

**BEFORE THE HEARINGS PANEL  
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

**IN THE MATTER** of the Resource  
Management  
Act 1991

**AND**

**IN THE MATTER** of Hearing Stream  
07 – Chapter 37  
Designations

---

**SYNOPSIS OF LEGAL SUBMISSIONS FOR  
QUEENSTOWN LAKES DISTRICT COUNCIL**

**HEARING STREAM 07 –  
CHAPTER 37 DESIGNATIONS**

**7 October 2016**

---

---

 **Simpson Grierson**  
Barristers & Solicitors

J G A Winchester / K L Hockly  
Telephone: +64-4-924-3529  
Facsimile: +64-4-472 6986  
Email: [katharine.hockly@simpsongrierson.com](mailto:katharine.hockly@simpsongrierson.com)  
DX SX11174  
PO Box 2402  
WELLINGTON

## TABLE OF CONTENTS

1. INTRODUCTION .....	2
2. SCOPE OF HEARING .....	3
3. COUNCIL'S ROLE IN HEARING STREAM 7 DESIGNATIONS .....	8
4. STATUTORY CONSIDERATIONS .....	9
5. KEY ISSUES .....	11
6. AURORA DESIGNATION NOISE CONDITIONS .....	17
7. DEEMED DESIGNATED COUNCIL ROADS .....	18
8. REZONING OF STOPPED ROADS .....	19
9. WITNESSES .....	21

## **MAY IT PLEASE THE PANEL:**

### **1. INTRODUCTION**

**1.1** The following is a synopsis of the legal submissions for the Queenstown Lakes District Council (**Council**), in its regulatory capacity, in relation to Chapter 37 Designations (**Designations Chapter**) of the Proposed District Plan (**PDP**).

**1.2** This synopsis has been filed in advance in accordance with the Panel's directions in its Fourth Procedural Minute dated 8 April 2016 and for the convenience of the Panel, requiring authorities and submitters.

**1.3** Full legal submissions will be provided. However, the Council advises that, as it is to appear after the requiring authorities and submitters in this hearing, its full written legal submissions will be tabled at the commencement of its appearance and will not be filed in advance of the hearing.

**1.4** As the Council will not file its full legal submissions prior the opening of this hearing, it has endeavoured for this synopsis to be as comprehensive as possible, in order to foreshadow the key issues for the benefit of the Panel.

**1.5** Broadly this synopsis of submissions:

- (a) identifies the scope of Hearing Stream 07 Designations;
- (b) provides an overview of the Council's role as regulatory authority in this hearing stream;
- (c) sets out the relevant legal tests the Panel must consider when making its recommendations and decisions on the designations subject to this hearing;

- (d) outlines the key outstanding issues and key issues of agreement from the Council's perspective; and
- (e) sets out its position on the status of Council roads and the rezoning of stopped roads.

## **2. SCOPE OF HEARING**

**2.1** The Designations hearing is on the Designations Chapter of the PDP. It covers all 'rolled over' designations and all new requirements notified as part of Stage 1 of the PDP.

### **Rollover of existing designations**

**2.2** By way of letter, dated 30 January 2013, the Council invited all requiring authorities with designations in the Operative District Plan (**ODP**) to give written notice confirming whether they required for their designation(s), that had not lapsed, to be rolled over into the PDP.<sup>1</sup> The letter indicated that the review of the ODP was intended to be completed, and the PDP notified, in 2013.

**2.3** As the PDP was not notified in 2013, the Council sent a further letter to all requiring authorities on 31 July 2014 providing an additional opportunity to respond by 30 September 2014.

**2.4** With the exception of those designations discussed at paragraphs [2.5] - [2.13] below, all requiring authorities gave notice for all of their designations to be 'rolled over' into the PDP (with or without modification).

**2.5** The following requiring authorities gave notice that they did not require the following designations to be 'rolled over':

- (a) Department of Conservation (Designations #114, #115, #120 and #188);

---

<sup>1</sup> In accordance with the Resource Management Act 1991, Schedule 1 (cl 4(1)).

- (b) Queenstown Lakes District Council (Designations #51, #78, #152, #153 and #187); and
- (c) Queenstown Airport Corporation Limited (**QAC**) (Designation #3).

