Unplanned engine testing*

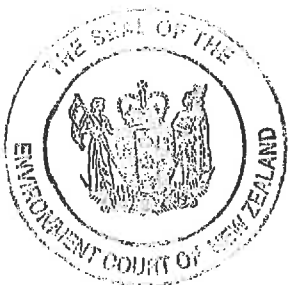
[160] We accept Mr Day's evidence that unplanned engine testing is not a significant issue. The incidence of this is not expected to be higher than once per year and is to be managed through the Noise Management Plan provisions that are the subject of PC35.

*Earth Bund*

[161] The reinstatement of an earth bund on the south side of the aerodrome was supported by Mr Hunt as a form of mitigation should buildings within the extended

<sup>133</sup> Transcript at [98].

<sup>134</sup> Transcript at [464-479].



aerodrome designation not be constructed in a manner to form an acoustic barrier.<sup>135</sup> Mr Day's evidence was that the difference with or without the extant bund would be 1 dBA, a sound level which is not detectable. If additional mitigation is required he recommended an acoustic fence be built.<sup>136</sup>

The need for additional noise attenuation is to be assessed at the outline plan of works stage, and directions will be given that QAC include a condition in the designation to give this effect.

#### **Traffic management**

[162] We heard from three expert witnesses on the topic of traffic management: Mr N Williams (QAC), Mr S Woods (QLDC) and Mr T Penny (RPL). At the commencement of their evidence a second joint witness statement was tabled recording their agreement on all outstanding traffic management issues.<sup>137</sup>

[163] In particular the witnesses were agreed on the following:

- (a) the cross-section of the western access road connecting the general aviation and helicopter precinct with Hawthorne Drive;
- (b) that 450-600 car park spaces are required to service the 25,000m<sup>2</sup> floor area of the proposed precinct's buildings;<sup>138</sup>
- (c) in addition to land required for the western access and its associated landscaping, 1.3 – 1.7 hectares of land is required for carparking, circulation and landscaping and not 5.6 hectares as previously estimated; and
- (d) the balance 2.7 – 3.1 hectares along the 1 km frontage to the RPZ (being some 27-31m in depth), is no longer required for carparking, circulation and landscaping.

#### ***Land surplus for carparking, circulation and landscaping***

[164] The traffic witnesses appeared to be of the view that this 5.6 hectares of land at clause (c) differed from an estimate given by Mr Munro. We are not sure that is the case,

<sup>135</sup> Hunt Rebuttal at [20-12].

<sup>136</sup> Day Rebuttal at [20-24].

<sup>137</sup> Dated 20 July 2012.

<sup>138</sup> This is estimated on the basis that 1.8-2.4 spaces per 100m<sup>2</sup> floor area.



but irrespective of that it appears that the area in the NOR required for carparking, circulation and landscaping (excluding the western access) is too large and not all of the land required is reasonably necessary to meet QAC's objective. The evidence is conflicting and it is not possible for us to reach a view as to the amount of surplus land. Consequently directions have been given that the parties file memoranda addressing whether the designation is to be cancelled in part by reducing the land area required. This should be considered in tandem with the landscape directions which may have a bearing on this extent of land required.

*Western access*

[165] The witnesses addressed a potentially quite problematic issue concerning the western-most access to the proposed general aviation/helicopter precinct. Since February 2012 RPL and the Minister of Education have entered into a contractual arrangement to buy land in the RPZ adjacent to Red Oaks Drive south of Hawthorne Drive for the purpose of establishing a secondary school.

[166] Hawthorne Drive is yet to be formed in the vicinity of the western access. When it is, the southern precinct's traffic movements will likely be restricted by a concrete median strip to left in and left out turns. Drivers wanting to turn right will be required to do a U-turn at one of two intersections controlled by traffic lights.<sup>139</sup> To the east, some 70m distance from the access, the intersection between Red Oaks Drive and Hawthorne Drive is very likely to experience significant pedestrian movement associated with children from the future secondary school crossing Hawthorne Drive. The desire to control movement across Hawthorne Drive (which will be a four lane road) is the reason for the traffic witnesses' recommendation that this intersection become signalised. The second signalised intersection is to be located some 200m west of the access in the vicinity of the Remarkables Park Town Centre and would be used by west bound Hawthorne Drive traffic wishing to enter the precinct.

[167] We have noted the heavily qualified joint statement made by the traffic witnesses – that U-turns at these intersections would be less than desirable, but technically feasible, “at least in the short term”. Mr Penny acknowledged that the U-turn would increase risk [we interpose of conflict between pedestrian and vehicular movements] and

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<sup>139</sup> Transcript at [620].



confusion at the intersections.<sup>140</sup> In his view, while physically feasible this movement is not desirable.<sup>141</sup>

[168] Critically, the traffic experts have not modelled the distribution (and timing) of traffic movement at the intersections.<sup>142</sup> Added to the traffic movement associated with the proposed southern precinct is traffic generated by PC34 – which while under appeal no change is expected to the additional 30,000m<sup>2</sup> gross floor area for retail activity that it enables.<sup>143</sup> It was faintly suggested that the risks associated with the U-turns may be managed by constructing a right turn bay at the Hawthorne Drive/Red Oaks Drive intersection. However, there has been no assessment of this facility and in any event it is beyond the scope of the NOR. Also a right turn bay would not address the ability of traffic to safely cross two lanes to reach the right turn bay over a relatively short distance between the western access and Red Oaks Drive.

[169] Because of the concerns shared by the traffic witnesses about the management of traffic, particularly in relation to Red Oaks Drive intersection, it was their view that access to the designation area would be considerably improved if the access was to connect directly to an extension of Red Oaks Drive north of Hawthorne Drive.<sup>144</sup> This would entail an extension to Red Oaks Drive over land owned by RPL - although we note that the court has no jurisdiction to direct this outcome. However, counsel for QAC agreed that the court could require the access to connect with Red Oaks Drive if this road was extended to the boundary of the aerodrome designation.

### *Discussion and findings*

[170] All this leaves the management of traffic in proximity to Red Oaks Drive in a most unsatisfactory state of affairs. Given this we were surprised by the evidence of QAC and QLDC planning witnesses. Ms Baker (for QLDC) gave evidence that from a planning perspective this outcome is acceptable. The potential environmental effects were “less than minor” and the proposal would meet “Part 2”.<sup>145</sup> There is no evidence before the court on which the court could possibly reach this conclusion. Mr Kyle for

<sup>140</sup> Transcript at [623].

<sup>141</sup> Transcript at [620].

<sup>142</sup> Transcript at [624].

<sup>143</sup> While PC34 enables has capacity for 30,000m<sup>2</sup> gfa, we note that in PC19 Messrs Heath and Tansley agreed that within the next 20 years the likely floorspace development would be 20,000m<sup>2</sup>.

<sup>144</sup> Transcript at [613] (Williams), [619] (Penny) and [630] (Woods).

<sup>145</sup> Transcript at [973].



QAC while characterising the recommendation by the traffic experts to signalise the intersections as “game changing”,<sup>146</sup> concluded the proposed access was not necessarily inconsistent with the District Plan.<sup>147</sup> Neither witness proffered an evaluation of the plan to substantiate their opinions. In fairness to Mr Kyle and Ms Baker the issue of traffic management around the proposed school was raised for the first time during the hearing, but we would have thought these witnesses had sufficient time to consider the proposal in light of the District Plan and offer a considered opinion to the court.

[171] We find that the proposal is inconsistent with Part 14 Transport, objective 1 – efficiency and associated policies 1.1 and 1.10 and also objective 2 – safety and accessibility, and its policy 2.6. The findings are not contingent on the secondary school establishing. We consider each of these provisions in turn:

**Objective 1 - Efficiency**

*Efficient use of the District's existing and future transportation resource and of fossil fuel usage associated with transportation.*

**Policy 1.1**

*To encourage efficiency in the use of motor vehicles.*

[172] Depending on the direction of their approach and their intended destination along the length of the designation, some vehicles could be required to travel nugatory distances in excess of 1 km to reach their destinations if an access/egress restriction is in place at the western access intersection with Hawthorne Drive. Factored up for multiple journeys, the resulting inefficiencies would clearly be at odds with Policy 1.1.

**Policy 1.10**

*To require access to property to be of a size, location and type to ensure safety and efficiency of road functioning.*

[173] Safety and efficiency would be severely compromised if vehicles wishing to travel west from the western access exit at Hawthorne Drive were required to turn left,

<sup>146</sup> Transcript at [878].

<sup>147</sup> Transcript at [881].





cross two lanes of traffic over a very short distance and then complete a U-turn at the Red Oaks Drive intersection in order to achieve their objective.

### **Objective 2- Safety and Accessibility**

*Maintenance and improvement of access, ease and safety of pedestrian and vehicle movement throughout the District.*

#### **Policy 2.6**

*To ensure intersections and accessways are designed and located so:*

- ...
- *they can accommodate vehicle manoeuvres.*
- ...
- *are separated so as not to adversely affect the free flow of traffic on arterial roads.*

[174] There would be considerable risks for the safety of pedestrian and vehicle movements if the only way for vehicles wishing to travel west after exiting the western access was to do a U-turn at the Red Oaks Drive/Hawthorne Drive intersection.

[175] The explanation and reasons for this objective also note that ... *the Council is committed to investigating the opportunity for new roads on Frankton Flats....to reduce the impact of development on State Highway No 6 and improve access to the airport and other activities.*

[176] The link between Frankton Flats and the Airport (as well as Remarkables Park) will be via the EAR and Hawthorne Drive. It seems highly likely that the EAR will be afforded arterial road status. The court is concerned that if vehicles were permitted to exit the aerodrome's western access east bound onto Hawthorne Drive this would adversely affect the free and safe flow of traffic on Hawthorne Drive because of:

- the western accesses proximity to the Red Oaks Drive intersection;
- vehicles wanting to turn right into Red Oaks Drive or do a U-turn to get back to Frankton changing lanes over a short distance; and



- the potential for U-turns to cause crashes.

[177] Similar safety and disruption concerns arise in respect of west bound vehicles on Hawthorne Drive making U-turns at a (to be) signalised intersection at (or near) Riverside Road in order to get back to the western access.

[178] These concerns are compounded by the likelihood that some drivers using the general aviation/helicopter precinct may be visitors unfamiliar with local roads and, in some cases, driving on the left hand side.

[179] We have formed the preliminary view that there should be a condition that the western access be used for left hand entry turns only and that egress should be via the eastern access only. We recognise that there may be timing issues around construction of the latter for exercising the designation. Because this subject arose only during the course of the hearing and the evidence may have been incomplete we have extended the parties the further opportunities made in our directions. We have also formed the view that the optimal solution might be for the general aviation/helicopter precinct to have ingress and egress to an extension of Red Oaks Drive north of Hawthorne Drive to the aerodrome boundary. However we understand that as no certainty attaches to this possibility it cannot be relied on.

[180] If there are difficulties with this proposal then leave will be reserved for the parties to call further evidence addressing traffic management this time in an holistic fashion having regard to the relevant traffic factors; and there are a number. The evidence is to include future volumes [vehicles/pedestrians including from any future secondary school, RPZ (including PC34), and southern precinct], intersection spacing, signalisation, Red Oaks Drive extension, EAR construction timing, the function of the site's eastern access onto the EAR, street pattern legibility and driver familiarity.

## **Landscape and visual amenity**

### ***Introduction***

[181] The relevant visual and amenity effects of the NOR are those experienced from within the RPZ and from public places including the Airport. In this regard we heard from three landscape architects; Mr D Miskell (QAC), Mr B McKenzie (RPL) and Dr M



Read (QLDC). The issues arising from the proposed development are best captured by QLDC's landscape architect, Dr M Read, as follows:

Currently the most striking aspect of Lot 6, traversed by Mr McKenzie in his evidence, is the expansive views which can be gained to the outstanding natural landscapes which ring the Wakatipu Basin. This serves, in my opinion, to underline that the landscape importance of the Frankton Flats as a platform from which these views can be appreciated rather than for any qualities which it may so far have retained itself. It is the case, however, that the current expansive views from Lot 6 will become less expansive and with greater evidence of urban development in the fore and mid-grounds regardless of the consequences of this notice of requirement.<sup>148</sup>

[182] We understood Dr Read to refer to development enabled by PC19 on the northern side of the aerodrome.

[183] Mr Miskell prepared an assessment of landscape effects attached to the NOR. In it he concluded that the potential adverse landscape effects resulting from the development would be "less than minor".<sup>149</sup> While he did not consider the viewing population within the RPZ site to be particularly sensitive to landscape change, he recommended a buffer of grasses, shrub and tree planting at the southern boundary of the NOR. As it transpires the NOR did not include any conditions addressing the built form, bulk and location of buildings within the proposed general aviation/helicopter precinct.

[184] In his evidence-in-chief Mr Miskell reviewed this earlier opinion. Upon reflection he now found the views to the north within Activity Area 8 to be an important consideration and recommended that landscape design controls be established; in particular conditions requiring:

- (a) a 1.2 m high hedge planting on both sides of the proposed access road;
- (b) an avenue planting at 20m spacing of trees capable of growing up to 10m as part of the access road development on the southern boundary of the designation; and

<sup>148</sup> Read EiC at [3.2], McKenzie EiC at [23].

<sup>149</sup> NOR Appendix D at [25].



- (c) native beech planting within car-parking areas.<sup>150</sup>

[185] Mr Miskell also recommended that a landscape buffer be maintained between any infrastructure and buildings on the designated land and the balance of Lot 6. And finally, that there should be “thoughtful” siting and design of all buildings and infrastructure to create a high standard of visual amenity from public viewpoints.<sup>151</sup> While QAC’s planner proposes a landscape condition in his evidence-in-chief, this does not fully pick up on all the recommendations made by Mr Miskell.

[186] The need for the precinct to appropriately address the environment in which it is to be located only really gained traction with QAC after the QLDC (non-regulatory) joined the proceedings in June 2012. That is so notwithstanding the recommendations made by RPL’s landscape architect in his evidence and in the report prepared by the EPA.

***Views from within Remarkables Park zone***

[187] Unmitigated, the concerns arising from within the RPZ are:

- (a) a possible built development that involves lineal arrangement of large, industrial scale buildings extending approximately 1 kilometre along RPZ boundary;
- (b) the obstruction of views to the surrounding mountains;
- (c) the disruption of the current sequence of an undeveloped foreground to more distant mountainous views;
- (d) the reduced opportunity for future development within the RPZ, through open space, to connect visually with the surrounding mountainous landscape; and
- (e) adverse visual effects associated with extensive car-parking.

[188] Mr Miskell estimated the viewing distance from the boundary of the NOR to RPZ’s Activity Areas 6 and 7 to be between 200 to 250m.<sup>152</sup> At this distance the southern general aviation/helicopter precinct would not intrude on the views of the

<sup>150</sup> Miskell EiC at [108].

<sup>151</sup> Miskell EiC at [107].

<sup>152</sup> Miskell EiC at [30].



skyline from either Activity Area. Views to the northern mountains from within RPZ become obscured at distances 125-150m or less from the precinct.<sup>153</sup> If there are gaps between buildings the degree of this effect will be less again.<sup>154</sup>

[189] The extent to which the NOR car-parks and buildings are visible from these activity areas will depend on future development north of the EAR, including Activity Area 8. In that regard, the Structure Plan produced by RPL landscape architect, Mr B McKenzie, shows intensive residential development immediately north of the EAR within the RPZ.

[190] That said, RPL is less concerned with maintaining a view to a skyline than it is with maintaining visual connection with the surrounding mountainous landscape. Mr McKenzie's response to the proposed landscape design controls was that they would have limited effect in addressing the visual effects of the proposal, because of its built form.<sup>155</sup>

#### *Views from within Queenstown Airport*

[191] The views from Queenstown Airport to the surrounding mountains are expansive, and views south along the Coneburn Valley are rightly described by Dr Read as exceptional.<sup>156</sup> Dr Read's evidence was that the southern precinct would partly obscure the base of the Remarkables Range (but not its "ice scoured face"), as it would also the Crown Terrace Escarpment. The development would narrow the field of vision and reduce the naturalness of the view.<sup>157</sup>

[192] Mr Miskell evaluated the effect on views and visual amenity as a consequence of this development. In his opinion The Remarkable mountains would "dwarf" the precinct development in the foreground.<sup>158</sup> At a distance of 300m [we take that to be from areas which are accessible by the public] it is unlikely that the buildings within the southern precinct would significantly reduce the positive visual impact of the surrounding mountains.<sup>159</sup> Further, in his opinion the views towards Coneburn Valley

<sup>153</sup> Miskell EiC at [22].

<sup>154</sup> Miskell EiC at [22].

<sup>155</sup> McKenzie at [101].

<sup>156</sup> Read EiC at [4.2.3].

<sup>157</sup> Read EiC at [4.3.2.2].

<sup>158</sup> Miskell EiC at [68].

<sup>159</sup> Miskell EiC at [67].



from within the Airport would be disrupted by the proposed precinct, as they would also be by development within the RPZ, albeit development within RPZ may have a lesser effect. He concludes the presence of aircraft related activities and structures within close proximity to the Airport is not an unexpected addition to the landscape and conditions can be imposed to ensure that any adverse landscape effects are successfully addressed.<sup>160</sup>

### *Discussion and findings*

[193] All three witnesses agreed that from a landscape perspective a location north of the main runway would be a better option for the proposed precinct; a northern location would have greater absorptive capacity as it would appear in the foreground of PC19's proposed industrial and yard based activities.<sup>161</sup> However, the adjacent Events Centre and sports fields would give rise to similar amenity issues as could occur if the development was adjacent to RPZ's Activity Area 8.

[194] We agree with Dr Read and Mr McKenzie that the lack of control in the designation conditions over the form, bulk, location and exterior appearance of buildings could, unmitigated, create a significant adverse effect on the visual amenity of those parts of the RPZ located adjacent to the aerodrome. This is particularly so given that Designation 2's building height restriction of 9.0m does not apply to hangars. We agree also with Dr Read that a lineal pattern of development along the 1km boundary with the balance of RPZ would be a new and notable pattern within the landscape and without mitigation this would be neither pleasant nor attractive.<sup>162</sup>

[195] While development within the RPZ, including Activity Area 8, may obstruct views towards the north and, in the nature of any development, the remnant natural character of RPZ's undeveloped land will be diminished; this does not detract from the relevance or significance of the views and the derived visual amenity for this zone. We find this to be the case even without assuming that any particular pattern of development will emerge in Activity Area 8 (such as a golf course and other recreational facilities as discussed by several witnesses).



<sup>160</sup> Miskell Second Supplementary Statement at [9-10], Transcript at p [720].

<sup>161</sup> Read EIC at [7.4], McKenzie Rebuttal at [35], Miskell EIC at [35], Transcript at [720].

<sup>162</sup> Read EIC at [4.2.8].

[196] However, we are satisfied that if development of the precinct, its land and buildings, addresses the surrounding environment including the Airport and the adjacent RPZ Activity Areas, these effects can be satisfactorily managed and would serve to visually integrate the precinct within the surrounding urban area in a manner which achieves the outcomes of the relevant objectives and policies of the District Plan.

***Outline Plan of Works***

[197] Pursuant to section 176A QAC is directed to file an outline plan of works in accordance with that section.

[198] We do not impose an additional requirement that QAC consult with QLDC or other interested parties prior to lodgment. It is plainly in QAC's interests to do this and consultation accords with sound resource management practice. A condition requiring consultation is unnecessary, given the directions requiring QAC to directly address the landscape and visual amenity objectives for its buildings and infrastructure design, an integrated design and management plan and the assessment matters relevant to an outline plan of works.

***Conditions on landscape and visual amenity***

[199] The conditions proposed by the QAC and QLDC (regulatory) planners were not supported, and we find that is with good reason. The conditions essentially provide tools by which to address the visual and amenity effects of the development but with no objectives articulating the intended outcomes. So that these outcomes are brought into account we have made directions that QAC is to propose the landscape and visual amenity objectives for building and infrastructure design and location.

[200] QAC is also to prepare for the court's approval:

- (1) the proposed conditions for inclusion in Designation 2 which give effect to the court's decision which will require:
  - (a) the preparation of an integrated design and management plan which states:
    - (i) the landscape and visual amenity objectives for building and infrastructure design and location and outcomes in relation to:



- a landscape planting, staging and maintenance plan addressing:
  - roading, car-parking and buildings; and
  - the extent to which the landscape planting complements existing landscaping within the aerodrome designation and adjoining RPZ activity areas;
- management of stormwater (including if relevant earthworks, retention ponds and landscaping);
- the management of signage, including the use of building colour as a corporate logo; and
- standards for an acceptable range of building materials, colour, tones and reflectivity.

[201] For avoidance of doubt the content of the various plans (for example the planting plan) are not required, and we doubt this would be possible without knowing the proposed layout of the precinct.

- (2) QAC is to propose conditions which require QLDC at the outline plan of works stage to consider the extent to which:
- (a) the outline plan of works gives effect to the integrated design and management plan and achieves the stated landscape and visual amenity objectives for building and infrastructure design and location;
  - (b) buildings appear recessive within the surrounding environment;
  - (c) buildings complement existing or consented development within the Airport and adjacent RPZ activity areas;
  - (d) buildings provide visual permeability;
  - (e) views of surrounding mountainous landscape are maintained;
  - (f) clustering of buildings may reduce a lineal arrangement of the precinct; and





- (g) the use of landscape mounding as a tool to attenuate the bulk and form of the precinct buildings.<sup>163</sup>

***Overall conclusion on landscape and visual amenity***

[202] QAC has prioritised its operational requirements without giving adequate consideration to how the development of the southern precinct addresses the surrounding landscape and urban context.

[203] There is considerable potential for large scale utilitarian buildings to be developed within the designation, particularly in the absence of maximum building height controls in relation to hangars. The effect of this would be to reduce the views and visual amenity enjoyed by both persons arriving and departing from this airport and from within the RPZ. The deficiencies in the management of landscape and visual amenity do not reflect the importance attributed to Queenstown by the Minister for the Environment; that it is a world renowned tourist destination and a place of national significance.

[204] The fact that the precinct's buildings will have a functional purpose does not obviate the need to address the development in its context, although plainly the functionality of the buildings is a relevant consideration. Our concerns are such that we are unable to conclude that the NOR's confirmation as proposed by QAC achieves the purpose of the Act.

**Direct referral to the Environment Court**

[205] Finally, we are to have regard to the Minister for the Environment's reasons for making the direction and also any information provided by the Environmental Protection Agency.

[206] We understand that QAC initially requested the NOR be directed to a Board of Inquiry and that the EPA, finding that the NOR was a proposal of national significance, made this recommendation to the Minister for the Environment.<sup>164</sup> We have considered the EPA's report to the Minister, and note the advice that the NOR could be determined

<sup>163</sup> While Mr Miskell in rebuttal at [54] did not consider the bund necessary and was a "land hungry" device, he was not opposed to it. This condition is not the same as a bund.

<sup>164</sup> Recommendation of the EPA to the Minister for the Environment dated 2 February 2011.



independently of other proceedings before the court.<sup>165</sup> As recorded in this decision and elsewhere, we do not share this view.

[207] Immediately following the EPA's recommendation to the Minister, QAC requested the matter be referred to the Environment Court as it had been unable to acquire the land from RPL.<sup>166</sup> The Minister for the Environment decided to refer the NOR to the court and his reasons for this included that there were a number of matters already before the court related to this NOR and that the direction to the court would facilitate an integrated decision-making process for Queenstown Airport.<sup>167</sup> In his ministerial direction, the Hon. Dr N Smith stated "Queenstown is a world renowned tourist destination and expansion of the Airport is likely to affect Queenstown, which is considered to be a place or area of national significance."<sup>168</sup> We agree with Dr Smith as to the role the Airport has in supporting and expanding Queenstown as a tourist destination and secondly, that the NOR should be considered in the wider context of other far reaching proceedings before the Environment Court. (As mentioned earlier these proceedings are QAC's privately initiated PC35 and a second NOR also to amend Designation 2 and PC19).

### **Part 2 of the Act**

[208] We commence our evaluation of the NOR under section 7 (no sections 6 and 8 matters are directly in play). Section 7 informs the purpose of the Act and we are to have particular regard to and accord such weight as we think fit to its provisions. Section 7 plays an important role but should not be approached in a way that obscures the purpose of the Act.

### **Section 7(b)**

[209] RPL submits that it is not an efficient use of resources to seek to designate land owned by a third party for airport purposes, where QAC owns land that is designated for the same purpose.<sup>169</sup> The submission is relevant to:

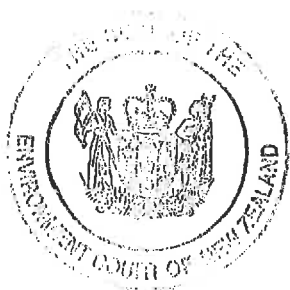
<sup>165</sup> Recommendation of the EPA to the Minister for the Environment dated 2 February 2011, at [17].

<sup>166</sup> Letter from Lane Neave to EPA dated 3 February 2011.

<sup>167</sup> Letter from Minister for the Environment to QAC dated 15 February 2011.

<sup>168</sup> Ministerial Direction dated 14 February 2011.

<sup>169</sup> RPL Closing Submissions [7.12].



- (a) the objective for the designation, which includes the statement “achieving the maximum operational efficiency as far as possible”;
- (b) section 7(b) of the Act which provides that in achieving the purpose of this Act we are to have particular regard to the efficient use and development of natural and physical resources; and
- (c) section 5.

[210] Counsel for QAC and RPL referred to the High Court decision of *Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482 where the court observed that on each occasion the Resource Management Act has imposed an obligation on the consent authority to consider alternative locations or methods, that obligation has been carefully spelt out in the Act.<sup>170</sup> Over time, a relatively narrow approach had been taken to section 7(b) in the context of a requirement for a designation. The courts have reviewed the decisions of territorial authorities with regard to whether alternatives have been properly considered, rather than whether alternatives had been excluded or the best alternative chosen. Justice Fogarty in *Meridian Energy Ltd v Central Otago District Council* reflected that it is difficult, if not impossible, to express some of the Part 2 criteria in terms of quantitative values.<sup>171</sup> In this case, the economists agreed that it was not possible to monetarise all the benefits or costs associated with the NOR.

[211] Decisions on costs and economic viability, or profitability of a project are not matters for the court. As Justice Wild in *Friends and Community of Ngawha Inc and Others v Minister of Corrections*<sup>172</sup> said, these matters should:

... sensibly be regarded as decisions for the promoter of the project. Otherwise, the Environment Court would be drawn into making, at least second-guessing, business decisions. That is surely not its task.

[212] The economists engaged by QAC and RPL considered it reasonable, if not essential, that we assume QAC would act rationally when making investment decisions.



<sup>170</sup> *Meridian Energy Ltd* at [77-78].

<sup>171</sup> At [108].

<sup>172</sup> High Court Wellington AP 110/02, Wild J., 20 June 2002 at [20].

[213] RPL referred us to the Environment Court decision of *Port Gore Marine Farm v Marlborough District Council* [2012] NZEnv C72 at [119] where, obiter dicta, the court commented that while a cost-benefit analysis is not a compulsory consideration under section 7(b) of the Act it may be very useful. The court goes on to state that without it an assessment of efficiency under section 7(b) tends to be rather empty.

[214] We find, for reasons that we give later, a cost-benefit analysis may be relevant and informative of matters in section 171(1)(b) and section 7(b), but that does not elevate the matter into a criterion to be fulfilled.

*The evidence*

[215] Dr T Hazeldine, Professor of Economics at the University of Auckland, gave evidence on behalf of RPL which proceeds on the basis that QAC has not made out the case whether the designation is reasonably necessary to achieve its objective.<sup>173</sup> As that is not our conclusion, at least in relation to the general aviation/helicopter precinct, we found his concluding remarks to be of limited assistance.

[216] Mr Ballingall, an economist employed by the New Zealand Institute of Economic Research Inc, gave evidence on behalf of ANZL. He sets out his understanding that these proceedings require consideration of alternatives and the cost-benefits issues, although he states correctly that a section 32 analysis is not required.<sup>174</sup> QAC did not present a cost-benefit analysis in support of the NOR.<sup>175</sup>

[217] Mr Ballingall supports a cost-benefit analysis as providing a “formal, structured method of systematically assessing proposals in terms of their outcomes relative to their use of resources”.<sup>176</sup> For these proceedings he suggests an analysis at the level of a regional perspective is required as this is where the majority of costs and benefits would accrue.<sup>177</sup> With reference to the cost-benefit analysis framework produced by the New Zealand Treasury, he analysed the NOR documentation in terms of (a) its definition of the problem – that is the challenge to be addressed, (b) the objective of the NOR and (c) the identification and analysis of the options which address the challenge. All of this he

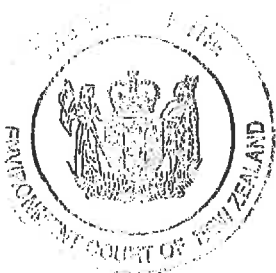
<sup>173</sup> Hazeldine EiC at [17, 55].

<sup>174</sup> Ballingall EiC at [3.4].

<sup>175</sup> Transcript at [633].

<sup>176</sup> Ballingall EiC at [3.19].

<sup>177</sup> Ballingall EiC at [3.22].



found inadequately detailed, commencing with the vague nature of the NOR objective. The NOR, he concludes, fails to explain how the capital costs of acquiring Lot 6 would be funded, and how this might affect the charges to scheduled airlines and non-scheduled operators and demand for their services.

[218] A key difference between Mr Ballingall and QAC's economist, Mr M Copeland, lies in the relevance of a cost-benefit analysis for options which have been considered and discounted by a requiring authority.<sup>178</sup> Mr Copeland's approach is like an economic impact assessment considering the use of the aerodrome with or without Lot 6.<sup>179</sup> Even then his focus is on the benefits of the proposal, excluding consideration of the opportunity cost to RPL in not being able to use this land and the cost of the land. He concludes that an increase in ticketing prices as a consequence of acquiring Lot 6 is not an externality but rather an imperfection in the market place – i.e. people perceive that the price for airline tickets is too high or too inefficient.<sup>180</sup>

*Discussion and findings*

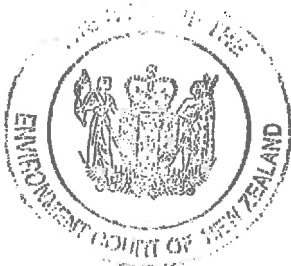
[219] We agree with Mr Copeland that QAC is not subject to any requirement of NZ Treasury or any other government agency when presenting this NOR. However, the value of Mr Ballingall's evidence is that it presents a tool for structured decision-making by a requiring authority. (There may of course be other tools.) In this regard, we would have been better assisted had the witnesses agreed in their expert conference on a costs-benefits tool for use in these proceedings. As it was several assessments were presented with different witnesses employing different metrics which made parts of their evidence impossible to compare. QAC's simple cross/tick method was inadequately described and conveyed no understanding of the parameters of each of the categories assessed.

[220] A cost-benefit analysis of the alternatives may be relevant and informative of matters in section 171(1)(b) in particular whether adequate consideration was given to alternatives in the circumstances where a requiring authority either does not have an interest in the land or the work will have a significant adverse effect on the environment. This could be presented in a qualitative or quantitative format (or a mixture of both) and

<sup>178</sup> Copeland Rebuttal at [10].

<sup>179</sup> Copeland EiC at [29].

<sup>180</sup> Transcript at [637].



could include consideration of the opportunity cost of the Airport using its own land versus the opportunity cost to RPL should the NOR be approved. Secondly, it has the advantage of increased transparency of decision-making and here we refer to RPL's concern that QAC's decision-making was weighted to maximise its other business opportunities within the existing designation.

[221] In these proceedings efficiency can be understood in terms of allocative, social and operational efficiency. Allocative efficiency seems to accord with a general rule of economics given by Mr Ballingall – that an efficient level of any activity occurs where its marginal costs matches its marginal benefits<sup>181</sup> and social efficiency, where the externality costs are identified and if possible, quantified and brought to account. While we are not concerned with the financial effect on QAC, the effect on people and communities which use the services provided by Queenstown Airport is relevant. Also relevant is the use of the existing designation for some or all of the proposed works when compared with the use of RPL land.

[222] We do not understand Mr Copeland's conclusion that higher ticketing costs, should they transpire, may be regarded as an imperfection in the market when he says the Airport is unlikely to employ monopolist pricing.<sup>182</sup> This response does not directly address the ANZL's concern about the effects on people and communities who would bear these costs. That said, except in the most general sense the sensitivity of the Queenstown tourism market to higher pricing charges was not addressed in evidence. In order to reach a view, this matter would need to be considered in the wider context of any welfare enhancing benefits associated with increased levels of economic activity<sup>183</sup> and the opportunity for effective competition between scheduled airline operators with the expansion of the passenger terminal.<sup>184</sup>

[223] The use and development of natural and physical resources may be inefficient where they do not avoid, remedy or mitigate the adverse effects of the activity on the environment and as a consequence impose costs on neighboring landowners or the community in general. Here we are concerned with the effects associated with the proposed use and development of land.

<sup>181</sup> Ballingall EiC at [3.7-3.8].

<sup>182</sup> Transcript at [638].

<sup>183</sup> See Copeland EiC at [49] where a range of benefits are discussed.

<sup>184</sup> Copeland EiC at [66].



[224] In this case there may be a negative opportunity cost to RPL if it is unable to use or develop its land in the manner enabled under the District Plan prior to the NOR (we refer to the possible displacement of a golf course to more valuable land zoned AA-4 and 7).<sup>185</sup> There may also be externality costs imposed on RPL as a consequence of unmitigated adverse effects emanating from the southern precinct. And externality costs imposed on the public in general if vehicle movement in the vicinity of the signalized intersections, particularly at Red Oaks Drive, is unsafe for pedestrians and motorists.

[225] While the compensation payable for the acquisition of land and any injurious affection to the balance are matters for the PWA forum, and we tend to the view that this is where the opportunity cost to RPL should be addressed, in the context of section 7(b) we can consider any inefficiency caused by the failure to avoid, remedy or mitigate adverse effects of activities on the environment as these may disenable people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety. When exercising our broad overall judgment under section 5 it is the scale and significance of any inefficiency that is to be brought into account, together with the benefits of the NOR. We consider this approach consistent with the High Court's findings in *Meridian Energy Ltd v Central Otago District Council* at [210].

[226] We have had to make what we can of all of the evidence presented. As we do not have any cost-benefit analysis our findings do not concern this measurement. Instead, we have reached the following conclusions qualitatively on operational efficiency and externality costs:

*Operational efficiency*

- (a) an instrument precision runway and a Code D taxiway is an *inefficient* use of part of the Lot 6 land when it is unlikely these uses will establish;
- (b) a general aviation/helicopter precinct including air and landside buildings, infrastructure and landscaping is an *efficient* use of part of the Lot 6 land;
- (c) it would be an *efficient* use of land to co-locate the Code C corporate jets south of the main runway in proximity to the Code C taxiway on the basis that QAC elect to build a Code C taxiway in this location;

<sup>185</sup> Given our decision to reduce the extent of the NOR we do not know whether this remains an issue.



- (d) a hybrid alternative would be *inefficient* in that it would compromise the benefits which would accrue from the collocation of all operations on one site, including for example, shared support services, shared parking, shared accessways within the precinct, proximity for day to day interactions among operators and for customers, many of whom will be unfamiliar with the Airport, knowing that all flightseeing and helicopter operations are located in one precinct.

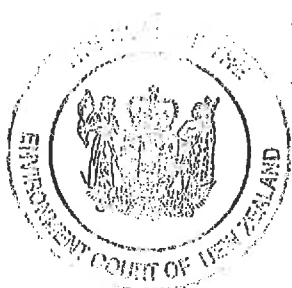
*Externality costs*

If the development were to proceed in the manner proposed by QAC then it is our preliminary view that use of the western access imposes an unacceptably high cost on the public in general, these costs being associated with the safety of pedestrians and motorists in the vicinity of two signalised intersections, particularly the intersection at Red Oaks Drive. Likewise, the inadequate level of landscape mitigation proposed by QAC would create externality costs to the public using the airport facility and RPL in the development of its land. However, the effects of noise are able to be adequately mitigated in the manner proposed by the Environment Court in its Interim Decision on PC35.

*Section 7 (c and f)*

[227] Our findings in relation to the effect on the environment of confirming the requirement are relevant to section 7(c) and (f), and do not require any further elaboration.

[228] Without the imposition of conditions the quality of the environment is likely to be appreciably affected by the closer proximity of aircraft operations to the RPZ. In particular, there is likely to be significant adverse effects on the visual amenity and views of activity areas adjacent to the extended aerodrome if conditions addressing the form, bulk, location and exterior appearance of buildings are not imposed. Even with such conditions, the amenity values and quality of the environment within RPZ will not be fully maintained and that outcome we take into consideration when making our ultimate determination on the NOR.





*Section 5*

[229] We remind ourselves that the single purpose of the RMA as expressed in section 5(1) is to promote the sustainable management of natural and physical resources. This case has raised considerations to which we must attach statutory weight that argue both for and against the NOR. In exercising our judgment it has been necessary to carefully weigh these matters and in the words of *North Shore City Council v Auckland Regional Council (Okara)*<sup>186</sup> compare the conflicting considerations, their scale and degree and relative significance or proportion in arriving at the final outcome.

[230] The designation amended in the manner we have intimated will enable the QAC, Queenstown Lakes and wider national and international communities to provide for their social and economic wellbeing by using the natural and physical resources concerned in ways that fulfill the QAC's objective of providing for expansion of the aerodrome to meet projected growth and, as far as possible, achieving maximum operational efficiency. We judge these to be major benefits in the context of the affected resources and having regard to the likely effects on the environment when avoided or mitigated by conditions.

[231] For the reasons we have given, an insufficient nexus has been established between fulfilling the QAC's objective and making provision for an instrument precision approach runway and Code D parallel taxiway to support the use of RPL's land for these purposes. The balance of the work will be achieved at the cost to RPL of not being able to use the affected resources it owns for purposes authorized by the district plan. This is recognized and if required there is legislation to deal with any related considerations which may arise (such as compensation).

[232] We have satisfied ourselves as carefully as is possible relying on the evidence and submissions made, that the aviation activities enabled by the designation provide for those aspects of the communities' safety which can properly be dealt with under the Act. Similarly, we have formed the view that the health of potentially affected people, and more particularly the degree to which they are subjected to noise as a result of the location of the aviation activities enabled by the amended designation, can be



<sup>186</sup> *North Shore City Council v Auckland Regional Council (Okara)* (1996) 2 ELRNZ 305, [1997] NZRMA 59.

appropriately managed through the finalized provisions of PC35, if approved.<sup>187</sup> We have only been able to make these findings in the knowledge that adverse effects on the environment likely to result from the activities authorised can be avoided, remedied or mitigated to a degree consistent with the Act's purpose.

[233] The adverse landscape and visual amenity effects of the linear general aviation/helicopter precinct, which would otherwise result, can be avoided or mitigated by the imposition of more effective conditions than those proposed by the QAC and the District Council. Such conditions are necessary to recognise and provide for the protection of views to the outstanding natural landscapes and features in which the development will sit and to manage anticipated effects on RPZ amenities in neighbouring Activity Areas. The integrated design and management plan to be produced by QAC for the court's approval prior to a final decision can secure these matters. We are not confident that the probable effects of concern would otherwise be managed effectively or the purpose of the Act necessarily fulfilled if these aspects were left solely to future outline plans of works.

[234] Potential adverse traffic effects identified during the course of the hearing are more difficult to assess in terms of their severity. We are confident however that the potential effect of exiting traffic on the free and safe flow of traffic in the vicinity of the proposed western access can be managed by the imposition of a condition limiting its use to entry only. Egress would be via the proposal's eastern access. We retain an open mind on whether the effects of concern may be able to be avoided or mitigated sufficiently by other means to secure the Act's purpose. To this end the parties are afforded the opportunity should they wish to submit alternative control measures based on a holistic understanding and assessment of existing and likely future traffic conditions on the local network.

[235] From the "other matters" specified for achieving the purpose of the Act we have identified sections 7(b), (c) and (f) as relevant. The latter two matters go generically to the effects on noise, landscape and visual amenity and traffic conditions which we have taken into account in our overall judgment in preceding paragraphs. We have

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<sup>187</sup> *Air New Zealand Ltd and Ors v Queenstown Lakes District Council* Decision No [2012] NZEnvC 195.



previously reviewed the degree to which the NOR allows for the efficient use and development of natural and physical resources (section 7(b)) and found that efficiency is not the sole preserve of monetarised costs/benefits and may also be assessed in terms of operational efficiency or indeed social efficiency (in particular relation to externality costs). Faced with incomplete information we are satisfied on the basis that QAC can reasonably be assumed to act rationally in its own interest that the NOR is consistent with aerodrome operational efficiency. We assume also that QAC will act rationally in respect of allocating its sovereign natural and physical resources. The extension to the aerodrome can equally be expected to efficiently meet (at least in part) social needs through the disposition and range of activities allowed for – but we can go no further than that absent evidence addressing any externality costs. Regrettably we were not assisted by a common approach on how economic efficiency might be appropriately assessed. A cost benefit analysis using a mix of quantitative and qualitative measures as appropriate may have lent an enhanced understanding of the relative degree of economic efficiency between alternatives for meeting QAC's objective by the use of airport and non airport land. Be that as it may, there is no statutory requirement for such and we do not find its absence material to the ultimate outcome in this case. We are concerned, however, that QAC satisfactorily address the externality costs associated with the adverse effects on landscape, and the adverse effects of noise and traffic as discussed in this decision.