**2.6** Accordingly, the above designations were not notified as part of the PDP.

### **Designations not notified as part of Stage 1 of the PDP**

#### *#584 - Wakatipu High School Relocation*

**2.7** By way of letter dated 8 September 2014, the Minister of Education sought for the existing designation for the future Wakatipu High School Relocation and Early Childhood Centre (#584) to be included in the PDP, without modification. However, the Council omitted to notify the designation as part of Stage 1 of the PDP. Remarkables Park Limited (**RPL**) submitted on this omission and requested for the designation to be included in the PDP.<sup>2</sup>

**2.8** It is the Council's position that, as notice for Designation #584 to be 'rolled over' was received by the Council prior to the notification of Stage 1 of the PDP, the Panel is able to recommend that the designation be included in the Designations Chapter as part of Stage 1.

**2.9** Clause 4(5) of Schedule 1 of the RMA requires the Council to include in its proposed plan all designations to which it receives notice to roll over. Clause 4 of Schedule 1 is titled, "*Requirements to be inserted prior to notification of proposed district plans.*" However, the Council submits that including Designation #584 in the Designations Chapter, after notification is unlikely to prejudice any person.

---

<sup>2</sup> Submitter #807.

### *Designation #585 - Recreation Reserve*

**2.10** The evidence of Ms Holden is that the ODP contains Designation #585, being a Recreation Reserve at Jack Reid Park in Arrowtown.<sup>3</sup> The Council, as requiring authority, omitted to give notice for this designation be 'rolled over' into the PDP.<sup>4</sup> The Council understands that the requiring authority has now identified this as an error.

**2.11** Clause 4(4) of Schedule 1 of the RMA provides that if a requiring authority fails to give notice for a designation to be 'rolled over,' no provision for that designation shall be included in a proposed plan. Accordingly, contrary to its position on Designation #584 above, it is the position of the Council that the Panel is not able to include Designation #585 in the Designations Chapter as part of Stage 1 of the PDP. However, Designation #585 could be notified as part of Stage 2 of the PDP.

### *NZ Transport Agency Designations*

**2.12** Following notification of the PDP, the NZ Transport Agency (**NZTA**) wrote to the Council<sup>5</sup> and advised it that the following alterations are either not included in the PDP or contain errors:

- (a) Kawarau Falls Bridge (RM120413);
- (b) Grant Road Roundabout (RM110290);
- (c) Eastern Access Road Roundabout and four laning (RM140857);
- (d) Makarora Variable Message Sign (RM150169);
- (e) Boyd Road (RM090645);

---

<sup>3</sup> Scheduled in Appendix 1 and shown on Planning Map 27.

<sup>4</sup> See paragraph 6.38- 6.40 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (QLDC), 23 September 2016; Scheduled in Appendix 1 and shown on Planning Map 27.

<sup>5</sup> See the letter dated 08 October 2015 at Appendix 3 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (General), 23 September 2016.

(f) Peninsula Road Improvements (RM081075); and

(g) Nevis Bluff (RM090555 and RM040909).

**2.13** NZTA requested that these matters be corrected. The Council advises that, at the time that NZTA gave notice for its designations to be rolled over into the PDP, the above alterations/corrections were not included in the ODP. The 'roll over' notice of NZTA did not contain a request for these matters to be addressed in the PDP. Accordingly, NZTA's designations were rolled over as reflected in the ODP at the time.

#### *Arrowtown Community Policing Centre*

**2.14** The New Zealand Police<sup>6</sup> made a submission on the Designations Chapter requesting an additional designation over the Arrowtown Community Policing Centre located at 57 Buckingham Street, Arrowtown.

**2.15** The Council advises that the Minister of Police did not give notice of the proposed designation prior to the notification of Stage 1 of the PDP. Accordingly, it is the position of the Council that the Panel has no jurisdiction to recommend that the proposed designation be included in the PDP.