[236] Overall we find the significant benefits to QAC and the wider community of developing and using the affected resources in the manner proposed, subject to the modifications and the conditions we have identified to avoid, remedy or mitigate adverse effects on the environment, to be consistent with the sustainable management purpose of the Act.

### **Outcome**

[237] Pursuant to section 149(U)(4)(b)(iii) the land required for a precision approach runway and Code D parallel taxiway is cancelled.

[238] The decision on the balance of land required for the designation is reserved pending confirmation as to the practicality of restricting the western access to allow for entry only or otherwise satisfactorily addressing the court's concerns about the



management of traffic at this location, approval by the court of an integrated design and management plan and finally the formulation of revised designation conditions as directed by the court as to the proposed assessment matters for an outline plan of works.

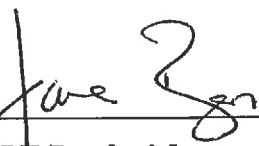
[239] Any decision to extend the aerodrome is for the purpose of establishing a general aviation/helicopter precinct. Other activities enabled by Designation 2 within the area of the extended aerodrome have not been considered by the court.

[240] The lapsing period will be addressed in the final decision subject to the court confirming the modified designation. For the lapsing clause to be effective, it is our tentative view that the Designation 2 should be amended by the inclusion of a statement that land within the aerodrome extension is to be used for the purpose of a general aviation/helicopter facility, and associated air and landside buildings and infrastructure and landscaping. This area will need to be separately identified in planning map 31a and Figure 1. In anticipation that QAC can address the court's concerns a direction has been given it propose a suitably worded statement.

[241] Consideration needs also to be given to the surplus land identified by the traffic witnesses at [164] and whether this is to be confirmed or cancelled (cancelled as this part of the work and designation is not reasonably necessary for achieving QAC's objective).

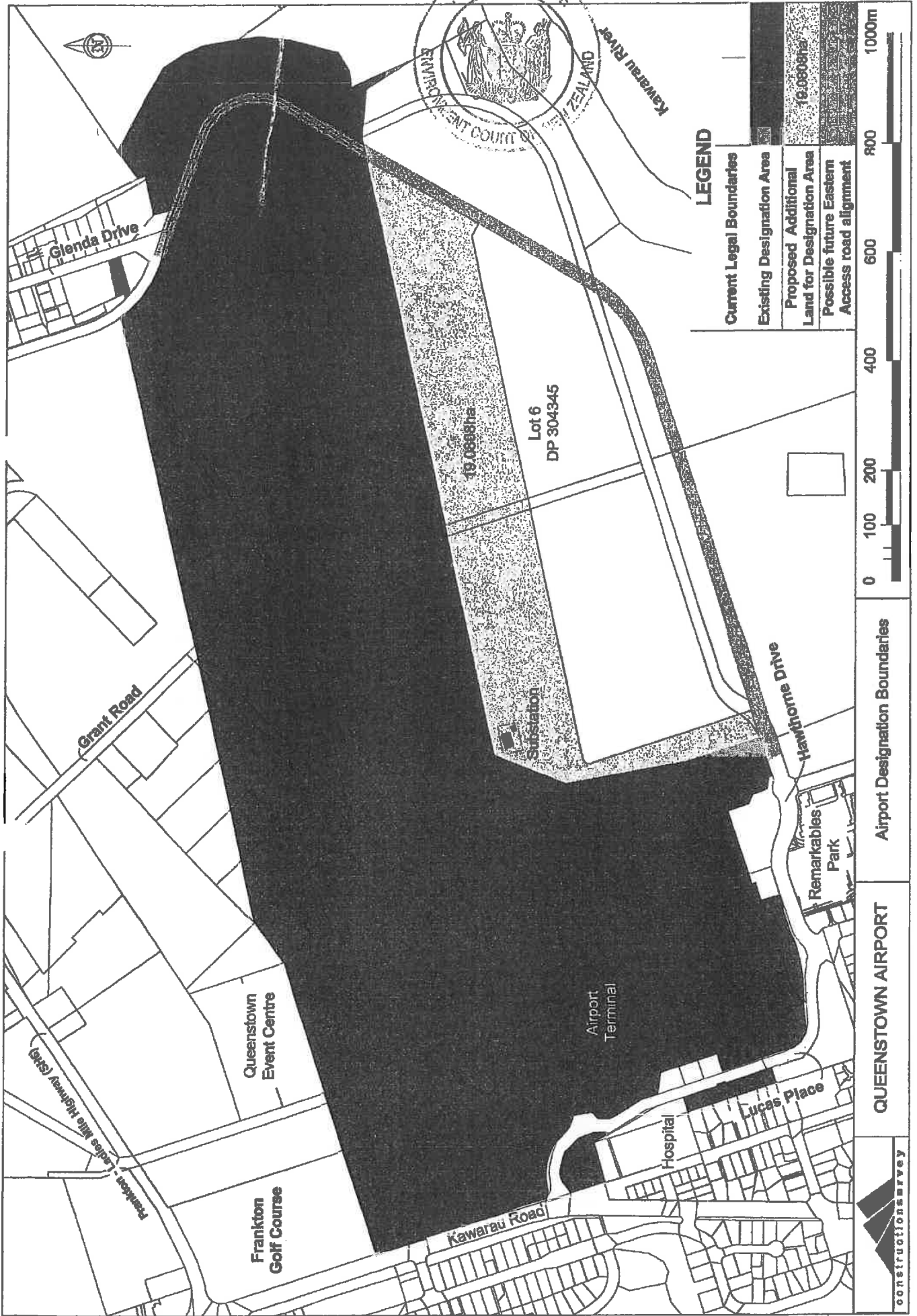
[242] Finally, confirmation of the modified designation will entail consequential changes to planning map 31a. If approved, the planning map will need to identify separately the area of the extension and amended air noise boundaries. Further directions will follow.

For the court:

  
**J E Borthwick**  
**Environment Judge**



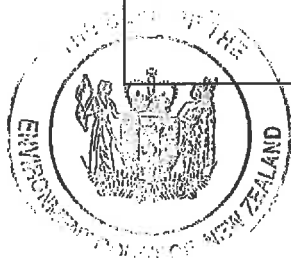
Annexure 1



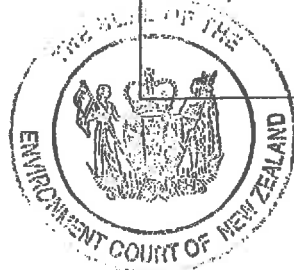
## ANNEXURE 2

## GLOSSARY OF TERMS

Area Navigation (RNAV)	RNAV is a method of Instrument Flight Rules (IFR) navigation which permits aircraft navigation along any desired flight path within the coverage of either station-referenced navigation aids or within the limits of the capability of self-contained aids, or a combination of both methods.
Aerodrome	A defined area of land used wholly or partly for the landing, departure, and surface movement of aircraft, including any buildings, installations and equipment on or adjacent to any such area used in connection with the aerodrome or its administration.
Aircraft stand	An aircraft stand is the term used to refer to a defined parking position for an aircraft.
Airfield	The network of runways and taxiways at an airport.
Airport	The broader environs of an aerodrome and its associated non-aviation commercial and industrial activities.
Airside	The movement area of an aerodrome, adjacent terrain and buildings or portions thereof, access to which is controlled.
Apron	A defined area on an aerodrome, intended to accommodate aircraft for the purposes of loading or unloading passengers or cargo, refuelling, parking or maintenance.
Capacity	The measure of an airport system's capability to accommodate a designated level of demand.
Decision Height	A decision height is a specified height or altitude in an aircraft approach at which a missed approach must be initiated if the required visual reference, such as the runway, to continue the approach has not been acquired. This allows the pilot sufficient time to safely re-configure the aircraft to climb and execute the missed approach procedures while avoiding terrain and obstacles.
Final Approach and Take-off areas (FATOs)	A defined area over which the final phase of a helicopter approach manoeuvre to hover or land is completed and from which the takeoff manoeuvre is commenced and, in some circumstances, including the rejected takeoff area available.
General Aviation (ga)	Refers to all civil aviation flights other than scheduled airline and regular cargo flights, and in these proceedings are grouped into three aircraft types; helicopters, fixed wing (principally flight school and sight-seeing) and corporate jet aircraft (principally Code C).
General aviation/helicopter precinct	In these proceedings QAC proposes the general aviation/helicopter precinct accommodate the three (ga) aircraft types. There are three general aviation precincts under consideration: the existing precinct; QAC's proposed southern precinct located south of the main runway; and a proposed northern precinct (located north of the main runway).



Helicopter	An aircraft whose lift is generated by the action of a rotary wing.
Instrument Approach Runway	A runway equipped with visual and electronic navigational aids for which a precision or a non-precision approach has been approved.
Instrument Flight Rules (IFR)	Rules governing flight in certain limited visibility and cloud conditions.
Instrument Landing System (ILS)	An Instrument Landing System (ILS) is a ground-based instrument approach system that provides precision guidance laterally and vertically to an aircraft approaching and landing on a runway.
Landside	Areas of an airport to which the travelling and non-travelling public have generally unrestricted access.
Movement area	The part of the aerodrome used for the take-off, landing and taxiing of aircraft, consisting of the airfield and the aprons.
Movement (passenger)	One passenger movement is one arrival or one departure of a passenger at an Airport.
Movement (aircraft)	One aircraft movement is one arrival or one departure of an aircraft at an Airport.
Non-Instrument Approach Runway	A Non-Instrument Approach Runway is a runway intended for the operation of aircraft using visual approach procedures.
Non-precision Approach	A non precision approach is an approach to an instrument runway served by visual aids and a non visual aid providing at least directional guidance adequate for a straight-in approach.
Non-scheduled Aircraft operations	Generally synonymous with "General Aviation".
New Zealand Civil Aviation Authority (NZCAA)	The New Zealand Civil Aviation Authority is responsible for the administration of Civil Aviation Regulations promulgated under the Civil Aviation Act 1990.
Precinct	Has the same meaning as general aviation/helicopter precinct.
Passenger Terminal	The building and its immediate surrounds in which facilities are provided for processing the departure, arrival or transit of passengers and their baggage.
Precision Approach	A precision approach is an approach to a runway where an instrument approach system provides guidance laterally and vertically to an aircraft approaching and landing on a runway.
Required Navigation Performance (RNP)	RNP is a statement of the navigation performance standards necessary for operation within a defined airspace, in the context of Area Navigation (RNAV).
Runway	A defined rectangular area on an aerodrome prepared for the landing and takeoff of aircraft.
Runway Incursion	A runway incursion is "any occurrence at an aerodrome involving the incorrect presence of an aircraft, vehicle, or person on the protected area of a surface designated for the landing and take-off of aircraft".



Runway strip	A runway strip is a defined graded area surrounding and including the runway, intended to reduce the risk of damage to aircraft running off a runway; and to protect aircraft flying over it during take-off or landing operations.
Scheduled airline operators	"Scheduled" airline passenger services refers to the regular scheduled movements operated by major airlines; and scheduled aircraft refers to the aircraft operated by such airlines.
Taxiway (and taxi, taxiing)	A defined path on an aerodrome for the taxiing of aircraft and intended to provide a link between one part of the aerodrome and another.
Terminal Precinct	The wider environs surrounding and including the Passenger Terminal including aircraft aprons, kerbside, car parking, road circulation, and hotels and commercial facilities drawing business from being in close proximity to the Passenger Terminal.
Visual Flight Rules (VFR)	Rules governing flight in during periods of generally good visibility and limited cloud cover.





## ANNEXURE 3

### GLOSSARY OF ACRONYMS

<b>ANB</b>	Air Noise Boundary
<b>ANZL</b>	Air New Zealand Limited
<b>ASAN</b>	Activity Sensitive to Aircraft Noise
<b>CAA</b>	New Zealand Civil Aviation Authority
<b>dBA</b>	Decibel
<b>EAR</b>	Eastern Access Road
<b>EPA</b>	Environmental Protection Agency
<b>FATO</b>	Final Approach and Take-off Areas
<b>FBO</b>	Fixed Base Operator
<b>GA</b>	General Aviation
<b>ILS</b>	Instrument Landing System
<b>OCB</b>	Outer Control Boundary
<b>NOR</b>	Notice of Requirement
<b>PC19</b>	Plan Change 19 – Frankton Flats (B)
<b>PC34</b>	Plan Change 34 – Remarkables Park
<b>PC35</b>	Plan Change 35 – Queenstown Airport Aircraft Noise Boundaries
<b>PWA</b>	Public Works Act 1981
<b>QAC</b>	Queenstown Airport Corporation
<b>QLDC</b>	Queenstown Lakes District Council



<b>RESA</b>	Runway End Safety Areas
<b>RMA</b>	Resource Management Act 1991
<b>RNP</b>	Required Navigation Performance
<b>RPL</b>	Remarkables Park Limited
<b>RPS</b>	Regional Policy Statement
<b>RPZ</b>	Remarkables Park Zone
<b>TALO</b>	Touch-down And Lift Off area



**BEFORE THE ENVIRONMENT COURT**

Decision No. [2014] NZEnvC 244

**IN THE MATTER** of the Resource Management Act 1991 and  
of an application under s 149T of the Act

**BETWEEN** QUEENSTOWN AIRPORT  
CORPORATION LIMITED

(ENV-2011-WLG-41)

Applicant

**Court:** Environment Judge J E Borthwick  
Environment Commissioner R M Dunlop  
Environment Commissioner D J Bunting

**Resumed Hearing:** at Queenstown on 17, 18, 19 and 20 March 2014

**Appearances:** M E Casey QC and R M Wolt for Queenstown Airport Corporation  
Limited  
J G A Winchester for Queenstown Lakes District Council  
(regulatory)  
J D K Gardner-Hopkins and C B Sygrove for Air New Zealand  
Limited  
Dr R J Somerville QC and R A Davidson for Remarkables Park  
Limited

**Date of Decision:** 26 November 2014

**Date of Issue:** 26 November 2014

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**DECISION OF THE ENVIRONMENT COURT**

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**REASONS**

**Introduction**

[1] The High Court directed the Environment Court to reconsider its decision in respect of Queenstown Airport Corporation Ltd's notice of requirement to alter Designation 2 of the Queenstown Lakes District Plan to extend the aerodrome at



Queenstown Airport. This decision concerns two of the three matters referred back by the High Court.

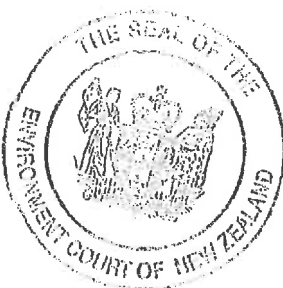
### **Background**

[2] On 25 September 2012 the Environment Court issued its interim decision<sup>1</sup> concerning Queenstown Airport Corporation Ltd's (QAC) notice of requirement (NOR) to alter an existing designation in the Queenstown Lakes District Plan (District Plan). The objective of the NOR is to provide for the expansion of Queenstown Airport to meet projected growth while achieving the maximum operational efficiency as far as possible. Under the notice QAC requires 19.1ha of land (referred to as Lot 6) owned by Remarkables Park Ltd (RPL).

[3] During the hearing in 2012 QAC, having taken expert advice, accepted that under CAA regulations the minimum separation distance between the main runway and the proposed southern parallel taxiway for Code C aircraft is 93m and not 168m as set out in the NOR.<sup>2</sup> In response the Environment Court modified QAC's requirement for Lot 6 land by reducing the area from 19.1ha to 8.07ha. The court reserved its final decision on the balance of the NOR and directed the parties to exchange further memoranda concerning conditions and an updated plan of the modified designation.

[4] The interim decision was appealed to the High Court by both QAC and RPL with QAC asserting that the Environment Court had made five errors of law and RPL that there had been 12 errors of law. RPL's appeal was also supported in large part by Air New Zealand Limited (ANZL).

[5] Following the release of the interim decision QAC resiled from its position that the CAA regulations require a separation distance of 93m between the main runway and the proposed taxiway. This was on the basis that the Director of Civil Aviation must approve a separation distance of less than 168m and QAC is concerned that if the Director does not approve the separation distance of 93m then a key component of the designation works will not be able to be completed.



<sup>1</sup> *Queenstown Airport Corporation Limited* [2012] NZEnvC 206.

<sup>2</sup> That was the court's understanding of the concession. See paragraph [78] of High Court decision for discussion.

[6] Notwithstanding that the appeals had to be heard by the High Court, the Environment Court resumed its hearing to consider the parties' responses as to the conditions of the designation. In its final decision the court approved the NOR on the basis of the 93m separation distance together with conditions addressing the effects of the NOR.<sup>3</sup>

[7] On 12 September 2013 the High Court released its decision on the appeals.<sup>4</sup> In its decision, the High Court allowed the QAC and RPL appeals in part, referring the NOR back to the Environment Court to reconsider the following:<sup>5</sup>

- (a) Whether the requirement should be cancelled or modified after it has provided the parties with an opportunity to be heard in relation to the separation requirements for a Code C taxiway and the process for confirming those requirements.
- (b) The assessment of the adequacy of alternatives and reasonable necessity under s 171(1) (b) and (c) after it has provided the parties with an opportunity to be heard in relation to RPL's legitimate expectation claims and the scarcity of industrial land.

[8] The case was then set down for a pre-hearing conference, at which it was clear the parties were at impasse as to how to advance the matters the High Court directed the Environment Court to reconsider. RPL's position was QAC should seek the Director of Civil Aviation's approval of the separation distance before the Environment Court reconsidered its claim to legitimate expectation and addressed the scarcity of industrial land. Irrespective of the Director's decision, RPL says its expectation is that Lot 6 will not be encumbered by a new designation and it would seek the cancellation of the NOR.<sup>6</sup>

[9] QAC, ANZL and Queenstown Lakes District Council (QLDC) urged the Environment Court to reconsider the matters referred by the High Court on the basis that the required separation distance should be 168m. QAC may (or may not) seek approval from the Director for a lesser separation distance. RPL thought this an inadequate

<sup>3</sup> *Queenstown Airport Corporation Limited* [2013] NZEnvC 95. The extent of the modified Designation is shown on Figure 1 Aviation Precinct Concept Detail (Optimised) Code C Taxiway Separation 93m.

<sup>4</sup> *Queenstown Airport Corporation Limited v Queenstown Lakes District Council* [2013] NZHC 2347.

<sup>5</sup> High Court decision at [148].

<sup>6</sup> Record of Pre-Hearing Conference dated 21 October 2013 at [10].



process because the outcome of the Director's decision may be that the extent of land required is considerably less than that sought under the NOR. Without the Director's approval the Environment Court is not in a position to determine whether the extent of land required is reasonably necessary under s 171(1)(c) of the Act.

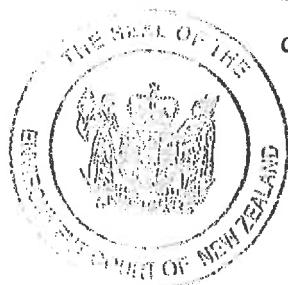
[10] To break the impasse the Environment Court directed it would hear two of the three matters referred back for reconsideration. Having provided the parties with an opportunity to be heard in relation to RPL's legitimate expectation claims and to address the scarcity of industrial land, the court would reconsider its assessment of the adequacy of consideration given to alternative sites and reasonable necessity for the works and designation under s 171(1)(b) and (c). It adjourned the reconsideration of the NOR in light of the separation requirements for a Code C taxiway and the process for confirming those requirements.

[11] The hearing on the legitimate expectation and scarcity of industrial land issues was set down in March 2014. At the conclusion of the hearing the parties' requested the court adjourn the proceedings to afford them a further opportunity to settle their differences through private mediation. By consent the hearing was adjourned.

[12] On 30 May 2014 the parties filed a joint memorandum advising that while progress had been made at mediation, various matters were still outstanding. They had agreed the mediation would resume on 19 June 2014, and requested an adjournment to enable that to occur. The hearing was adjourned.

[13] On 26 June 2014 the parties filed a joint memorandum advising mediation had not resumed. The parties requested the court reserve its decision but in the meantime they would continue their discussions and should they reach an agreement they would advise the court at their earliest opportunity.

[14] On 27 June 2014 the court issued a minute reserving its decision, noting with rostered commitments it was unlikely a decision would be released before the fourth quarter of 2014.



[15] We address next the decision of the High Court as it concerns RPL's claims to legitimate expectation.

**High Court decision – RPL's legitimate expectation**

[16] RPL contends it has a legitimate expectation that QAC would not exercise its powers as a requiring authority and act in a way inconsistent with rights conferred under a series of Land Exchange Deeds and through the course of the parties' dealings. At the 2012 hearing no evidence was led in support of RPL's claim. The interim decision records that certain contracts were handed up to the bench, with the direction that these were not to be read.<sup>7</sup> In the absence of evidence the court declined to take into consideration RPL's contended benefits, a decision which RPL successfully appealed.

[17] The High Court accepted Mr Somerville's submission that the Environment Court was invited not to interpret the contracts, there being no serious dispute about the key representations. In his decision Justice Whata found it was at least arguable, on the face of the agreements, that the expectation of both RPL and QAC was that Lot 6 would remain a buffer zone. The High Court's understanding of the facts is given at paragraph [108]:

[108] I also accept Mr Somerville's basic contention that the contracts were themselves evidence of reliance. In short, the contracts represented the exchange of mutually enforceable promises, for valuable consideration with consequences for breach. The contracts recorded land swaps, that future airport development would accord with agreed plans and not otherwise (and I understand no agreed plan was produced showing Lot 6 would be developed for aerodrome purposes), that QAC would withdraw the aerodrome designation from Lot 6 and that Lot 6 would act as a "buffer" zone, i.e. as between airport activities and RPL's activities. Also attached to one of the contracts were plans showing "potential Helicopter Area 7 Hectares" to the north of the main runway.<sup>52</sup> Effect was given to these contracts by the parties, including the imposition of a covenant over Lot 6 and the withdrawal of the aerodrome designation over Lot 6. I understand that these facts were not challenged. It is therefore at least arguable that on the face of the agreements it was the expectation of both parties that Lot 6 would remain a buffer zone.

Footnote:

<sup>52</sup> See transcript at 1406.



Interim decision at [55].

[18] The High Court found the Environment Court's failure to consider RPL's claim to legitimate expectation to be material:

[146] ... Yet there is at least an arguable case that RPL could legitimately expect that Lot 6 would remain a buffer zone, and/or alternatives not involving RPL's land would be thoroughly explored before the decision to designate was notified or confirmed. As a minimum, RPL could expect that clear justification for using Lot 6 would be established prior to confirmation.

[19] On the doctrine of legitimate expectation and its recognition in resource management law the High Court records:

[106] As to whether RPL's claimed unfairness is prima facie relevant, the doctrine of legitimate expectation is also not new to resource management law. In *Aoraki Water Trust v Meridian Energy Ltd*<sup>46</sup> the High Court recognised that the doctrine of legitimate expectation might be applied in the RMA context.<sup>47</sup> The Court in that case was dealing with the expectation of water rights holders that the regional council would not derogate from their water rights grants unless specifically empowered to do so by the RMA.<sup>48</sup> The application of the doctrine will however depend entirely on the facts of the particular case. But a key ingredient is whether there has been reliance on an assurance given by a public authority, made in the lawful exercise of the authority's powers. If so, the affected person may legitimately expect compliance with that assurance subject only to an express statutory duty or power to do otherwise.<sup>49</sup> In the present case, that must mean satisfaction of the criteria expressed at s 171 and in particular at subs (1)(b) and (c), having regard to any relevant legitimate expectations, properly established. Fairness would then implore an outcome which is consistent with those expectations provided that the outcome met the statutory criteria and achieved the statutory purpose. Conversely, the Court, like QAC cannot be bound to give effect to those expectations where to do so is inconsistent with the requirements of s 171.<sup>50</sup> In short the Court's jurisdiction, though wide, is framed by the scheme and purpose of the RMA.<sup>51</sup>

Footnotes:

<sup>46.</sup> *Aoraki Water Trust v Meridian Energy Ltd* [2005] NZLR 268 (HC).

<sup>47.</sup> At [39]-[42].

<sup>48.</sup> At [46].

<sup>49.</sup> Refer *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC).

<sup>50.</sup> *The Power Co Ltd v Gore District Council* [1997] 1 NZLR 537 (CA).

<sup>51.</sup> Furthermore, the Environment Court does not have jurisdiction to examine the legality of the decision to notify a NOR. Any challenge to legality of QAC's decision to notify must still be brought by way of judicial review. *Waitakere City Council v Estate Homes Limited* [2006] NZSC 112 at [38].





[20] At the March 2014 hearing, the parties' view of the facts differed from the High Court's understanding in two important respects:

- (a) they did not agree on the interpretation of the Deeds; and
- (b) QAC contends clause 3.3 of the 1997 Deed, a key provision, is probably unenforceable due to illegality.

[21] We set out next our understanding of the promises contained in the Land Exchange Deeds and those that have arisen through the parties' dealings. Note we refer to "RPL" as the contracting party, whereas the Deeds record RPL or related companies. Nothing turns on the identity of the parties. The promises made in the Deeds are extensive, and we record those relevant to the issue to be reconsidered by the Environment Court.

#### **The Five<sup>8</sup> Land Exchange Deeds**

[22] In 1997 RPL and QAC entered into a Deed to settle their respective interests in appeals lodged in the Environment Court on the proposed District Plan. To settle the appeals the parties agreed to exchange certain land – RPL would transfer to QAC land it owned north of the main runway and QAC would transfer to RPL land it owned south of the main runway, including land known in this proceeding as Lot 6. Each party would consolidate their respective land holdings on either side of the main runway and the land exchanges would facilitate the extension of the main runway, realignment of the proposed eastern access road and the relocation of the crosswind runway north-east of its present location.<sup>9</sup>

[23] Clause 3.3 of the 1997 Deed provides:

... the land transferred to [RPL] ... shall not thereafter be the subject of any claim or requirement by QAC other than Air Noise Boundary and Airport Approach and Land Use Controls and aerodrome purposes designations/requirements QAC needs to maintain for the continuing operations of Queenstown Airport in accordance with agreed present and future layout.

[our emphasis]

<sup>8</sup> We were referred to other Deeds, but these are of contextual relevance only.

<sup>9</sup> Porter EIC at [14-7].



[24] In clause 6.3 RPL agreed to register a restricted covenant over Lot 6 in favour of QAC:

[RPL] shall after the land exchange, utilise the buffer land only for rural and/or recreational uses and infrastructural utilities not of a noise sensitive nature in terms of NZS6805. ... This limitation shall be the subject of a registrable restrictive covenant in favour of QAC which shall enure during the life of the airport at its present location. The term "recreational uses" expressly allows for provision of a golf course and associated facilities.

[25] In clause 4.1 RPL agreed to commission and pay for the building of a new grass crosswind runway in the position, scale and dimensions shown in Figure 5-1R attached to the Deed.<sup>10</sup> Figure 5-1R shows the position of a new crosswind runway<sup>11</sup> flanked by two areas labeled 'potential' locations for aviation uses and helicopter operators.<sup>12</sup> The two areas are located to the north of the main runway.

[26] The recitals to a second Deed signed in 1998 record the parties' agreement as to future noise contours and activities on RPL's land. Noise contours were modeled, and agreed, for the existing and proposed new crosswind runway.

[27] In 1999 the parties entered into a third Deed. The Deed's recitals record that the parties agreed to settle issues relating to, *inter alia*, the main runway extension, roading realignments, land exchange, crosswind runways, land use planning, future activities and air noise contours.

[28] The 1999 Deed records QAC had transferred some but not all of the land that was to be the subject of a restrictive covenant in the 1997 Deed (clauses 5.1 and 5.2). RPL agreed to register the restrictive covenant over the land that had been transferred (clause 5.2) and to complete registration contemporaneously with the settlement of the balance of the land transfers (clause 5.3). It was uncertain whether the new crosswind runway would be developed. If it was not, the Deed records this would necessitate changes to the areas of land to be exchanged (clause 4.1). Any changes would be the

<sup>10</sup> Note: this agreement was conditional upon completed of the first land exchange and subject to obtaining necessary consents and secondly permission from QAC. These conditions are of no particular relevance.

<sup>11</sup> Runway 16/34.

<sup>12</sup> QAC submission at [11]-[12].

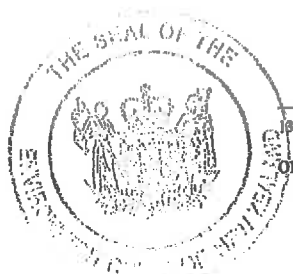


subject of an agreement (clause 4.2) the basis of which was to achieve equality of value for RPL and QAC (clause 4.3).

[29] Following the resolution of proceedings before the Environment Court (District Plan appeal proceedings lodged by QAC and RPL respectively) the parties entered into a fourth Deed (the 2000 Deed). In this Deed they record their agreement on the adjustment of the land exchange and 'certain consequential and other matters' (2000 Deed, Background C). More particularly, QAC and RPL agreed to immediately withdraw caveats they each had registered against part of the other's land (clause 7.1); RPL would complete the registration of the restrictive covenant over Lot 6 (clause 7.2) and QAC would immediately uplift the Airport's designations (clause 15.2). The parties also agreed to amend a number of the land exchange provisions in the 1997 Deed (clause 15.1).

[30] Finally, it was Mr Porter's unchallenged evidence that by 2006 the parties were in dispute over a range of matters, including performance of certain agreements in the earlier Deeds. He gave evidence that QAC provided to him a copy of its 2004 Master Plan for the Airport showing expansion of the airport north of the main runway.<sup>13</sup> This Master Plan was referred to in negotiation and mediation that preceded a 2006 Mediation Deed. The 2004 Master Plan does not appear to have been produced, and we were not referred to any exhibit or bundle containing the same. We note the Master Plans appended to the Lot 6 NOR and dated from 2005, do not investigate development of the airport facilities shown in Figure 5-1R.

[31] The 2006 Mediation Deed records the existing crosswind runway was to be retained and the proposed new crosswind runway abandoned (clause 4.3). In clause 7.1 the parties agreed to complete the land exchanges proposed in the Land Exchange Deeds as they are now shown on an updated subdivision plan (Figure 6-5V-S). The new crosswind runway and the potential aviation and helicopter operator areas are not shown on Figure 6-5V-S. Instead the Figure 6-5V-S shows the areas set aside for these



He does not say whether the Master Plan considered the development in accordance with Figure 5-1R or the existing aerodrome designation to the north of the main runway or something else.

activities to be occupied, in part, by the Eastern Access Road, a local road and subdivision in proximity to Glenda Drive.

**RPL's legitimate expectation claims**

[32] RPL's expectations as to the exercise by QAC of its powers as a requiring authority derive from the substantive benefits conferred under the Land Exchange Deeds and reinforced through the conduct of the parties over many years.<sup>14</sup> We found it helpful to group those expectations under two general headings as follows:

- (a) did QAC agree to obtain RPL's prior approval for the design and layout of the Airport?
- (b) did QAC promise in the Land Exchange Deeds or otherwise represent to RPL that it would use its own land for airport purposes and not require Lot 6?

[33] The claims, while closely related, are to quite different benefits.

[34] If RPL's expectations are recognised, it submits the court should cancel the NOR with the effect that land available for buffering of airport and noise sensitive activities in the Remarkables Park Zone (i.e. Lot 6) will not be reduced and RPL will retain the opportunity to develop Lot 6 in accordance with the District Plan.<sup>15</sup> In saying that Mr Somerville, for RPL, accepted cancellation is not the only outcome available to the court.

<sup>14</sup> Mr Somerville also addressed promissory estoppel and public law estoppel. While RPL appealed the interim decision on grounds that the court held equitable issues (estoppel) were not relevant under s 171(1)(d), the High Court did not refer the application to be reconsidered on this basis. Mr Somerville argues that, even so, the High Court discusses fairness and fairness subsumes the doctrine of promissory estoppel. Fairness is undoubtedly an important consideration in these proceedings.

While RPL's submission is that QAC is estopped from requiring Lot 6, this is prefaced by a submission that the court is to make its decision having applied the statutory tests in the Act. We have not discussed the estoppel as the court was not directed to reconsider its decision on this basis. Moreover, Mr Somerville agreed that the outcomes pursued by RPL would be the same under the doctrine of estoppel and legitimate expectation (Transcript at 345).

<sup>15</sup> Porter Reply [4].



***Issue: Did QAC agree to obtain RPL's prior approval for the design and layout of the Airport?***

***Legal Submissions and Evidence***

[35] The parties agree that Figure 5-1R is the 'agreed present and future layout' referred to in clause 3.3.

[36] The former Chief Executive Officer of QAC, Mr S Sanderson, gave evidence that the areas labeled 'potential' locations for aviation uses and helicopter operators record RPL's preferred location for a helicopter facility and, we understand, it has no more import than that.<sup>16</sup>

[37] Mr Porter's view is quite different. He says the words 'agreed present and future layout' in clause 3.3 of the 1997 Deed contemplates two future scenarios. The first is the future as depicted by Figure 5-1R (this is the 'agreed present layout') and the second scenario is any layout which is different from Figure 5-1R (this is the 'future layout'). Thus he interprets clause 3.3 as requiring RPL's agreement to any 'future layout' that is not Figure 5-1R.

[38] Mr Porter gave evidence that prior to the 1997 Deed being entered into RPL's lawyers, Brookfields, wrote to QAC agreeing to insert a clause in the Deed that it would not oppose the presence of the airport 'on this location' provided that the clause was qualified by reference to Figure 5-1R and secondly, subject to a promise by QAC that it would not expand the airport and noise contours to RPL's detriment.<sup>17</sup>

[39] Mr Somerville on behalf of RPL submits the Deeds gave rise to an expectation to a fair process. Fair process means, amongst other things, that QAC would not change the airport layout and design in a way affecting RPL's land without negotiating or following the alternative disputes resolution procedures in the Deeds.<sup>18</sup> In the manner framed, we understand RPL's expectation is to substantive and procedural benefits.

<sup>16</sup> Sanderson EiC at [16].

<sup>17</sup> Porter EiC at [16]. Letter from Brookfields to Berry & Co dated 19 September 1997.

<sup>18</sup> Somerville opening submissions at [22].



[40] Mr Casey responds saying that the 1997 Deed was premised upon the layout in Figure 5-1R and the parties agreed to conduct their affairs in a way consistent with the terms of the Deed.<sup>19</sup> However, there was no express provision of what the position would be if the agreed present and future layout was not, or could not be, completed.<sup>20</sup> Moreover, the locations of the areas for aviation/helicopter operators are shown as 'potential' only and are not necessarily agreed. For this and other reasons he says the interpretation of the Deed is problematic for both parties.<sup>21</sup> While the Deed contains a term that it was "subject to such further or other matters as the parties may agree and record in writing from time to time"<sup>22</sup> the parties have not been able to agree upon a location for aviation/helicopter facilities different from the areas shown on Figure 5-1R.

Discussion and findings

[41] For there to be an expectation of the sort claimed by RPL there needed to have been a clear, unambiguous and unqualified representation: *Talleys Fisheries Ltd v Cullen* High Court, Wellington, CP287/00, 31 January 2002, Ronald Young J at page 47ff. Alternatively, where the expectation is not dependent on the existence of a legal right to the benefit sought there must nevertheless be a reasonable basis for the expectation. A legitimate expectation cannot be founded on a hope or unsubstantiated belief of the person asserting it: *Te Heu Heu v Attorney-General* 1999 1 NZLR 98 at 127.

[42] Whether Mr Porter is right in his claim that QAC agreed under clause 3.3 to obtain RPL's prior approval for a future layout that is different from that shown in Figure 5-1R turns on the interpretation of the 1997 Deed. Mr Porter's expectation that QAC would obtain RPL's approval for an Airport design or layout that is different from Figure 5-1R is a much broader proposition than an expectation QAC would use its own land for airport purposes, and not require RPL's.<sup>23</sup>

<sup>19</sup> Clause 6.10-6.11.

<sup>20</sup> QAC submissions at [14].

<sup>21</sup> Transcript at 231.

<sup>22</sup> Clause 1.3.

<sup>23</sup> Transcript at 84-85 and 103, EiC at [23].



[43] We start with the premise that Figure 5-1R shows the agreed present and future layout of the Airport.

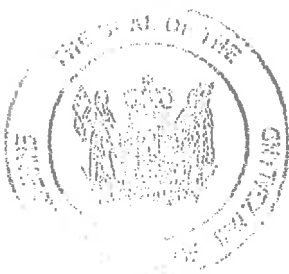
[44] In clause 3.3 QAC promises that its claims or requirements over the land transferred to RPL would henceforth be restricted to the maintenance of the Airport in accordance with the agreed present and future layout. Under the Deed RPL was to develop the new crosswind runway shown in Figure 5-1R. By itself the new crosswind runway would likely have necessitated changes to the Air Noise Boundary and Airport Approach and Land Use Controls. QAC, however, does not promise that it would develop the two 'potential' areas in Figure 5-1R.

[45] Pre-contractual negotiations between RPL's lawyers, Brookfields, and QAC referred to above do not qualify the promises made in the 1997 Deed. Assuming clauses 6.1, together with 3.3, respond to the matters addressed in Brookfields' letter – clause 6.1 simply states that the parties would not oppose land use or development consistent, *inter alia*, with the Deed.

[46] Construed objectively the phrase 'agreed present and future layout', means the *agreed present and agreed future layout*. This interpretation accords with Figure 5-1R which shows the Airport's present layout and the future layout (that is, the new crosswind runway and two other areas marked for potential development). We find therefore clause 3.3 does not contain the additional promise that QAC would either develop the areas shown in Figure 5-1R or obtain RPL's agreement to develop an airport with a different design and layout. Mr Porter's interpretation of clause 3.3 is unsupported by the other terms in the 1997 Deed and strains the plain meaning of the phrase 'agreed present and future layout'.

[47] As to whether there was any other reasonable basis for this expectation, there is no evidence any inducement given by QAC during the course of the parties' dealings to substantiate Mr Porter's belief.

[48] Even if we are wrong in our interpretation above, then Figure 5-1R was varied following the abandonment of the new crosswind runway. The 2006 Mediation Deed records the abandonment of the new crosswind runway [clause 4.3] and, separately, at



[clause 7.1] the parties' agreement to complete the further land exchanges shown on attached subdivision plan (Figure 6-3V-S). Figure 6-3V-S does not show the relocated crosswind runway or the potential aviation and helicopter operator areas. Instead land shown in Figure 5-1R for the new crosswind runway and airport helicopter operations is bisected by a proposed east – west road (lot 10). Figure 6-3V-S appears to slightly reduce the area previously available for helicopter operations by relocating the Eastern Access Road to the west where it passes around the north eastern end of the main runway. Furthermore, Figure 3857-184 S attached to the 2006 Deed shows a proposed eastern access road alignment bisecting the Figure 5-1R helicopter operations area generally on a north – south alignment. By 2006 (at least) Figure 5-1R was no longer the 'agreed present and future layout'. We infer that if the activities shown in Figure 5-1R were to be developed, the parties had agreed they would be at a different location (not shown). This inference is supported by RPL's case which focused primarily on alternative sites south and west of the activities in Figure 5-1R and secondly, by the Master Planning for the Airport from 2005.

[49] To summarise, RPL can not legitimately expect that QAC would either develop the Airport layout in Figure 5-1R or alternatively obtain its approval for a layout that was different from that shown in Figure 5-1R.

***Issue: Did QAC promise in the Land Exchange Deeds that it would use its own land for airport purposes and not require Lot 6?***

Legal submissions and evidence

[50] RPL contends it has an expectation to the following substantive benefits:

- (a) the land transferred to RPL (Lot 6) would not be the subject of a NOR;<sup>24</sup>
- (b) Lot 6 would remain a buffer;<sup>25</sup>
- (c) QAC would not use its coercive powers under the RMA to designate RPL's land and derogate from its property rights;<sup>26</sup> and



<sup>24</sup> Transcript at 329. Somerville submissions at [12].

<sup>25</sup> Somerville closing submissions at [1].

<sup>26</sup> Somerville at [6].



- (d) QAC would not use its powers as a requiring authority and act in a way that would have a significant detrimental effect on RPL's master planning of the Remarkables Park Special Zone.<sup>27</sup>

[51] To establish its claim RPL relies on the following:<sup>28</sup>

- (a) QAC transferred part of Lot 6 to RPL on the basis that RPL register a restrictive covenant over the land prohibiting noise sensitive activities. RPL benefited by restrictions contained in the covenant;
- (b) the promises made in the Deeds are specific and unqualified, namely the land transferred to RPL would not be the subject of any NOR by the QAC; and
- (c) the promise was directed at a particular individual (RPL).