#### *Kawarau River Bridge*

**2.16** Submitters Kerry Dunlop, David Hay, Adam Childs, Sir Eion Edgar, Dr Ralph Hanan, Hudson Turnbull, Kevin Conaghan, Simon Hayes, Alan Millar, Bill and Kirsty Sharpe<sup>7</sup> seek that a second bridge over the Kawarau River to the east of Boyd Road be designated. The Council submits that, as the submitters are not requiring authorities, the Panel has no jurisdiction to recommend this designation.

---

<sup>6</sup> Submitter #57.  
<sup>7</sup> Submitter #553.

## New notices of requirement

**2.17** The following authorities lodged new notices of requirement that were notified by the Council as part of the PDP in accordance with Clause 4(5) of Schedule 1 of the Resource Management Act 1991 (**RMA**):

- (a) Aurora Energy Limited (**Aurora**) gave notice of seven requirements for the purpose of Electricity Substation and Ancillary Purposes and Electricity Regulators and Ancillary Purposes;<sup>8</sup>
- (b) the Minister of Education gave a notice of requirement for Makarora School at 31 Rata Street Makarora;<sup>9</sup> and
- (c) the Council gave notice of 181 new requirements for the purposes of identifying and protecting its existing engineering infrastructure assets as well as new parks and reserves.<sup>10</sup>

## Withdrawal of designations

**2.18** Clause 4(10) of Schedule 1 of the PDP provides that,

*"if a territorial authority receives notice from a requiring authority that a requirement has been withdrawn, the territorial authority must, as soon as reasonably practicable and without using the process in this schedule, amend its proposed district plan accordingly."*

**2.19** The following designations have been withdrawn since the notification of Stage 1 of the PDP:

- (a) Designation #5 (Railway Purposes);<sup>11</sup> and

---

<sup>8</sup> See paragraph 6.7 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (General), 23 September 2016.

<sup>9</sup> Ibid, paragraphs 6.50 and 6.56-6.58.

<sup>10</sup> See paragraph 1.3 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (QLDC), 23 September 2016.

<sup>11</sup> By way of submission, Submitter #81 (KiwiRail Holdings Limited).

(b) Designation #171 (Recreation Reserve).<sup>12</sup>

**2.20** The Council further understands that, the Council, as requiring authority, does not intend to pursue the following designations. However, a Council resolution is required before these designations can be formally withdrawn:

(a) #389 and #390 (Local Purpose Reserves (Storm Water Soakage Basin); and

(b) #560 (Local Purpose (Repeater Site)).

### **3. COUNCIL'S ROLE IN HEARING STREAM 7 DESIGNATIONS**

**3.1** The Council has two roles in the Designations hearing. It is both regulatory authority and a requiring authority. These submissions are provided on behalf of the Council as regulatory authority. The Council is separately represented in this hearing in its role as requiring authority.

**3.2** In the context of its role as regulatory authority the Council has been responsible for:

(a) requesting whether requiring authorities required their designations to be 'rolled over' into the PDP (either with or without modification);

(b) incorporating 'rolled over' designations and new notices of requirement for designations into the PDP;

(c) calling for submissions on Stage 1 of the PDP, including the Designations Chapter; and

(d) preparing three s 42A reports on the Designations Chapter to provide an overview of the chapter, and to assess 'rolled over' designations to which modification

---

<sup>12</sup> By way of submission, Submitter #383 (Queenstown Lakes District Council).

is sought, new requirements and public submissions in accordance with the relevant statutory considerations.

**3.3** The Council has a recommendatory role in relation to notices requirements of other requiring authorities notified as part of the PDP<sup>13</sup> and decision making powers in respect of its own requirements.<sup>14</sup> Both functions have been delegated to the Panel.

#### **4. STATUTORY CONSIDERATIONS**

**4.1** Where a new requirement is notified in the PDP, a requiring authority has sought a modification to a designation, or submissions have been received on a designation, clauses 9(1) and 9(2) of Schedule 1 of the RMA require the Panel to comply with section 168A(3) or 171 of the RMA, as relevant.

**4.2** Both sections 168A(3) and 171 require that, when considering requirements and any submissions received, the Panel must, subject to Part 2 of the RMA, consider the effects on the environment of allowing the requirements. When doing so, the Panel must "have particular regard to":

- (a) any relevant provisions of:<sup>15</sup>
  - (i) a national policy statement;
  - (ii) a New Zealand Coastal Policy Statement;
  - (iii) a regional policy statement, or proposed regional policy statement; or
  - (iv) a plan, or proposed plan;

---

<sup>13</sup> Resource Management Act 1991, Schedule 1 (cl 9(1)).

<sup>14</sup> Resource Management Act 1991, Schedule 1 (cl 9(2)).

<sup>15</sup> Ibid, ss 171(1)(a) and 168A(3)(a).

- (b) whether adequate consideration has been given to alternative sites, routes and methods of undertaking the public work, if:<sup>16</sup>
  - (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;
- (c) whether the work and designation are reasonably necessary for achieving the project objectives;<sup>17</sup> and
- (d) any other matter that the Panel considers is reasonably necessary in order to make a recommendation or decision, as relevant.<sup>18</sup>

**4.3** In relation to the Panel's obligation to have particular regard to "whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work", caselaw is well settled. In essence, the question to be addressed by the Panel is whether the requiring authority has acted arbitrarily or given only cursory consideration to alternatives.<sup>19</sup> The requiring authority is not required to demonstrate it has considered all possible alternatives, or that it has selected the best of all available alternatives.<sup>20</sup>

**4.4** When considering whether both the "work" and the "designation" (as a planning tool) are reasonably necessary for achieving the Project objectives, the Panel is not entitled to consider the merits of the requiring authorities' objectives.<sup>21</sup>

---

<sup>16</sup> Ibid, ss 171(1)(b) and 168A(3)(b).

<sup>17</sup> Ibid, ss 171(1)(c) and 168A(3)(c).

<sup>18</sup> Ibid, ss 171(1)(d) and 168A(3)(d).

<sup>19</sup> *Waimairi DC v Christchurch CC* (PT, C030/82, 13 July 1982), at pages 24-25, 41, applied in *Quay Property Management Ltd v Transit NZ* (EnvC, W028/00, 29 May 2000), at [148].

<sup>20</sup> *Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482, at [81].

<sup>21</sup> *Babington v Invercargill City Council* (1993) 2 NZRMA 480, at 486.

4.5 *Reasonably necessary* is an objective standard that falls between the subjective test of expediency or desirability at one end and absolute necessity at the other. The epithet "reasonably" qualifies some tolerance.<sup>22</sup>

#### **Designations for which no modification is sought, and no submissions have been received**

4.6 Clause 9(3) of Schedule 1 of the RMA precludes the Panel from making a recommendation or decision in respect of any existing designation that is proposed to be "rolled over" without modification, and on which no submissions have been received.

4.7 The Council submits that the reference to an existing designation "on which no submissions have been received" should include a designation on which submissions have been received in support. It is submitted that the reference to "on which no submissions have been received" was intended to exclude only submissions that sought either a deletion or a modification of the designation.

## **5. KEY ISSUES**

5.1 The key issues considered to be resolved through the recommendations made in the section 42A reports on the Designations Chapter are listed below, followed by the key matters of disagreement that are currently understood to be outstanding:

### *Wider chapter*

(a) additional explanatory text has been recommended at the beginning of the chapter to provide clarification;<sup>23</sup>

---

<sup>22</sup> *Watkins v Transit New Zealand* (EnvC A54/2003, 16 April 2003), at [47]; applied in *Gavin Wallace v Auckland Council* [2012] NZEnvC 120 at [183].

<sup>23</sup> See paragraph 7.5 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (QLDC), 23 September 2016; submitter #383 (Queenstown Lakes District Council).

*QLDC designations*

- (b) condition G has been recommended to be deleted on the basis that it is a duplication of condition B;<sup>24</sup>
- (c) Designations #526, #528 and #529 (Civic Offices) are recommended to be merged into a single designation #527;<sup>25</sup>
- (d) designation #462 (Storm Water Soak Pit/Waste Water Pump Station) has been recommended to be separated into two separate designations, #462 and #586;<sup>26</sup>
- (e) the following designations are recommended to be amended on the planning maps to reflect the extent of the landfills shown on the Council's hazards register:
  - (i) #428 (Glenorchy Closed Landfill);<sup>27</sup> and
  - (ii) #429 (Luggate Closed Landfill);<sup>28</sup>
- (f) Designation #439 (Kingston Closed Landfill) is recommended to be included on Planning Map 39a to the extent shown on the Council Hazards Register;<sup>29</sup>
- (g) the following amendments to Designation #29 (Multi-purpose indoor and outdoor recreation, cultural and conference complex) have been recommended:
  - (i) correction of legal descriptions in Schedule 37.2 (**Schedule**) and the conditions of the designation;<sup>30</sup>