[52] In addition RPL says:

- (a) in accordance with the Deeds RPL transferred higher value land to QAC located north of the main runway;
- (b) QAC would retain the land transferred by RPL while at the same time acquiring back the lower value Lot 6 using its public law powers;<sup>29</sup>
- (c) the breach of the promises contained in the Deeds is an abuse of power and it would be unfair to permit QAC and QLDC (QLDC is a signatory to the Deeds) to depart from the assurances given in the Deeds;
- (d) there is no over-riding public interest to justify a breach of the promise contained in the Deeds; and
- (e) QAC is now selectively aligning private contracts with public law statutes when deciding which contracts to honour and which to not.<sup>30</sup>

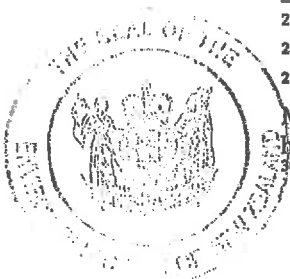
[53] For its part QAC:

<sup>27</sup> Somerville at [6].

<sup>28</sup> Somerville closing submissions at [1.12], Somerville opening submissions at [12(b)].

<sup>29</sup> Evidence from Mr C Stanley, a valuer, was provisionally admitted. No party sought to cross-examine Mr Stanley, submitting instead the evidence was irrelevant to the issues sent back for reconsideration. We have noted the evidence and find it to be of contextual relevance alone.

<sup>30</sup> Transcript at 322.



- (a) has not acknowledged the benefits asserted by RPL under the Land Exchange Deeds;
- (b) says clause 3.3 of the 1997 Deed purporting to limit the powers of QAC is probably unenforceable due to illegality;<sup>31</sup>
- (c) acknowledges the Deeds “may” give rise to an expectation on the part of RPL<sup>32</sup> that it would not look to RPL’s land<sup>33</sup> but if it did this expectation does not prevail against the statutory tests or Part 2 of the Act;<sup>34</sup>
- (d) acknowledges the Deeds “may” give rise to an expectation as to certain process, and if it did the process is the same or similar as under the RMA or Public Works Act and QAC conducted itself in a manner that satisfied RPL’s expectations in this regard;<sup>35</sup> and
- (e) submits that the Deeds do not prevent the court’s proper exercise of its powers under the RMA.<sup>36</sup>

[54] We expand on our summary of QAC’s key submissions above repeating that RPL’s rights under the Deeds were not acknowledged by QAC or by its former CEO, Mr Sanderson.<sup>37</sup> This may be given QAC’s view, tentatively expressed, that clause 3.3 is unenforceable insofar as it purports to limit or fetter the power to designate and take land.<sup>38</sup>

[55] QAC submits that it could not contract to take away a power conferred upon it by Parliament or curtail the Authority’s statutory obligations (citing *Dandelion Investments Ltd v Commissioner of Inland Revenue* [2003] 1 NZLR 600, *The Power Co Ltd v Gore District Council* [1997] 1 NZLR 537, *Commissioner of Inland Revenue v New Zealand Wool Board*,<sup>39</sup> *Staunton Investments Ltd v Chief Executive of Ministry of*

<sup>31</sup> QAC submissions at [29(d)].

<sup>32</sup> QAC submissions at [5.3].

<sup>33</sup> QAC submissions at [5.9]. QAC later discounts the possibility RPL had a substantive benefit at paragraph [29] where it submits “At most, the effect of the expectation is that QAC must carefully consider alternatives to Lot 6 ...”. QAC also submits at [5.1]-[5.3] the expectation could not amount to an outcome.

<sup>34</sup> QAC submissions at [5.1]-[5.3], Transcript at 204.

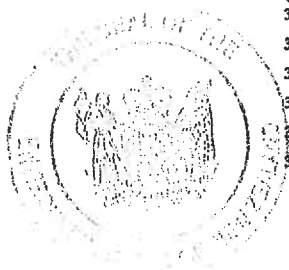
<sup>35</sup> QAC submissions at [5.3]-[5.6].

<sup>36</sup> QAC submissions at [47].

<sup>37</sup> Sanderson, Transcript 261-263.

<sup>38</sup> QAC submissions at [41].

<sup>39</sup> (1999) 19 NZTC 15, 476.



*Fisheries* [2004] NZAR 88). The relevant powers are those conferred by ss 3 and 4 of the Airport Authorities Act 1996 and s 167 of the RMA.<sup>40</sup>

[56] QAC asserts that it did not enter into the Deeds in the course of its commercial operations, but in some other capacity; we surmise as a requiring authority.<sup>41</sup> A submission made notwithstanding Mr Sanderson's characterisation of QAC's dealings with RPL as "commercial".

[57] That said, QAC appears to accept that clause 3.3 of the 1997 Deed may give rise to a substantive expectation that QAC would not designate Lot 6 as consideration was given for the exchange of land under the Deed. However, QAC says it is not clear what the remedy is where those benefits are not conferred. The usual remedy is to ensure proper process is followed, but not to "dictate" a substantive outcome in this proceeding.<sup>42</sup>

[58] Referring to evidence called in the 2012 and 2014 hearings, QAC submits between 1997 and 2008 it considered the use of its land (principally land north of the main runway) for aerodrome activities. It turned to Lot 6 only when it had reached the view that its own land was unworkable and unsuitable, a view informed by Master Planning for the airport. In December 2008 Mr Sanderson advised Mr Porter that QAC was considering giving notice to require Lot 6 for aerodrome purposes. QAC says it consulted with RPL before lodging the NOR with the EPA in December 2010. Its meetings with RPL were conducted in good faith. During this time QAC amended its draft requirement for the land taking into consideration RPL's concerns, including the effects on RPL's land if the extension to the existing designation was confirmed. QAC lodged the NOR when it had reached the view that no commercial deal could be reached with RPL.<sup>43</sup>

[59] We record ANZL's response to QAC's submission as to the illegality of the Deeds. In its submission ANZL contended that an airport authority/requiring authority can agree to bind or fetter its discretion not to exercise a statutory power to use specific

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<sup>40</sup> QAC submissions at [54]-[57].

<sup>41</sup> QAC submissions at [42].

<sup>42</sup> QAC submissions at [33].

<sup>43</sup> Sanderson at [43]-[44] and [53].



land for a statutory purpose. What it cannot do is to forgo its ability to designate all or any land, but this is not the scenario before the court.<sup>44</sup> ANZL cautions if an airport authority/requiring authority cannot enter binding contracts with neighbouring landowners this would significantly undermine the ability for QAC (or any other requiring authority) to enter into commercial agreements. RPL takes a similar view.

[60] Ultimately QAC, RPL and ANZL agree that, if the Deeds and/or the course of dealings did give rise to a legitimate expectation held by RPL, this would not be determinative of the NOR.<sup>45</sup> Rather, the court is to take into account RPL's expectations when considering s 171 and Part 2 of the Act and, ultimately, when exercising its discretion whether to confirm the NOR (with or without modification) or cancel the notice.

Discussion and findings

[61] While the concept of legitimate expectation has been long recognised in administrative law, its boundaries are not well settled and it is far from straightforward to apply in practice: at paragraph [137] *New Zealand Association for Migration and Investments Inc v The Attorney General*.<sup>46</sup> This has proven to be the case here.

[62] Under s 149U(4) the decision whether to confirm (with or without modification) or cancel the NOR to extend the existing designation rests with the Environment Court and not QAC. We record no party has activated the alternative dispute resolution process in the Deeds. The legality of QAC's decision to lodge with the EPA a notice of requirement to alter its designation has not been challenged and any challenge as to the notice would need to be by way of judicial review.<sup>47</sup>

[63] The promise made to RPL in clause 3.3 of the 1997 Deed was clear and unambiguous. In clause 3.3 QAC promises that its claims or requirements over the land transferred to RPL would henceforth be restricted to the maintenance of the Airport in accordance with the agreed present and future layout. The agreed present and future

<sup>44</sup> ANZL submissions at [4.1].

<sup>45</sup> ANZL submissions at [4], RPL closing submissions at [1.11], QAC in general.

<sup>46</sup> High Court Auckland Registry M 1700/02.

<sup>47</sup> See *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at footnote 51.



layout is recorded in Figure 5-1R. QAC reneged on this promise when it lodged the NOR.

[64] Far from straightforward is QAC's submission that clause 3.3 is unenforceable due to illegality, a submission made notwithstanding the consideration which has passed for the benefits of the promise. In support of its submission QAC referred to ss 3 and 4 of the Airport Authorities Act 1996 and s 167 of the RMA which empower QAC to do certain things, however those provisions do not impose a duty or obligation upon QAC to act in a certain way (as asserted).<sup>48</sup> In the end we are not assisted by the submissions and do not understand whether QAC says it signed the Deeds or clause 3.3 of the 1997 Deed as a requiring authority, an airport authority or in both capacities.<sup>49</sup>

[65] We do not consider the legality of clause 3.3 is determinative, as RPL could legitimately expect QAC would use the land transferred to it for airport purposes. The corollary to QAC using its own land is that it would not use RPL's, and it is clear from the evidence both parties expected Lot 6 to remain a buffer area. The Deeds aside, there was a reasonable basis for these expectations. Up until December 2008, the parties' relationship was premised on QAC using land within the northern part of the existing designation to expand its existing facilities. RPL's expectation was informed and reinforced by the Master Planning for the Airport from (at least) 2005 to July 2008 and through the wider arrangements under the Land Exchange Deeds.

[66] RPLs' expectations were repeated and reinforced between Mr Sanderson and Mr Porter, including by QAC's insistence that the restrictive covenant over Lot 6 did not contemplate large format retail activities as proposed under PC34.<sup>50</sup> In that regard there was some suggestion by QAC that RPL's subsequent conduct undermined the reliance it placed upon the Deeds. Having heard from Mr Porter and Mr Sanderson, we are satisfied that until the notification of the NOR both parties conducted their affairs in a manner consistent with the terms of the Deeds, albeit if from time to time each tested the boundaries of, and other party's commitment towards, those agreements.

<sup>48</sup> QAC submissions at [54]-[57] and [55].

<sup>49</sup> We did not find the labels "commercial operations" and "obligations in relation to the provision of airport infrastructure" at QAC submissions paragraph [42] enlightening.

<sup>50</sup> Transcript 2012 at 998, transcript 2014 at 259 and 270-1.



[67] Where specific promises are made to an individual, as is the case here, Justice Randerson's observations in *New Zealand Association for Migration and Investments Inc v The Attorney General* are to the point:

[158] Where very specific promises are made to an individual or a small class with serious consequences for them if the promises are not kept, the Court's approach is likely to be one of particularly close examination of the decision to ensure that the legitimate expectations of individuals are not unfairly or unreasonably thwarted. The Court will be astute to ensure the decision maker has conscientiously considered the position of those affected, has sound and logical reasons for renegeing on the promises made, and has otherwise acted lawfully, fairly, and reasonably in the administrative law sense...

[68] In the context of an application for an NOR Justice Whata in *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* says the approach to be taken is as follows:

[106] ... Fairness would then implore an outcome which is consistent with those expectations provided that the outcome met the statutory criteria and achieved the statutory purpose. Conversely, the Court, like QAC, cannot be bound to give effect to those expectations where to do so is inconsistent with the requirements of s 171.<sup>50</sup> In short, the Court's jurisdiction, though wide, is framed by the scheme and purpose of the RMA.<sup>51</sup>

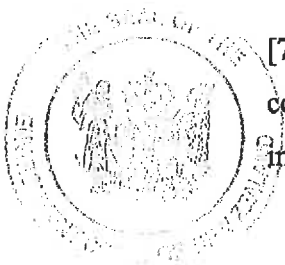
Footnotes:

<sup>50.</sup> *The Power Co Ltd v Gore District Council* [1997] 1 NZLR 537 (CA).

<sup>51.</sup> Furthermore, the Environment Court does not have jurisdiction to examine the legality of the decision to notify a NOR. Any challenge to legality of QAC's decision to notify must still be brought by way of judicial review. *Waitakere City Council v Estate Homes Limited* [2006] NZSC 112 at [38].

[69] The outcome here is RPL's legitimate expectation that QAC would use its own land for airport purposes, and not RPL's land for undertaking the work. Provided that the use of QAC's land met the statutory criteria and achieved the statutory purpose fairness would implore this outcome.

[70] Before we reconsider our findings under s 171(1)(b) and (c), taking into consideration RPL's expectations, we address the High Court's direction on scarcity of industrial land.



## Scarcity of Industrial Land

### *Introduction*

[71] During the course of the 2012 hearing RPL and ANZL had identified five alternative sites or methods which they say QAC had not adequately considered. These included conceptual plans for a general aviation/helicopter precinct north of the main runway which were produced by RPL's aviation planner, Mr D Sachman. Two plans included 4.52ha of industrial land owned by QAC outside of the Airport's existing designation.

[72] In the interim decision the court found the use of the undesignated land to be suppositious<sup>51</sup> for the following reasons [89]-[91]:

[89] Conceptual plans prepared by RPL for a general aviation/helicopter precinct north of the main runway included undesignated land owned by QAC within the area of PC19.<sup>52</sup> Under these plans a general aviation/helicopter precinct would displace up to 4.52 hectares of industrial land within PC19. In proposing this option, RPL witnesses did not address the scarcity of industrial land within Queenstown (an important issue that PC19 *inter alia* seeks to address). There was some suggestion by the RPL planner, Mr M Foster, that aerodrome activities are industrial activities for the relevant activity areas within PC19.

[90] We doubt Mr Foster's interpretation is correct and in the absence of any evidence in this proceeding or PC19 addressing the implications of an aviation precinct within PC19, particularly in relation to the urban form and function, we do not consider that PC19 land should be available as part of an alternative location. Activities relating to an aviation precinct appear to be outside those contemplated by the District Council when promulgating PC19.

[91] The conceptual plans for a general aviation/helicopter precinct located partly on land designated for the Event Centre were not supported by Mr Foster. We agree with him that the presence of the Event Centre's designation would cause "serious trouble" and should be discarded.<sup>53</sup>

[73] In respect of RPL's appeal the High Court found:<sup>54</sup>

<sup>51</sup> Interim decision at [88].

<sup>52</sup> Sachman BiC at Appendix E, concept plans 1 and 1a, and Exhibits 11A-D.

<sup>53</sup> Transcript at 939.

<sup>54</sup> High Court decision at [129].



Problematically however, the Court identified “scarcity of industrial land” and PC19 as a key reason for treating the site to the north as suppositious. As there was no evidence about this, and no argument directly addressing its merits, the Court fell into procedural, if not substantive error. It may be that the Court treated scarcity of industrial land in Queenstown as a matter of uncontroverted fact. Certainly recent decisions of the Environment Court and this Court about PC19 refer to the significant need for industrial land in Queenstown. And the Court could not be criticised for referring to PC19 as it was a mandatory relevant consideration. But RPL should have been invited to submit on the factual issue of scarcity if it was going to be the reason for rejecting RPL’s alternative site as suppositious. As a minimum, and in the absence of any party raising the issue of scarcity of industrial land, RPL was entitled to notice of the Court’s conclusions about that issue before it was used as a reason to reject RPL’s objection. While I would ordinarily afford the Court a significant amount of latitude for the reasons mentioned at [125]-[126], an issue of procedural justice arose when the Court resolved a substantive issue relying on its own knowledge and without notice to the parties.

[74] And later in its decision, the High Court concluded:<sup>55</sup>

One real difficulty for RPL is that the Environment Court has closely assessed the effects of the NOR in light of the criteria at s 171 and found clear justification for it. To the extent therefore that there has been any unfairness in the process leading up to the issuance of the NOR, it could be said to have been remedied by the subsequent Environment Court process. The tipping point however is that the Court referred to the scarcity of industrial land to disregard RPL’s alternative. RPL was never afforded the opportunity to address the scarcity of industrial land and whether that provided a proper basis for the Court’s conclusion. This was procedurally unfair and compounded the failure to have regard to RPL’s asserted expectations. I cannot foreclose the possibility that scarcity of industrial land is not a valid issue, or if it is, that scarcity was and is not a proper reason to foreclose consideration of RPL’s alternative, especially in light of the previous contractual arrangements.

*RPL legal submissions and evidence*

[75] RPL submits alternative sites to the NOR include industrial land owned by QAC. However, it considers effects arising from the use of industrial land are irrelevant where QAC did not consider sites involving its industrial land.

[76] RPL further submits:<sup>56</sup>

<sup>55</sup> High Court decision at [147].

<sup>56</sup> Unless otherwise recorded the submissions are from Mr Somerville’s opening submissions at [39]-[44].



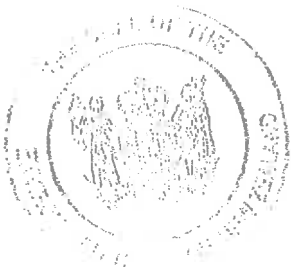


- (a) in the interim decision the Environment Court disregarded Mr Foster's interpretation as to activities allowed on industrial land;<sup>57</sup>
- (b) there is insufficient evidence concerning the extent to which QAC's existing designation would need to be altered (presumably extended) to meet its requirement, and in the absence of that evidence the court cannot determine the effect on industrial land supply;
- (c) if QAC were to give notice under the Act requiring industrial land for airport purposes QLDC would be unlikely to resist the alteration of its existing designation;
- (d) but in any event any assessment of alternatives and secondly, what is reasonably necessary for achieving the objectives for which the designation is sought, is to be addressed in terms of the need of the airport rather than the need for industrial land supply.

[77] RPL called evidence from resource management planners, Mr M Foster and Mr B Putt.

[78] Evidently, as he explained, the purpose of Mr Putt's evidence was to provide the court with an independent and new assessment of the NOR in relation to Part 2 matters and to provide limited evidence on the topic of industrial land referred back by the High Court.<sup>58</sup> In summary on the topic of industrial land his evidence was:

- (a) the analysis of Wakatipu's industrial and commercial land needs and the conclusions drawn in the Environment Court's interim decision on plan change 19 were "incredibly detailed" and he held no contrary view to the court's findings. He accepted this evidence on this topic was not seriously challenged by any of the plan change appeals;
- (b) yard-type and transport operations would be displaced if QAC used its industrial land for aerodrome activities, but on a quick review of the Yellow Pages he had located transport operators in Alexandra, Cromwell, Dipton and Ranfurly.<sup>59</sup>



<sup>57</sup> Somerville closing submissions at [7.2].

<sup>58</sup> Putt Transcript at 153.

<sup>59</sup> Putt EiC at [35] Transcript at 158.

[79] Mr Foster gave evidence (relevantly) that:

- (a) some of QAC's industrial land could be used for aircraft hangars or for other aviation related activities. That was so even if a taxi-way was required to connect these activities to the airport;<sup>60</sup>
- (b) if "service" activities as per the operative District Plan's definition includes helicopter hangars without airside access, QAC would not need to designate further land;
- (c) on the other hand the location of a taxi-way and/or FATO/TALOs on industrial land would require either a variation to PC19 or an extension to the airport designation over land in PC19;<sup>61</sup>
- (d) the airport is a national resource and its requirement trumps any issue arising in relation as to scarcity of industrial land. If industrial land is required the current designation boundaries should be extended to recognise its pre-eminent role; and
- (e) that it is feasible for this land to be used for some sort of airport purpose within the context of PC19. A plan entitled *Possible GA Use of Area Z* shows an indicative layout for a seven lot subdivision on the 4.52ha block. Five lots are connected to land within the airport designation by a taxi-way.<sup>62</sup> This plan is unrelated to plans produced earlier by RPL's aviation planner Mr Sachman for general aviation and helicopter facilities.<sup>63</sup> If it was decided to locate aviation facilities on the northern side of the airport, a significant amount of work would be required to sort out an effective layout.<sup>64</sup>

QAC's submissions and evidence

[80] In response, QAC observes that the reason the matter was referred back was because RPL had not had an opportunity to address the scarcity of industrial land. Having heard from the parties the court must determine whether its finding was correct,

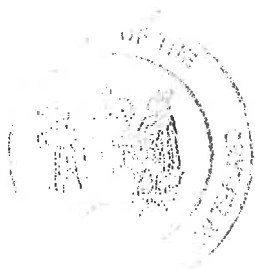
<sup>60</sup> Foster EIC at [3.9]-[3.11].

<sup>61</sup> Foster Transcript at 151. We note the take-off or landing of aircraft other than for emergency landings, rescues or fire-fighting is prohibited under PC19.