---

<sup>24</sup> Ibid, paragraph 7.8; submitter 383 (Queenstown Lakes District Council).

<sup>25</sup> Ibid, paragraph 6.18; submitter #383 (Queenstown Lakes District Council).

<sup>26</sup> Ibid, paragraphs 6.34 – 6.37.

<sup>27</sup> Ibid, paragraph 7.84; submitters #481 (Cabo Limited) and #769 (Island Capital Limited).

<sup>28</sup> Ibid, paragraph 7.88; submitter #314 (Wakatipu Holdings Limited).

<sup>29</sup> Ibid, paragraph 6.48.

<sup>30</sup> Ibid, paragraphs 7.14 ; submitter 719 (NZTA).

- (ii) amendment to the Schedule and Condition 1 to clarify that the designation applies to only part of certain land parcels;<sup>31</sup>
- (h) except where amendments have been recommended or a designation has been withdrawn, the Council's new notices of requirement have been recommended to be confirmed as notified;<sup>32</sup>

*Other requiring authority designations*

- (i) Designations #574<sup>33</sup> and #567<sup>34</sup> (Electricity Substation and Ancillary purposes) are recommended to be amended to apply to only the easements in favour of Aurora;
- (j) new notices of requirement for Designations #566, #568, #569, #573, #574, #580 (Electricity Substation and Ancillary Purposes), and #581 (Electricity Regulators and Ancillary Purposes) have been recommended to be confirmed as amended in the revised chapter contained at Appendix 1 of the s42A reports on the Designations Chapter;<sup>35</sup>
- (k) the notice of requirement for Makarora Primary School Designation #577 (Education Purposes) has been recommended to be confirmed as notified;<sup>36</sup>

*Airports*

- (l) the mechanical ventilation conditions in Designation #2 (Aerodrome purposes) have been recommended to

---

<sup>31</sup> Ibid, paragraph 7.29.

<sup>32</sup> Ibid, paragraph 9.1.

<sup>33</sup> See paragraph 6.16 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (General), 23 September 2016; submitter #51 (Hall Family Trust).

<sup>34</sup> Ibid at paragraph 6.27; submitter #632 (RCL Queenstown Pty Limited, RCL Henley Downs Limited, RCL Jacks Point Limited).

<sup>35</sup> Ibid, paragraph 6.30.

<sup>36</sup> Ibid, paragraph 6.57 – 6.79.

be amended to refer to the requirement for cooling as well as heating;<sup>37</sup>

**5.2** Key outstanding issues on the Designation Chapter are understood to be:

(a) whether conditions on the following designations are necessary:

- (i) #526, #528 and #529 (Civic Offices);<sup>38</sup>
- (ii) #492-#496; #532-#533 and #561-#562 (Recreation Reserves);<sup>39</sup>
- (iii) #522, #523 and #524 (Recreation Reserve, Local Purpose Reserve (Child Care Centre), Local Purpose Reserve (Education));<sup>40</sup>

(b) Whether the following amendments to the conditions of Designation #29 (Multi-purpose indoor and outdoor recreation, cultural and conference complex) are necessary:

- (i) amendment to condition 23 to stipulate that only messages relating to the site can be displayed on the entry sign;<sup>41</sup>
- (ii) amendment to condition 25 to restrict the location of a further entry sign should Grant Road be utilised for access;<sup>42</sup>
- (iii) addition of an advice note to recommend early engagement with NZTA if events on site

---

<sup>37</sup> See paragraph 6.23 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (Airports), 23 September 2016; submitter # 79 (D Jerram).

<sup>38</sup> See paragraph 6.22 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (QLDC), 23 September 2016.

<sup>39</sup> Ibid, paragraph 6.13.

<sup>40</sup> Ibid, paragraphs 6.25 – 6.27.

<sup>41</sup> Ibid, paragraph 7.33; submitter #719 (NZTA).

<sup>42</sup> Ibid, paragraph 7.36; submitter #719 (NZTA).

generate traffic that may change the normal operation of SH6;<sup>43</sup>

- (iv) amendments to condition 7 to provide acoustic insulation requirements for new or altered buildings<sup>44</sup> and to restrict the provision of community facilities to those directly related or ancillary to the operation of the Queenstown Events Centre;<sup>45</sup>
- (v) amendment to condition 4 to restrict the use of the childcare centre to children whose their parents or guardians are using the site for its designated purpose;<sup>46</sup>
- (vi) amendment to condition 14 to ensure that Designation #4 (Approach and Land Use Control (Transitional Slopes and Surfaces)) is not compromised by activities carried out in accordance with Designation #29;<sup>47</sup>
- (c) the correct extent of the boundaries of Designation #29 (Multi-purpose indoor and outdoor recreation, cultural and conference complex) on Planning Map 31a;<sup>48</sup>
- (d) whether it is appropriate for the conditions of designations #105, #110, #111, #113 (Recreation Reserves) to provide for buildings;<sup>49</sup>
- (e) whether the following designations should be extended to include the whole site:

---

<sup>43</sup> Ibid, paragraph 7.40; submitter #719 (NZTA).

<sup>44</sup> Ibid, paragraphs 7.41-7.42; submitter #433 (QAC).

<sup>45</sup> Ibid, paragraph 7.46; submitter #433 (QAC).

<sup>46</sup> Ibid, paragraph 7.44; submitter #433 (QAC).

<sup>47</sup> Ibid, paragraph 7.52; submitter #433 (QAC).

<sup>48</sup> Ibid, paragraphs 7.17 - 7.28 ; submitter #433 (QAC).

<sup>49</sup> Ibid, paragraphs 7.58- 7.59 submitters #704 (Ross & Judith Young Family Trust) and FS1305 (Wanaka Watersports Facility Trust).

- (i) #175 (Part of Hawea Recreation Reserve (Motor Park)),<sup>50</sup>
  - (ii) #239 (Local Purpose Reserve Airport);<sup>51</sup>
- (f) whether the conditions that have been volunteered by the Council, as requiring authority, in respect of Designation #239 (Recreation Reserve (Aerodrome)) are sufficient;<sup>52</sup>

*Other requiring authorities*

- (g) whether the following conditions are necessary:
- (i) condition 1 of RM120701 of Designation #570 (Electricity Substation and Ancillary purposes);<sup>53</sup>
  - (ii) conditions 1-8, 9(b) and 10-13 of Designation # 372 (Police Purposes);<sup>54</sup>
- (h) whether it is necessary to include legal descriptions in the Schedule in relation to Designations #7 (Police Station) and #372 (Police Purposes);<sup>55</sup>

*Airports*

- (i) Designation #2 (Aerodrome purposes):
- (i) whether it is appropriate to include a list of prohibited non-airport related activities in the designation conditions;<sup>56</sup>

<sup>50</sup> Ibid, paragraph 7.62; submitter #282 (Sarah Burdon).

<sup>51</sup> Ibid, paragraph 7.75; submitter #23 (Skydive Queenstown Limited).

<sup>52</sup> Ibid, paragraph 7.71; submitters #744 (Wyuna Preserve Residents Association Incorporated), 1308 (Blanket Bay Lodge), FS1345 (Skydive Queenstown Limited).

<sup>53</sup> See paragraphs 6.18-6.21 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (General), 23 September 2016; submitter #724 (Queenstown Gold Limited).

<sup>54</sup> Ibid, paragraph 6.63; submitter #57 (New Zealand Police).

<sup>55</sup> Ibid, paragraph 6.62; submitter #57 (New Zealand Police).

<sup>56</sup> See paragraphs 6.10 – 6.11 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (Airports), 23 September 2016; submitter #807 (RPL).