<sup>62</sup> Foster EIC at [3.11].

<sup>63</sup> Mr Sachman's plans also included industrial land and land within the existing designation north of the main runway.

<sup>64</sup> Foster Transcript at [150]-[151].



as a matter of fact, and if so whether this reason was sufficient basis to rule out the consideration of [part of] an alternative site advanced on behalf of RPL.

[81] It is open to a party opposing a notice of requirement to say that the consideration of alternatives by the requiring authority was inadequate under s 171(1)(b)(i). While a requiring authority is not obliged to consider every conceivable option, the opposing party may produce evidence as to an alternative site(s) that should have been considered, but was not. In this case the Environment Court could have reasonably expected RPL's planners to have addressed the impact of RPL's preferred alternative on the land supply for industrial activities.<sup>65</sup> RPL did not do this. No party to PC19, including RPL, challenged the 2006 Commercial Land Needs Report (CNLR) which identified a scarcity of industrially zoned land in the Wakatipu Basin, or challenged the appropriateness of industrial activities in this area.<sup>66</sup>

[82] Mr Foster's attempt to "fit" airport activities into the definition of "industrial" does not address the issue of land shortage identified in the 2006 Commercial Land Needs Report. If PC19 land were to be used for aerodrome activities, it would likely need to be either designated for this purpose and/or PC19 varied.<sup>67</sup>

[83] QAC submits the scarcity of industrial land is a relevant but not determinative issue in this proceeding.<sup>68</sup> When read in its entirety, the interim decision is clear that scarcity of industrial land was one finding that led the court to conclude that the north-eastern sector was unsuitable for the aviation precinct. Other more important findings, included safety and operational constraints and these findings apply equally to QAC's designated and undesignated land north of the main runway.<sup>69</sup>

[84] Planning evidence was given by Mr J Kyle in support of QAC. The key points of his evidence follow:

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<sup>65</sup> Transcript 224-226.

<sup>66</sup> QAC submissions at [79]-[86]. Counsel notes QAC did initially challenge the suitability of PC19 for industrial activities but did not maintain its challenge.

<sup>67</sup> QLDC submissions at [83]-[84].

<sup>68</sup> Transcript at 222.

<sup>69</sup> Transcript at 176 and 227.



- (a) he agreed with Mr Foster that some service or industrial activities associated with the airport that are not dependent on airside access could establish on the PC19 land;
- (b) that said, the activities covered by the NOR fall within the District Plan definition of "Airport Aerodrome".<sup>70</sup> These are not "service" as defined in the District Plan and are not anticipated within PC19's industrial areas;
- (c) the area of industrial land allocated under PC19's Structure Plan is less than forecast demand;<sup>71</sup>
- (d) the Mitre 10 Mega and Pak 'n Save proposals (since consented) for retail activities within the AA-E1 industrial area have reduced the land available to meet that demand;
- (e) while a slowdown in the rate of population growth since 2006 means that the PC19 land required for industrial use may not be required within the timeframe envisaged within the Commercial Needs Land Report, there are very few alternative locations for industrial growth within the Basin and the QLDC is not investigating alternative sites for industrial activity. The allocation of land for industrial use within PC19 remains highly important to the economic vitality and wellbeing of the District;<sup>72</sup>
- (f) Cromwell and other alternative locations for industrial activities servicing Wakatipu Basin were put forward by Mr Putt without consideration of the suitability of those locations. For example, Cromwell is some 55km from Frankton with a difficult road connection, particularly in winter, and with access sometimes restricted in the unstable Nevis Bluff area.<sup>73</sup>

QLDC submissions

[85] The final submission on the topic of scarcity of industrial land was received from QLDC. QLDC submitted that the evidence produced at this hearing does not require the court to alter its conclusions about the scarcity of industrial land.

[86] Whether the court's decision on scarcity of industrial land is viewed as a contextual or a substantive decision, the consideration of the planning framework is

<sup>70</sup> "Airport Aerodrome" means any defined area of land or water, intended or designed to be used, whether wholly or partly for the landing, departure, movement or servicing of aircraft.

<sup>71</sup> Kyle EIC at [10]-[13].

<sup>72</sup> Kyle EIC at [15].

<sup>73</sup> Kyle EIC at [19].



mandatory under s 171(1)(a)(iv).<sup>74</sup> RPL witnesses do not address the court's findings on the scarcity of industrial land, but instead challenge decisions not referred back by the High Court for reconsideration. QLDC is critical of RPL's evidence directed at the relative value of using industrial land for airport purposes as against the value of retaining the Remarkables Park Zone. This evidence does not take cognisance of the conditions imposed by the court on the NOR.

***Discussion and findings***

[87] Where a party seeks to challenge the adequacy of consideration given by a requiring authority to alternative sites, the challenging party (here RPL) has the burden of proof to lead evidence that, *prima facie*, supports the use of the alternative site. The court had assumed, it appears wrongly from the High Court's decision, that to discharge the burden of proof evidence should have been led by RPL addressing the wider policy implications of using the alternative site.

[88] That said, RPL and QAC have now had an opportunity to lead evidence and make submissions on the scarcity of industrial land. On the topic of use of industrial land we accept the evidence of Mr Kyle (which was not seriously challenged) and our findings of fact are:

- (a) the use of 4.52ha of land for aerodrome activities would displace industrial and service activities;
- (b) the supply of land for industrial activities within PC19 is not sufficient to meet forecast demand. Since 2012 QLDC has consented retail activities in PC19 land zoned for industrial activities (AA-E1), reducing the land supply;<sup>75</sup>
- (c) aircraft movement within the industrial area is prohibited and would require a plan change or change to the existing designation;
- (d) the 2005 Master Plan did consider the use of industrial land for general aviation and helicopter uses, but identified disadvantages at the locations considered;<sup>76</sup>

<sup>74</sup> QLDC submissions at [10].

<sup>75</sup> In PC19 the court did not rely on 2006 CNLR when making its findings but also had updated evidence produced by QLDC and RPL witnesses.

<sup>76</sup> 2005 Master Plan at 39ff.



- (e) contrary to RPL's submission, the Environment Court did have regard to Mr Foster's interpretation of industrial activities (see paragraph [90] of the interim decision).<sup>77</sup> The work for which the land is required falls within the District Plan definition of "airport aerodrome" activities and not "industrial" or "service" activities as he asserts; and
- (f) QAC's industrial land is not required to accommodate the aerodrome activities that are the subject matter of this NOR. The 2010 Master Plan identifies that there is sufficient land within the existing designation (approximately 22ha), north of the main runway to accommodate the general aviation and helicopter precinct as well as a Code B taxiway to service the same. Under this configuration the proposed Code C taxiway would be located south of the main runway. QAC requires Lot 6 because it says its northern land is not the most practicable, efficient or effective means of providing for increased general aviation and helicopter operations.<sup>78</sup>

[89] With these findings in mind, we return to RPL's expectation in the context of QAC's consideration of alternative sites.

### **Reconsideration of the Interim Decision**

#### ***Introduction***

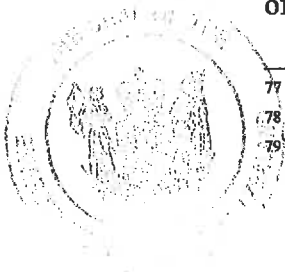
[90] The overarching question is whether giving effect to the expectation that QAC use its own land and not RPL's land for undertaking the work would meet the statutory criteria and ultimately the sustainable purpose of the Act? The alternative site in contention is QAC's land to the north of the main runway, some of which is subject to an existing designation and the balance 4.52ha zoned for industrial activities.<sup>79</sup>

[91] The enquiries under s 171(1)(b) and s 171(1)(c) are inter-related. If there is an alternative site for undertaking the work owned by the requiring authority, this begs the question whether the requirement for RPL's land is reasonably necessary. This question was alluded to in the interim decision when the court said "The suitability or otherwise of existing designated land is a question of fact and degree and where suitable

<sup>77</sup> Somerville closing submissions at [7.2].

<sup>78</sup> NOR, Annexure 5 at 3.

<sup>79</sup> ANZL and RPL did not challenge the interim decision on other sites also put forward.



designated land exists there will be less tolerance around the issue whether the land or work is reasonably necessary to achieve the objective of the requiring authority”.<sup>80</sup> However, in the interim decision the court had not considered whether the parties’ dealings gave rise to a legitimate expectation on the part of RPL.

[92] Returning again to the High Court’s decision at paragraph [106], the outcome which fairness implores is RPL’s legitimate expectation that QAC would use its own land, and not RPL’s land (which would remain a buffer zone). We consider fairness requires the NOR be cancelled if undertaking the work on QAC’s land would meet the statutory criteria and achieve the statute’s purpose.

*Evaluation – section 171(1)(b)*

[93] At the 2012 hearing the court heard from a number of witnesses including Mr D Sachman and Mr M Foster for RPL. In his evidence Mr Sachman sought to demonstrate that QAC had not adequately considered alternative sites to Lot 6. In his opinion the NOR is “not the best strategy for accommodating these [helicopter and general aviation fixed wing] facilities”, for which QAC had adequate land north of the main runway.<sup>81</sup> He said QAC had not meaningfully assessed potential alternative sites to the north; in particular it had not attempted to explore and optimise the potential of the north to accommodate non-scheduled facilities and operations.<sup>82</sup> He critiqued QAC’s aviation planning evidence led in support of the NOR which he said was deficient in that it was limited to a single layout whereas QAC should have developed a range of northern options to be evaluated,<sup>83</sup> and if any were found to have shortcomings then to determine whether those shortcomings could be overcome.<sup>84</sup>

[94] Planning evidence was given Mr M Foster. He responded to QAC’s assessment of alternative sites (in particular a northern precinct within its existing aerodrome designation) also finding its assessment deficient. He said “it is my firm view that the potential impacts on the RPZ are greater than what could occur on the northern side given the proposed Plan Change 19 zoning”.<sup>85</sup> Mr Foster criticises QLDC’s planner, Ms

<sup>80</sup> Interim decision at [94].

<sup>81</sup> Sachman EiC at [9].

<sup>82</sup> Sachman EiC at [80].

<sup>83</sup> Sachman EiC at [89].

<sup>84</sup> Sachman EiC at [90].

<sup>85</sup> Foster Reply at [18].



W Baker, for not assessing the extent of integration of the two alternative precincts considered by QAC under the District Plan or PC19.<sup>86</sup>

[95] In addition to the opinions of Messrs Sachman and Foster, the court heard evidence from Mr S Sanderson (former CEO), Mr I Munro (QAC's airport planner), Mr J Kyle (a planner), Mr M Haines (the manager of the aeronautical services unit of CAA), Mr B Macmillan (air traffic controller) and also from two helicopter operators. The court considered several Master Plans for the Airport dating from 2005.

[96] In the interim decision at paragraphs [89]-[111] the court sets out its findings on the consideration given by QAC to alternative sites. The court found an array of factors, including safety, militate against a northern aviation precinct.<sup>87</sup> Importantly – these findings applied to QAC land both within and outside of its existing designation, including land zoned for industrial activities.

[97] In a key submission RPL asserts QAC did not produce evidence whether it could meet the concerns of helicopter operators concerning the alternative northern precinct. RPL asserts QAC's airport planner, Mr Munro, gave evidence that he could design a facility for helicopter and fixed wing aircraft for the alternative site.<sup>88</sup> Having reviewed the transcript and written evidence given by Mr Munro we are satisfied he did not give this evidence.<sup>89</sup> QAC's airport planners were initially instructed not to consider land outside of the existing aerodrome, which is why early plans concentrated on a northern precinct. In refining the master planning over a number of years, QAC identified for safety and operational reasons that it needed to locate its general aviation and helicopter facilities to the south.

[98] In cross-examination Mr Munro was uncommitted to counsel's question whether the northern option could be made to work if Lot 6 was unavailable.<sup>90</sup> His muted response needs to be viewed against the reasons he gave for recommending against the northern location for a general aviation and helicopter precinct. He gave cogent reasons for his opinion that it is "strongly preferable operationally that helicopter facilities are

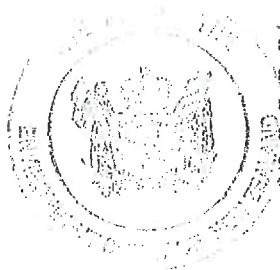
<sup>86</sup> Foster Reply at [22].

<sup>87</sup> Interim decision at [112]-[115], and for reasons see [89]-[105].

<sup>88</sup> RPL submissions at [35-36].

<sup>89</sup> RPL opening submissions at [36].

<sup>90</sup> 2012 Transcript at 273.





based in the south”.<sup>91</sup> His evidence examined the interaction of different users, with safe and efficient functioning of helicopters being a key constraint on airfield operations, but it was not the only constraint. While he said it is possible to locate the general aviation (fixed wing) facilities on either the northern or southern side, in his view, there are “strong reasons” supporting their collocation on the south.<sup>92</sup>

[99] We are satisfied that QAC’s consideration of the alternative northern location was more than adequate and in the circumstances QAC cannot be criticised for not considering its industrial land as an alternative site to the NOR.

[100] In the interim decision we considered RPL’s submission pursuant to s 7(b) that it was an inefficient use of resources to seek to designate land owned by a third party for airport purposes, where QAC owns land designated for the same purpose.<sup>93</sup> We concluded that a general aviation/helicopter precinct including air and landside buildings, infrastructure and landscaping was an efficient use of Lot 6 and that it was efficient also to collocate these with facilities for Code C corporate jets. We concluded a hybrid alternative (i.e splitting facilities north and south of the main runway) would be inefficient because it would compromise the benefits which would accrue from the collocation of all operations on one site.<sup>94</sup>

[101] Having given the matter further consideration we confirm that the safety and operational constraints on the airfield are such that we are satisfied for the purposes of s 7(b) that the use and development of the alternative site would not be efficient.

[102] In respect of s 7(c) – the maintenance and enhancement of amenity values and s 7(f) – the maintenance and enhancement of the quality of the environment, the modelling of air noise contours in PC35 assumed either a northern or southern precinct. Together with PC19, PC35 responds (or can respond) to both eventualities. With PC19 residential and business areas located some distance away from QAC’s land, undertaking the works on QAC’s land does not give rise to any particular tension with subsections (c) or (f). While noise, landscape and traffic management conditions

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<sup>91</sup> Munro EIC at [254].

<sup>92</sup> Munro EIC at [281].

<sup>93</sup> Interim decision at [209].

<sup>94</sup> Interim decision at [226].



address the southern NOR, we heard no evidence to suggest that amenity effects and effects on the quality of the environment of undertaking the work on QAC's land could not be managed through similar conditions.<sup>95</sup>

[103] The purpose of the Act is to promote the sustainable management of natural and physical resources, this includes the Airport as a physical resource. An important finding in the interim decision is the array of factors – including safety – militating against a northern location for a helicopter facility. The operation of general aviation<sup>96</sup> and helicopters<sup>97</sup> from a northern precinct would constrain the use of the main runway. The splitting of facilities north and south of the main runway is inefficient and would reduce the benefits which would otherwise accrue from the collation of all operations. We are satisfied that undertaking work on QAC's land would not promote the sustainable management of natural and physical resources.

[104] We conclude that for the works required under the designation to achieve the sustainable management purposes of the Act, the general aviation and helicopter precinct needs to be collocated with other facilities to the south of the main runway.

***Evaluation - section 171(1)(c)***

[105] Subject to the overarching question set out above, the issue here is – given RPL's expectation for QAC to use its own land and not RPL's – are the work and designation reasonably necessary for achieving QAC's objectives?

[106] While supporting the decision that the NOR be reduced from 19.1 to 8.07ha, RPL infers Lot 6 is not reasonably necessary because – it repeats – QAC's airport planner, Mr Munro, had rejected the location of a general aviation and helicopter precinct to the south and instead gave evidence these activities could occur on QAC's land.<sup>98</sup>

<sup>95</sup> Evidence on amenity and quality of the environment given by Dr Read for QLDC, is discussed by Mr Foster in his statement of rebuttal dated 8 June 2012.

<sup>96</sup> Interim decision at [101].

<sup>97</sup> Interim decision at [103-104].

<sup>98</sup> Somerville opening submissions at [36] and [45].



[107] On the other hand QAC submits it is not clear from the High Court's decision "exactly how these matters might impact on the question of reasonable necessity."<sup>99</sup> Counsel cautions against using s 171(1)(c) as a back door way to revisit the assessment of alternatives under s 171(1)(b). Lot 6 would remain reasonably necessary to meet the objectives of the NOR even if the court were to find inadequate consideration was given to alternative sites.

[108] In respect of s 171(1)(c) the court observed in the interim decision:

[92] The crux of RPL's case is that if there is designated land on which QAC may develop a general aviation/helicopter precinct then it cannot be said this work or designation is reasonably necessary for achieving its objective (section 171(1)(c)). QAC responds submitting that "the existence of an alternative does not render a chosen option unnecessary and the choice of neighbouring land that is suitable can be reasonable where the requiring authority's land is less suitable."<sup>100</sup>

...

[94] The suitability or otherwise of existing designated land is a question of fact and degree and where suitable designated land exists there will be less tolerance around the issue of whether the work or designation is reasonably necessary to achieve the objective of the requiring authority. However, we do not go as far as to construe "reasonably necessary" to mean "essential" as submitted by RPL as this would ignore the qualification "reasonably" and secondly, it would necessitate the local authority (or Environment Court) to determine the best site for the works whereas this is a decision for the requiring authority (section 171(1)(b)).

[109] At paragraph [97] of the High Court's decision Justice Whata observed:

If I then turn to the substance of the Court's assessment, it is evident that the Court carefully evaluated whether the works were clearly justified. In this regard, the Court was aware that NORs that affect private property must be afforded "less tolerance".<sup>38</sup> I also agree with Mr Kirkpatrick that the various passages of the judgment illustrate that the Court sought clear justification for the scope of the NOR.<sup>39</sup> And it is important to view the judgment as a whole. When this is done, very careful consideration was plainly given to whether the works were justified.

<sup>99</sup> QAC submissions at [62].

<sup>100</sup> QAC closing at [70].



## Footnotes:

<sup>38.</sup> *Re Queenstown Airport Corporation Limited* [2012] NZEnvC 206 at [94].

<sup>39.</sup> For example at [112]-[115], [139]-[142], [226], [236].

[110] While a requiring authority's inability to fully satisfy one matter to which the court is directed to have particular regard under s 171 may not be determinative, including in circumstances where a legitimate expectation about the use of an alternative site arises, QAC's submission does not adequately take cognizance of the additional level of scrutiny created by RPL's legitimate expectation.

[111] RPL's legitimate expectation that QAC use its own land, and not RPL's, when undertaking this work is central to the question whether the work and designation are reasonably necessary under s 171(1)(c). That is so notwithstanding our finding that QAC did give adequate consideration to the alternative site and that the site would not achieve the purpose of the Act. Since 2012 the court has been concerned that QAC not *future proof* the airport in a manner, or to an extent, that was not required to achieve the NOR's objectives. In its interim decision the court did not accept the extent of land in Lot 6 was reasonably necessary to achieve the objectives for which the designation was sought and modified the NOR by reducing the land required.

[112] QAC has not sought approval from the Director of Civil Aviation Authority for the proposed extension to the aerodrome. Given that, we are not yet in a position to reconsider the matters under s 171(1)(c) as it affects the extent of land required and secondly, whether the work and designation is reasonably necessary to meet the objective of the requirement. This can be addressed further when we hear from the parties in relation to the Code C taxiway separation distance and the process for confirming those requirements.

[113] Postscript: it occurs to us that the Director of Civil Aviation is also a public authority, and RPL's legitimate expectation could extend to decision-making under the Civil Aviation Act.



**Other matters**

[114] We record that we did consider Mr Putt's criticism of QAC for failing to undertake an analysis under Part 2 of whether RPL could sustainably manage its land, should the NOR be confirmed. This, he said, should have been done as part of its consideration of alternative sites.<sup>101</sup> In saying that he agreed with counsel for QAC that it was appropriate for the Environment Court to consider whether any actual or potential effects on RPL, including the Remarkables Park Zone, could be addressed through conditions on the designation and he acknowledged that the court had done this.<sup>102</sup> While RPL's managing director, Mr Porter, did not agree to QAC's requirement for Lot 6 or with the court's assessment of the NOR's noise effects he said that the decision by the court to reduce the land area required together with conditions addressing landscape and amenity were a "vast improvement" and helped RPL "enormously".<sup>103</sup>

[115] It is debatable whether the majority of Mr Putt's evidence is within the scope of the High Court's directions. Mr Putt did not consider the conditions imposed by the court on the designation and we decline to rehear that part of the decision.

**Outcome**

[116] We find RPL could legitimately expect QAC would use its own land for airport purposes, and not RPL's land. However, RPL could not expect QAC to develop the airport in accordance with the design and layout shown in Figure 5-1R of the 1997 Deed or that it would need to obtain RPL's approval for the design and layout of the airport.

[117] We confirm our earlier finding under s 171(1)(b) that QAC did give adequate consideration to alternative sites.

[118] We reserve our decision under s 171(1)(c) whether the works and designation are reasonably necessary. Directions will be made setting down this issue for a telephone

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<sup>101</sup> Transcript at 153-160.

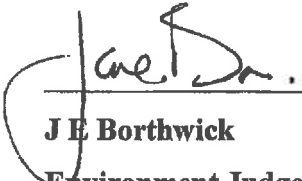
<sup>102</sup> Transcript at 160-161.

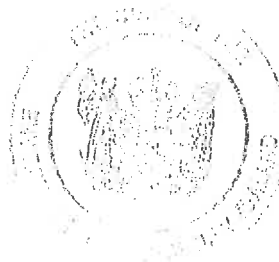
<sup>103</sup> Transcript at 118.



conference, together with the Code C taxiway and the process for confirming those requirements, also referred back for reconsideration.

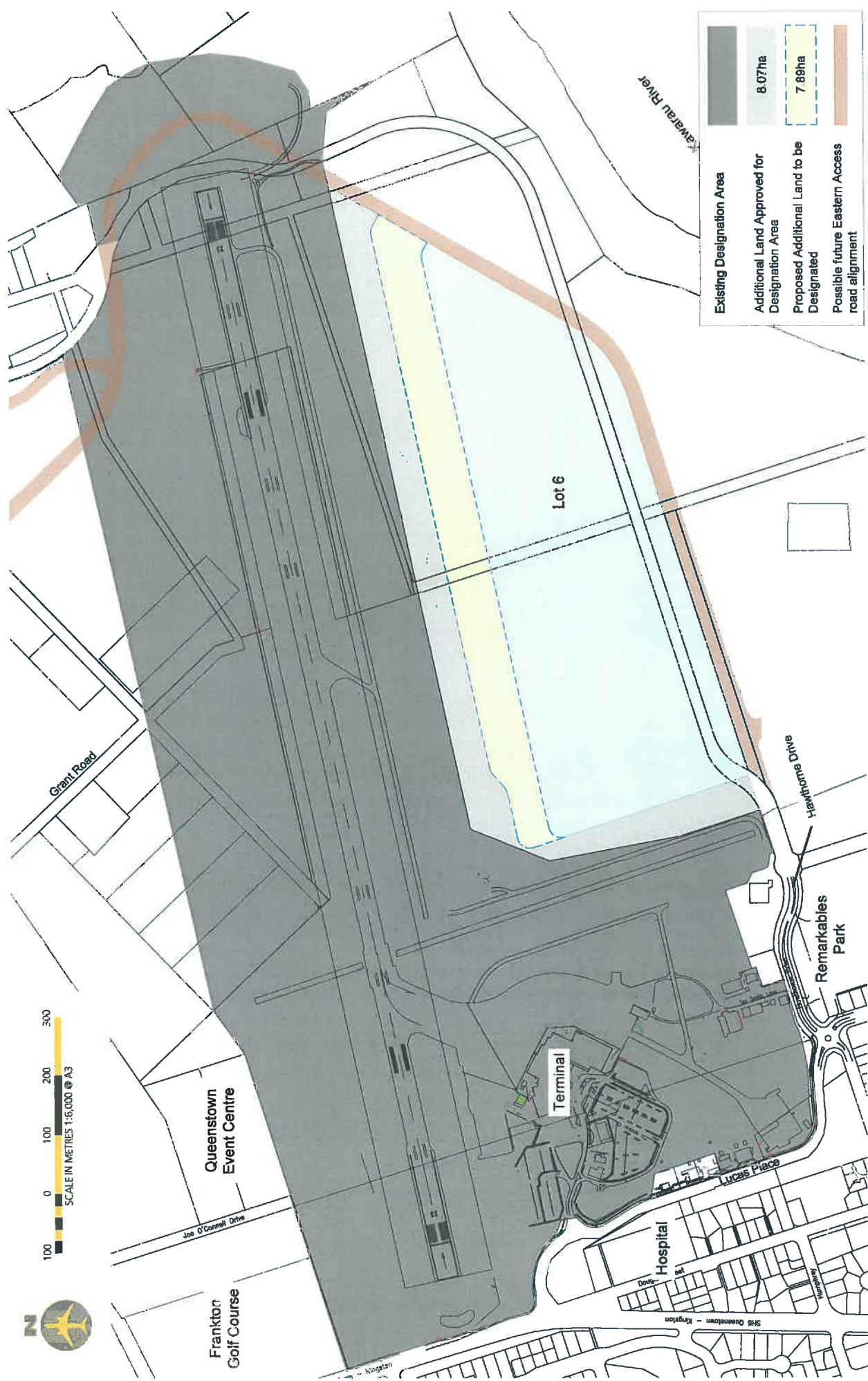
For the Court:

  
\_\_\_\_\_  
**J E Borthwick**  
**Environment Judge**



# **APPENDIX B**

**Plan Showing Proposed Extension to Aerodrome Purposes  
Designation Boundary**



**Aviation Precinct Concept Detail (Optimised)**  
**Code C Taxiway Separation 168m**

11167 331  
 24 May 2013

24052013 16:54 | P:\01\_Queenstown\11167\_Queenstown\01\_11167\_0420\_11167\_331.dwg



# **APPENDIX C**

**Queenstown Airport Corporation  
Statement of Intent for the Years 2015-2017**



# Queenstown Airport Corporation Limited

## Statement of Intent

**2015-2017**

**27 May 2014**

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## Queenstown Airport Business

The primary activity of Queenstown Airport Corporation Limited (QAC) is to operate Queenstown Airport (ZQN) efficiently and effectively and on sound business principles for airport users. This consists of providing appropriate landside and airside facilities for its users, including both commercial and non-commercial aviation users and their passengers, and developing wider commercial opportunities that complement the use of the Airport and its surrounding land.

QAC also provides airport and property expertise to assist the Queenstown Lakes District Council (QLDC) with the management of the Wanaka Airport and the Glenorchy Aerodrome.

## Mission, Vision Statement, Goals, and Objectives

### Mission Statement

To provide airport and related facilities in the district and meet the growing needs for airport services to the Lakes District, to the highest quality in an economically sustainable manner and in the best interests of the community.

### Vision Statement

***“Seize the challenge to make Queenstown easy to get to, with an airport experience that leaves a wonderful first and lasting impression”***

### Goals

To achieve its mission QAC has established a number of goals. These are to:

- Deliver sustainable income growth through increased income diversification and cost management
- Promote the Airport and Queenstown Lakes District to grow visitor numbers
- Develop the Airport infrastructure and facilities to support the District's economic growth while maximising use and avoiding over-capitalisation
- Provide people using the Airport with a 'wonderful experience' consistent with our vision
- Establish the Airport as a preferred place to work and do business within the District
- Operate as a socially and environmentally responsible part of the Queenstown Lakes District community

### Objectives

The six goals set out above each support a range of objectives and key initiatives that are outlined in pages 8 to 19 of this Statement of Intent (SOI).

## Corporate Governance

The QAC Board and management are committed to ensuring the Company meets best practice governance principles and maintains the highest ethical standards.

The Board of Directors is appointed by the Shareholders to govern and direct QAC's activities. The Board is the overall final body responsible for all decision-making within the Company. It is accountable to its Shareholders for the financial and non-financial performance of the Company.

The Board works collaboratively with its Shareholders to ensure a "no surprises" relationship. As part of that relationship, Shareholder representatives are invited to attend board meetings as observers.

### Role of the Board

The Board is responsible for the proper direction and overview of QAC's activities. This responsibility includes:

- Approving Strategic plans, budgets and the SOI
- Corporate policies, including, financial and dividend policies, and delegated authorities
- Assessment of business opportunities and business risks
- Internal control and assurance systems
- Compliance with relevant law
- Monitoring financial performance and achievement of the strategic initiatives and SOI objectives
- Integrity of management information systems
- Appointment and monitoring of the performance and remuneration of the Chief Executive Officer (CEO)
- Reporting to Shareholders

### Code of Conduct

The Board has adopted a code of conduct based on the New Zealand Institute of Directors' *Code of Practice for Directors*. The purpose of the code is to clarify how the Board of Directors shall define and deal with:

- The role and fundamental obligations of the Board
- Independence and conflict of interest, including conflict with management
- Board procedures, including the role of the Chairman and interaction with the CEO
- Reliance on information and independent advice
- Confidentiality of company information
- Board and Director performance review and development

## Regulatory Framework

This SOI sets out QAC's overall goals and objectives for the three financial years ending 30 June 2015, 2016, and 2017, and is prepared in accordance with Section 64(1) of the Local Government Act 2002.

QAC is a Council Controlled Trading Organisation (CCTO) for the purposes of the Local Government Act 2002. Under section 59 of the Local Government Act 2002, the principal objective of a CCTO is to:

- (a) *achieve the objectives of its Shareholders, both commercial and non-commercial, as specified in the statement of intent; 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.*

QAC's business is subject to regulatory control under the Airport Authorities Act 1966 and complies with the disclosure requirements of a *specified airport company* pursuant to the Airport Authorities (Airport Companies Information Disclosure) Regulations.

The Airport Authorities Act 1966 (section 4(3)) states that the Airport "*...must be operated or managed as a commercial undertaking.*"

The company's governance is also covered by the Companies Act 1993.

QAC's aeronautical operations are governed by the Civil Aviation Act 1990 and Civil Aviation Rules Part 139.

## The Statement of Intent Process

In accordance with Local Government Act 2002, the Company submits a draft SOI for the coming financial year to QLDC by 1 March. After due consultation with QLDC, and after considering any comments from QLDC, the final SOI is approved by the Board of Directors and delivered to the QLDC by 30 June.

## Shareholders

QAC's Shareholders are QLDC (75.01%) and Auckland International Airport Ltd (AIAL) (24.99%).

## Leveraging value from the strategic alliance with Auckland International Airport Limited

AIAL's investment in QAC included an undertaking between the two companies to work together to grow QAC's business returns and increase passenger numbers. Financial and passenger growth targets were set which have been exceeded.

The current focus for the Strategic Alliance is less on financial and passenger output measures and more on inputs. Particularly, inputs involving a sharing of AIAL intellectual property and general airport expertise. For example, during the 2013 calendar year, members of AIAL's Property Team have assisted QAC with its retail lease plans. QAC has benefitted from AIAL's input on IT systems, risk management systems and processes, carpark equipment, its noise mitigation programme, and trans Tasman route development.

The value of having a sounding board for airport business issues should not be underestimated. On top of this in the coming 18 months, AIAL will specifically provide QAC with:

- Support in finalising the retail offerings within the terminal
- Input on airport trends and operating efficiencies
- Peer review of the Risk Management project outcomes
- Peer review of capital plans – quantum and timings - as they link to the airport's Master Plan
- Support in the roll out of the noise mitigation programme (PC35) to ensure QAC is seen as proactive socially responsible, and professional in implementing its PC35 obligation
- Training and/or mentoring support for personnel
- Support with procurement, including insurance
- Targeted route development for direct scheduled services including joint promotion of Queenstown and the Southern Lakes Region

AIAL will continue its own route development into markets, such as China and Indonesia, that can not support direct flights to Queenstown due to aircraft size. However, promotions will feature Queenstown and promote passengers travelling through AIAL to Queenstown on domestic carriers.

## Reporting to Shareholders

The Company has adopted 30 June as its balance date. Within two months of the end of the first half of each financial year, Directors will deliver an interim report to Shareholders consisting of:

- Un-audited half-yearly financial statements
- Directors' Report

Within three months of the end of each financial year, Directors will deliver to Shareholders an Annual Report which will consist of:

- Chairman's and CEO's report
- Directors' Responsibility statement
- Audited financial statement
- Notes to the financial statements including accounting policies
- A Statement of Service Performance summarising QAC's performance of the SOI goals and objectives



## Goals, Objectives, Key Initiatives, and Measures

### Goal 1: Deliver sustainable income growth through increased income diversification and cost management

It is essential we run the Airport to deliver strong financial returns that improve year-on-year. Aeronautical pricing was reset in 2012 for a 9 year period to 2021 and assumes strong passenger growth. QAC's aeronautical returns are therefore mostly predetermined and above forecast passenger growth has marginal upside for aeronautical revenue. Non aeronautical revenue, on the other hand, provides QAC with opportunities for upside from increasing passenger numbers and adding to the range of services being offered.

It is important QAC work to self-fund capital growth in the short-term. During the SOI forecast period – 1 July 2014 to 30 June 2017 – QAC does not plan to seek additional capital. The equity injection by AIAL in 2010 allowed QAC to reduce debt to today's low levels and QAC has the financial capacity to increase debt to fund the infrastructure developments anticipated through the forecast period.

Objective	Key Initiatives
Generate improved business returns over the forecast period sufficient to: <ul style="list-style-type: none"> <li>• support the funding of growth capital</li> <li>• provide a dividend that meets shareholder expectations.</li> </ul>	Growing non-aeronautical revenue with an improved offering to the travelling public. Development of a new aviation precinct on Lot 6 land that will provide opportunities for an expanded offer to Airlines, General Aviation and Private Jets. Maintain a level of debt consistent with our Treasury Policy.
Strive for Operational Excellence through continuous improvement programmes.	Develop an overarching Risk Management system incorporating CAA, Health & Safety and Environmental risk management systems. Operate a Safety Management System covering both landside and airside. Implement management strategies to minimise birdlife in the vicinity of the airport that pose a bird strike hazard. Implement Noise management mitigation in line with PC35. Improving the airline check-in area for greater self-check-in and common use bag drops. Identify ways to measure delays to scheduled aircraft due to congestion on the runway to determine savings from a parallel taxiway.
Develop and motivate staff to embrace our vision for the business and to want to make a difference.	Staff inductions and service training, possibly linked to QRC initiatives. Regular team briefings on QAC's direction and performance.
Diversify revenues to de-risk the business.	Increase commercial revenues.

## Measures

### Financial

- Achievement of financial forecasts.
- Manage finances and debt levels within parameters set by the Board.
- Revenue mix between aeronautical and non-aeronautical.

### Operational

- Recertify QAC with CAA.
- International Air Transport Association (IATA) Service Level C maintained.
- Aeronautical operations comply with QAC's aerodrome certificate as confirmed by:
- Internal audits
- CAA audits.
- SMS system implemented that covers air and landside operations. Tenants and Airlines are sharing safety hazards and incidents with QAC for learnings.
- Staff Culture Survey.
- Check-in capacity increased without the need to build.

**Goal 2: Promote the Airport and Queenstown Lakes District to grow visitor numbers**

Airports no longer operate on a 'build it and they will come' basis. They are now actively engaged in securing passenger growth by working with airlines to establish new routes or grow capacity on existing routes. AIAL has a large team dedicated to route development and their expertise will be important to QAC initiatives in this area.

The local Regional Tourism Organisations (RTOs) do a great job promoting Queenstown, Wanaka, and the Southern Lakes Region generally. QAC, working alongside AIAL, can help RTOs with their goal of attracting high-value, longer staying visitors.

Direct international commercial flights to Queenstown are based on Boeing 737 or Airbus A320 aircraft meaning our international focus is restricted to East Coast Australia and Pacific Islands. This is not seen as a constraint with a focus to improve connectivity from our key international feeder airports of Auckland, Christchurch, Sydney, and Melbourne.

The Qantas group alliance with Emirates is positive for the region and QAC will work to promote the additional market reach provided by this alliance.

The withdrawal of Jetstar from Christchurch and Wellington routes has led to a fall in seat capacity and consequently passengers from these routes. This has resulted in falling domestic passenger numbers year-on-year through FY14.

QAC and the Region will benefit from growth in off-peak months and initiatives like the proposed Queenstown Convention Centre will help attract visitors to our region during these periods.

Objective	Key Initiatives
To be actively involved in route development focusing on new services or increased capacity from Australia, Pacific Island and New Zealand. This includes adding capacity and frequency to existing routes.	QAC, with support and input from AIAL, works with Airlines, Tourism New Zealand and RTOs to grow visitor numbers to the wider region. Particular emphasis is on growing off peak volumes.
Make Queenstown Airport easier to get to with better improved connectivity at hub airports.	Increase flying window with evening flights. Target long haul travellers promoting connectivity via hub airports.
Assist selected local events as far as possible by allowing promotion within and around the terminal.	Provide space for welcome desks and other opportunities on a case-by-case basis.
Measures	
<ul style="list-style-type: none"> <li>• Growth in passenger numbers.</li> <li>• Increase in scheduled airline capacity being flown into ZQN either from: <ul style="list-style-type: none"> <li>• new routes flown by new or existing airlines</li> <li>• new flights on existing routes</li> <li>• larger aircraft introduced on existing routes, e.g. A320 replacing older generation 737s; more jets on the ZQN-CHC route.</li> </ul> </li> <li>• Joint marketing campaign(s) are undertaken and their success measured.</li> </ul>	

### **Goal 3 – Develop the airport infrastructure and facilities to support the District’s economic growth, while maximising use and avoiding over-capitalisation**

ZQN may be the fastest growing airport in Australasia; and we are definitely the fastest growing New Zealand airport. This growth comes at a price as airport infrastructure and facilities need to develop in line with passenger growth if we are to meet passenger expectations of a modern airport. QAC’s strategy is to develop incrementally in response to passenger growth and the terminal Master Plan has been developed along these principles. Airfield infrastructure by its nature tends to be lumpy and requires careful planning in consultation with users to ensure it is delivered in a timely manner.

ZQN remains a small airport compared to the city airports of Auckland, Christchurch, and Wellington. At peak times we are very busy, while outside the peaks we can have surplus capacity. The facilities used by international travellers are those most under pressure during peaks, but the most under-utilised outside the peaks.

Wherever possible, airside areas (the terminal areas beyond security screening), have built-in flexibility to allow use by either domestic or international flights. Holding passengers in the main terminal area and allowing access through security to the departure lounges on a ‘just in time’ basis during busy times is another approach to addressing congestion and improving the passenger experience.

Winter 2014 will see a 30 percent increase in international flights to and from Queenstown and the resulting growth in international passengers will exceed our terminal capacities. For the coming winter a second international arrivals baggage belt will be added and housed in a temporary facility.

By winter 2015, an expanded international arrivals area will have been built incorporating the second baggage belt as well as increased areas for Immigration, Customs, and MPI screening. The International Departures Lounge will be expanded to accommodate the peak periods for departures.

The check-in area will operate at capacity in winter 2014 with potential for serious congestion. QAC terminal staff will work with airlines to improve queuing within their check-in area. The focus after winter 2014 will be to increase throughput capacity with greater use of self-check-in kiosks and online check-in; and providing common user bag drops. If successful this will defer the need to build an extra check-in hall area.

The major infrastructure projects planned for the forecast period are:

- Terminal expansion for international arriving and departing passengers
- Additional jet stands
- Evening flight infrastructure
- Check-in upgrade
- Acquisition and development of Lot 6 land.

Acquiring land from Remarkables Park Limited (RPL) for a new aviation precinct remains a priority. A negotiated settlement is preferred. Notwithstanding, the initiative was recognised by the Minister for the Environment as a ‘project of national significance’ back in February 2011, the court process continues and a conclusion before the end of 2014 is now unlikely. The delays block QAC’s plans to establish corporate jet facilities and frustrates the expansion plans of the region’s General Aviation (GA) industry.

## EVENING FLIGHTS

Being able to land and depart scheduled services throughout the existing consented window of 6am to 10pm requires New Zealand's Civil Aviation Authority (CAA) and Australia's Civil Aviation Safety Authority (CASA) approval to operate after dark. The first step to Evening Flights was the May 2014 approval of the Foundation Safety Case which provides a pathway of the technology, infrastructure, and operational steps required to enable flights after dark to happen.

In June 2012 QAC formed a working group of technical and operational experts with experience in RNP AR (Authorisation Required) and Queenstown-specific operations to prepare a Foundation Safety Case.

The working group included representatives from QAC, Airways NZ, Jetstar, and Qantas, and was facilitated by risk management experts Navigatus Consulting. Each organisation set aside its commercial interests to work towards achieving a common goal – to examine whether flying in and out of Queenstown Airport at night could be undertaken safely and, if so, under what conditions. The group went through a thorough and collaborative process to achieve a comprehensive understanding of the factors influencing the safety of operations and options for addressing these.

The main elements required to be in place before the commencement of after-dark flights are:

- Widening of the runway to 45m (from the current 30m)
- A comprehensive aeronautical lighting package (runway, taxiway, approach and off-airport lights)
- A customised crew selection and training package
- Employing the full capability of the existing RNP AR technology
- Changes to on-board flight procedures to reduce pilot workload on final approach
- Individual airline applications and approvals

The commercial arrangements between QAC and the airlines have still to be addressed and infrastructure put in place, meaning the first evening flights are not likely until winter 2016.

Objective	Key Initiatives
To be well informed of airport and aviation trends and drivers of passenger volumes that will positively or negatively impact demands on our infrastructure.	AIAL engagement on airport and airline trends. Selective attendance at industry conference or workshops. Selective use of aviation consultants.
Develop plans for continued growth so as not to impede the region's growth.	<p>Annual Master Plan review to ensure developments to the airport's infrastructure and facilities continue to address anticipated passenger growth and industry trends.</p> <p>Acquire land south of the runway for development of a new aviation precinct, freeing up land for terminal expansion.</p> <p>Capital plans updated for airport developments forecast for the next 10 years.</p> <p>Expand the international arrivals area.</p> <p>Upgrade check-in area to increase common use facilities and take advantage of new self-check-in practices.</p>
To expand the approved window for airlines to arrive and depart ZQN, taking advantage of ZQN's consented operating hours of 6am to 10pm.	<p>Approval by CAA of the Foundation Safety Case for evening flights.</p> <p>Develop a business case for funding the infrastructure to allow evening flights.</p> <p>Airlines to submit individual safety cases to CAA or CASA for approval.</p>
Ensure expansions to the Airport infrastructure and facilities are delivered in a timely manner to balance the risks of over-capitalisation with the risks of turning away passengers and aircraft.	<p>Ongoing consultation with airlines and GA users on adequacy of infrastructure.</p> <p>Passenger feedback via surveys.</p> <p>AIAL to peer review development plans.</p>
Measures	
<ul style="list-style-type: none"> <li>• Forecast capital plans can be funded by QAC through cashflow and increased debt.</li> <li>• Master Plan review completed with Board and shareholder representatives.</li> <li>• QAC's purchase of 16ha of RPL's Lot 6 land completed.</li> <li>• Airline(s) arrangements agreed to commence evening flights for winter 2016.</li> <li>• Evening flight airfield developments completed for winter 2016 flights.</li> <li>• Construction commenced for terminal expansion for international passenger areas by September 2014.</li> <li>• Temporary international arrivals capacity added for winter 2014.</li> </ul>	

#### **Goal 4: Provide people using the Airport with a “wonderful experience” consistent with our vision**

The travelling public expect their airports to be comfortable and safe places to be in with clear way finding (signage), easy flows with minimal congestion, and a range of services to be available for their convenience. For the departing passenger this seamlessness must extend from parking, to check in, moving through security screening to the departure lounge, to boarding the plane. For arriving passengers it is from disembarking the plane to finding one’s way through the terminal to the baggage claim area, the exits, public transport, rental cars, or carpark.

The ZQN terminal has been built to embrace the surrounding landscape and provide stunning views. All changes to the internal layout or future expansion will be done in a way to maintain the current terminal ambience. The public areas of the terminal have gone through a transformation since April 2013, starting with an upgrade to the rental car area followed by a revitalisation of our retail offering with the introduction of local brands – *Remarkable Sweet Shop* and *Kapa*. The final stage is new café and bar offerings.

*Patagonia* opened its new café in March 2014 and has been very well received. *Airpresso* has taken over the main terminal café and bar lease and will carry out a substantial refurbishment before it reopens in July 2014.

Carparking space has been at a premium at certain times of the year and we are developing plans to increase the number of parking spaces. This is not an easy task and we will take the opportunity of expiring leases to convert land to carparks. This change in land use will provide QAC with higher commercial incomes at the same time as better meeting the needs of our travelling public.

The long-term parking option created during 2013 has proved very popular and the available spaces do not meet demand throughout much of the year. We will introduce an online booking system for parking from 2015 to meet customer requests.

The airport is serviced by *Connectabus* and *Connexions* providing public transport to Queenstown, Cromwell, and Wanaka on a scheduled basis. *Tracknet Transport* provides scheduled services to Te Anau, Milford Sounds, and Invercargill. Group tour coaches are provided parking close to the terminal for convenient pick-up and drop-off.

Objective	Key Initiatives
<p>Provide a superior experience for people using the airport from access roads, parking, and in-terminal experience.</p>	<p>Provide suitable land transport options for access to and from the Airport. Increase parking offer.</p> <p>Work with QLDC on opportunities to enhance public transport/accessibility to airport users.</p> <p>Enhance the retail and Food and Beverage (F&amp;B) experience at QAC to better match passenger needs and embrace the region.</p> <p>Continue seasonal theming within the terminal to provide a warm welcome and reflect a sense of place.</p>
<p>Ensure people flow through the terminal is efficient such that:</p> <ul style="list-style-type: none"> <li>• congestion in the terminal and overcrowding in the departure lounges is minimised</li> <li>• congestion for international passengers is reduced.</li> </ul>	<p>Revisit way finding and Flight Information Display Screens (FIDS) screens.</p> <p>Active management of people flows by Airport staff during peak period, especially winter. Co-ordination of Airlines, AVSEC, Customs and MPI during these peaks.</p> <p>Terminal expansion for winter 2015. Temporary capacity for winter 2014.</p> <p>Working with Customs, introduce smart gate technology for Queenstown's international arriving passengers.</p> <p>Expand the international arrival and departure areas.</p>
Measures	
<ul style="list-style-type: none"> <li>• Revamp of the main café for winter 2014.</li> <li>• A range of transport options exist and meet the needs of airport users.</li> <li>• Temporary international arrivals capacity available for winter 2014 peak (July and August).</li> <li>• Survey established in 2014 to measure passenger experience and obtain feedback.</li> <li>• New arrivals duty free and new international departure retail secured for 2015 terminal expansion.</li> <li>• Smartgates available to inbound international passengers for July 2015.</li> <li>• 15% increase in parking spaces by end 2015.</li> </ul>	



## Goal 5: Establish Queenstown Airport as a preferred place of work and business within the District

Lease income from businesses operating in the airport terminal and on land in the airport precinct, together with parking revenues, are an important and increasing part of QAC's profitability.

QAC is a major hub for people, receiving over 1.2 million passengers per year as well as those that come to greet or farewell travellers. These people expect a range of services to be available to them; be it rental cars, retail, food and beverage, banking, transport, or tour desks etc, and in turn businesses providing these services are keen to be a part of the airport's success and enhance the service offered to airport users.

QLDC is reviewing the Region's District Plan and the recently released 'strategic directions' chapter of the Proposed District Plan recognises the importance of the Queenstown Airport. QAC will be promoting the creation of a specific Airport Zone to apply across all QAC's airport designated land holdings.

Queenstown Airport is already a major employment hub in the region and future employment growth at the airport should outperform the rest of the region. As our passenger numbers expand so too will our service offerings, subject to terminal space to house them. If we are successful in our plans to introduce evening flights from winter 2016, QAC and our tenants will need extra staff to manage the expanded operating hours.

Objective	Key Initiatives
The region understands the diversity of businesses and jobs at the Airport.	<p>QAC communications to profile the diversity and growth in business.</p> <p>Ensure the contribution of the airport and the businesses operating at the airport are duly recognised in QLDC's upcoming District Plan review through the creation of an Airport Zone across all airport designated land.</p>
Businesses serving passengers are professional and successful. They employ people that embrace the QAC's vision for the travelling public.	QAC to provide regular updates to all staff and tenants on developments and prospects of the airport.
The benefits from growing passenger numbers flows through to all businesses operating at the Airport.	<p>Survey tenants on their Airport experience.</p> <p>Survey passengers on their terminal service experience.</p>
Measures	
<ul style="list-style-type: none"> <li>• Annual Review, ZQN News features, selected media releases as required.</li> <li>• Website developments to profile service offerings at the terminal.</li> <li>• Airport wide team briefings three to four times per year.</li> <li>• Survey results.</li> <li>• QLDC's District Plan adopts a specific Airport Zone.</li> </ul>	

## **Goal 6: Operate as a socially and environmentally responsible part of Queenstown Lakes District community**

operate a business that provides essential infrastructure to our community and region and at the same time we have impacts on local neighbours that need to be managed. Increasing aircraft noise, in particular, is a direct negative consequence of our growth.

The Queenstown Airport Noise Management Plan was adopted by the Queenstown Airport Liaison Committee in February 2014, commencing a new period in QAC's operations involving regular noise monitoring and providing for noise mitigation packages to neighbouring homes. Developing the systems to ensure the rollout runs smoothly, and communicating the programme to the community are early priorities.

QLDC has a focus on reducing water use, reducing inflows to the town's sewerage system, and reducing waste to landfill. QAC can help with all these initiatives.

Part of the Frankton Golf Course is on land owned by QAC. We need to balance achieving a market return on the land with the public amenity the course provides the community.

### **Queenstown Airport Liaison Committee**

The Queenstown Airport Liaison Committee held its first meeting in November 2013. Chaired by Jane Taylor, (Queenstown-based barrister and an independent Hearings Commissioner in resource management matters) the Committee includes three community representatives; Gregory Miller, Steve McIsaac, and Scott Freeman, as well as:

Scott Paterson (QAC - CEO), Mark Harrington (QAC - GM Operations), Bob Fletcher (Air NZ), representing scheduled airlines, Clayton Lightfoot (Airways), Dave Matthews (Helicopter Line), representing general aviation, and Nathan Keenan (QLDC).

The Committee will oversee the airport's Noise Management Plan, including the rollout of noise mitigation measures for local residents. A section of QAC's website ([www.noise@queenstownairport.co.nz](mailto:www.noise@queenstownairport.co.nz)) is dedicated to information on noise, including an overview of the airport's noise boundaries, the role of the Committee, and what QAC will do to mitigate effects of noise for residents.

A programme to rollout noise mitigation assistance will be developed for the second half of 2014.

Objective	Key Initiatives
<p>Reduce our impact on Council's infrastructure with a particular focus on water and waste management.</p>	<p>Water use is measured and initiatives developed to reduce water use per passenger. Firstly, to cap the total volume per pax of reticulated water used on site, and latterly reduce that total volume.</p> <p>Waste is measured and initiatives developed to reduce the amount of waste sent to landfill from the airport site, initially on a per pax basis and latterly on a total volume basis.</p> <p>Establish base energy use to allow improvement initiatives to be measured.</p>
<p>Manage the noise impact of the airport on the surrounding residential and business areas.</p>	<p>Implementation of the Noise Management Plan requirements around noise monitoring and mitigation.</p>
<p>Engage with the Community, keeping them informed on developments at the airport and future plans.</p>	<p>CEO and Senior Executives to present at community forums on airport developments and future plans.</p> <p>The Queenstown Airport Liaison Committee oversees noise management plans for ZQN.</p> <p>Support community events.</p> <p>Continue to make land available to QLDC Sport and Recreation for the Frankton Golf Course at concessionary rents for as long as that land is not needed for airport purposes.</p> <p>Protect QAC-owned heritage buildings.</p>
<p>Support QLDC with its plans for Wanaka Airport and oversee Glenorchy Aerodrome.</p>	<p>Make management and airport expertise available to Wanaka Airport and Glenorchy Aerodrome.</p> <p>Provide accounting and admin services to Wanaka Airport.</p>
<p>Participate in Council and Regional Planning and the Resource Management Act (RMA) process to protect the Airport from unintended planning consequences.</p>	<p>Remain watchful and active in surrounding land developments, and plan changes that may conflict with the Airport.</p> <p>Achieve planning that is consistent with airport operations driven by the Master Plan.</p> <p>Progress Noise Boundary Plan Change (PC35) to inclusion in the District Plan.</p> <p>Create an Airport Zone for ZQN.</p>

## Measures

- Tranche One of QAC's Noise Mitigation Programme rolled out commencing September 2014.
- 2014/15 Noise monitoring concluded and outputs shared with community second quarter 2015.
- Airport noise, as measured, is within the levels set in the District Plan.
- Information releases are regular, accurate and remain relevant e.g. passenger stats, website content, ZQN Newsletter, and media releases.
- Water volume used per year, with a view that:
  - water use per pax over the forecast period is constant or declining
  - total water volumes used at ZQN peaks during the forecast period and is in decline by 2017.
- Waste water volumes discharged from ZQN, with a view that:
  - volumes per pax over the forecast period is constant or declining
  - total volumes discharged from ZQN peaks during the forecast period and is in decline by 2017.
- Wanaka Airport's financial performance improves year-on-year.

## Financial Forecast 2015-17

Year Ended 30 June	Forecast 2015 (\$000's)	Forecast 2016 (\$000's)	Forecast 2017 (\$000's)
<b>Total Revenue</b>	<b>23,215</b>	<b>25,804</b>	<b>29,359</b>
<b>Total Operating Expenditure</b>	<b>7,250</b>	<b>7,354</b>	<b>8,317</b>
<b>Operating Cashflow (EBITDA)</b>	<b>15,965</b>	<b>18,450</b>	<b>21,042</b>
<b>Interest expense</b>	<b>1,664</b>	<b>2,067</b>	<b>2,355</b>
<b>Depreciation</b>	<b>4,035</b>	<b>4,857</b>	<b>4,659</b>
<b>Profit Before Tax</b>	<b>10,265</b>	<b>11,526</b>	<b>14,028</b>
<b>Profit After Tax</b>	<b>7,186</b>	<b>8,068</b>	<b>9,819</b>
<b>Total Liabilities</b>	<b>37,023</b>	<b>46,423</b>	<b>52,186</b>
<b>Total Shareholder's Funds</b>	<b>161,724</b>	<b>165,199</b>	<b>169,984</b>
<b>Total Assets</b>	<b>198,747</b>	<b>211,623</b>	<b>222,171</b>
<b>Dividends Paid<sup>2</sup></b>	<b>4,175</b>	<b>4,593</b>	<b>5,034</b>
<b>Anticipated Capital Expenditure</b>	<b>20,434</b>	<b>17,516</b>	<b>14,911</b>
<b>Total Closing Debt</b>	<b>27,212</b>	<b>36,457</b>	<b>41,809</b>
<b>Net Drawdown/(Repayment of) Debt</b>	<b>9,293</b>	<b>9,245</b>	<b>5,352</b>

### Notes

1. Average Shareholders funds comprises of opening and closing balances
2. Dividends calculated on a paid basis rather than earned.

Financial Ratios	Forecast 2015	Forecast 2016	Forecast 2017
<b>Aeronautical Revenue per Pax</b>	<b>\$11.83</b>	<b>\$12.10</b>	<b>\$12.73</b>
<b>Commercial Revenue per Pax</b>	<b>\$5.72</b>	<b>\$5.84</b>	<b>\$5.97</b>
<b>NPAT per Pax</b>	<b>\$5.43</b>	<b>\$5.61</b>	<b>\$6.25</b>
<b>Shareholders' Funds to Total Assets</b>	<b>81.4%</b>	<b>78.1%</b>	<b>76.5%</b>
<b>NPAT to Shareholders Funds</b>	<b>4.4%</b>	<b>4.9%</b>	<b>5.8%</b>
<b>EBITDA to Total Assets</b>	<b>8.0%</b>	<b>8.7%</b>	<b>9.5%</b>

## Passenger Forecast 2015-17

Year Ended 30 June	Forecast 2015 (\$000's)	Forecast 2016 (\$000's)	Forecast 2017 (\$000's)
<b>Total Pax 000</b>	<b>1,322</b>	<b>1,439</b>	<b>1,570</b>

The numbers in the financial forecast are as at 27 May 2014.

## Dividend Policy

The Board will declare dividends according to the following policy:

- A base dividend payment from normalised Net Profit After Tax (NPAT) of \$2 million each year 50 percent payable by 31 January. The balance of the base payment will be paid after year end accounts are finalised with an additional 50 percent of normalised NPAT that exceeds \$2 million.
- In the event that the normalised NPAT is forecasted to be less than \$3 million then the Board will reconsider a dividend payment and will apply prudent governance prior to declaring any dividend.

The Board will consider any request from the Shareholders for further dividend payments and will apply prudent governance when considering such requests.

Prior to declaring a dividend the Board will consult with the Shareholders, and seek advice where necessary, to ensure that the tax consequences for each Shareholder are managed.

The Board will not issue shares wholly or partly in lieu of the proposed dividend or proposed future dividends, without the approval of Shareholders.

## Commercial Value

The Board estimate the commercial value of QAC to be \$177 million to \$206 million; (SOI 2013 – 2016 enterprise value range: \$113 million to \$133 million). This estimate is in line with a PWC high level valuation of November 2013.

## Capital Subscription

No new shares in the company will be issued without the consent of Shareholders.

The company is confident it can fund its capital growth plans from internal sources (cashflow and/or debt) during the forecast period 2015-2017. The Board will assess this position annually as part of the SOI process.

## Investment in Other Entities

The Company must consult with the Shareholders prior to any investment being made in another entity.

## **Non-commercial Services**

QAC receives a fee from QLDC for the management of Wanaka Airport. This includes the cost of an onsite airport Manager, providing accounting and administration services, management input to the airport's development, and compliance obligations to CAA and Airways.

QAC also manages the Glenorchy Aerodrome on behalf of QLDC, including ground maintenance.

QAC leases land to QLDC that forms part of the Frankton Golf Course for \$25,000 pa. The market rental value for the land has been assessed at \$86,500 pa (Seager and Partners, February 2010). The alternative airport-related use for the land could include long-term parking.

## **Audit**

The Office of the Auditor General has re-appointed Deloitte to undertake the Audit of QAC for 3 further years: 1 July 2014 to 30 June 2017.

## **Accounting Policies**

QAC will maintain accounting records in accordance with the Companies Act 1993, and the accounting standards promulgated by the New Zealand Institute of Chartered Accountants.

## Corporate Directory

<b>Location:</b>	Queenstown Airport Corporation Airport Administration, Queenstown Airport Sir Henry Wigley Drive Frankton Queenstown 9300	
<b>Mailing address:</b>	PO Box 2641 Queenstown 9349 NEW ZEALAND	
<b>DDI:</b>	03 450 9031	
<b>Fax:</b>	03 442 3515	
<b>Email:</b>	admin@queenstownairport.co.nz	
<b>Website:</b>	www.queenstownairport.co.nz	
<b>Shareholders</b>	Queenstown Lakes District Council (75.01%) Auckland Airport Holdings (No2) Limited (24.99%)	
<b>Directors</b>	John Gilks (Chairman) Alison Gerry James Hadley Grant Lilly Richard Tweedie	
<b>Senior Management</b>	Chief Executive Officer Chief Financial Officer GM Operations GM Property	Scott Paterson – <a href="mailto:Scott@queenstownairport.co.nz">Scott@queenstownairport.co.nz</a> Mark Edghill – <a href="mailto:Marke@queenstownairport.co.nz">Marke@queenstownairport.co.nz</a> Mark Harrington – <a href="mailto:Mark@queenstownairport.co.nz">Mark@queenstownairport.co.nz</a> Sean Thompson – <a href="mailto:Sean@queenstownairport.co.nz">Sean@queenstownairport.co.nz</a>
<b>Senior persons per Civil Aviation Rules, part 139</b>	Chief Executive Officer GM Operations Manager Rescue Fire	Scott Paterson Mark Harrington Bill Wrigley



## Abbreviations

AIAL	Auckland International Airport Limited
AVSEC	Aviation Security Service
CAA	Civil Aviation Authority of New Zealand
CASA	Civil Aviation Safety Authority (Australia)
CEO	Chief Executive Officer
CCTO	Council Controlled Trading Organisation
CHC	Christchurch Airport
EBITDA	Earnings Before Interest, Tax, Depreciation and Amortisation
F&B	Food and Beverage
FIDS	Flight Information Display Screens
FY	Financial Year – 1 July to 30 June
GA	General Aviation
IATA	International Air Transport Association
MPI	Ministry of Primary Industries
NPAT	Net Profit After Tax
PC35	Queenstown Lakes District Council Plan Change 35 relating to Airport Noise boundaries.
QAC	Queenstown Airport Corporation, the company that owns and operates Queenstown Airport
QLDC	Queenstown Lakes District Council
QRC	Queenstown Resort College
RMA	Resource Management Act
RPL	Remarkables Park Limited
RTO	Regional Tourism Organisation
SOI	Statement of Intent
ZQN	Queenstown Aerodrome including airfield and terminal