- (ii) whether the part of the designation relating Lot 1 DP 472825 should be uplifted;<sup>57</sup>
  - (iii) whether the notified conditions relating to building height and setback are adequate;<sup>58</sup>
- (j) whether the amendment to condition D.3 of Designation #4 (Airport Approach and Land Use controls), in relation to the width of the transitional surfaces, accurately reflects Figure 1 Queenstown Airport: Airport Approach and Protection Measures;<sup>59</sup>
- (k) Designation #64 (Aerodrome Purposes):
- (i) whether it is necessary to impose limits and controls on the hours of operation of scheduled passenger services or conditions on lighting during the hours of darkness;<sup>60</sup>
  - (ii) whether the list of permitted non-airport related activities notified in the PDP is appropriate/ reasonably necessary;<sup>61</sup> and
  - (iii) whether it is appropriate for all management and reporting requirements relating to Wanaka Airport to be undertaken by Airport Management (being QAC on behalf of the Council).<sup>62</sup>

## 6. AURORA DESIGNATION NOISE CONDITIONS

**6.1** Ms Rebecca Holden, the author of the s 42A reports on the Designations Chapter has recommended that the noise conditions in Designations #331, #572 and #575 (Electricity Substation and Ancillary Purposes) be updated to refer to

<sup>57</sup> Ibid, paragraph 6.15; submitter #807 (RPL).

<sup>58</sup> Ibid, paragraphs 6.16-6.20; submitter #807 (RPL).

<sup>59</sup> Ibid, paragraph 6.33-6.36; submitter #807 (RPL).

<sup>60</sup> Ibid, paragraph 6.49; Submitter #433 (QAC).

<sup>61</sup> Ibid, paragraphs 6.63-6.66; submitters #433 (QAC) and #5 (Twenty24 Limited).

<sup>62</sup> Ibid, paragraph 6.70; submitters #433 (QAC) and FS1030 (Jeremy Bell Investments Limited).

current New Zealand Standards (**NZSs**).<sup>63</sup> No modifications to the noise conditions were proposed by the requiring authority, Aurora, as part of its notice to roll the designations over into the PDP. Further, the Council has not identified any submissions on the noise conditions. However, Aurora has provided consent to update the references to the NZSs as proposed by the Council.<sup>64</sup>

**6.2** The Council submits that the Panel is able to recommend that designations #331, #572 and #575 be updated to refer to current NZSs. It is the position of the Council that, on account of the consent provided by Aurora, the update of designation conditions to reflect current NZSs would be neutral and there would be no prejudice to any party.

## **7. DEEMED DESIGNATED COUNCIL ROADS**

**7.1** The first paragraph of Section A Roads, located on page 37-41 of the Designations Chapter, contains the following statement:

*“All Queenstown Lakes District Council Roads are deemed to be designated for the purpose of road.”*

**7.2** The Council understands that the Panel questioned the validity of this statement during the hearing of the rural chapters of the PDP.<sup>65</sup>

**7.3** The evidence of Ms Holden is that the above statement was rolled over from the ODP. However, the Council has not been able to establish that a Notice of Requirement was issued in relation to any such designation prior to the statement being included in the ODP. Further, Ms Holden's evidence is that the notice of the Council, as requiring authority, to roll over its designations from the ODP into the PDP did not contain a request to roll over any designation relating to Council roads.

---

<sup>63</sup> See paragraphs 6.3 and 6.6 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (General), 23 September 2016.

<sup>64</sup> Ibid, paragraphs 6.3 and 6.6.

<sup>65</sup> Hearing Stream 02 Rural.

**7.4** The Council submits that there is no provision in the RMA for designations to be 'deemed.' To be lawful, a designation must be introduced into a district plan through the Part 8 or Clause 4 Schedule 1 process of the RMA. Further, Clause 4(4) of Schedule 1 of the RMA provides that if a requiring authority fails to give notice to roll over an existing designation, no provision for that designation shall be included in a proposed plan.<sup>66</sup>

**7.5** It is the Council's position that, unless evidence can be provided by the requiring authority, to establish that the RMA designation process was followed to designate Council roads and that any such designation was requested to be rolled over into the PDP, the above statement is *ultra vires*. As a consequence it should be removed from the Designations Chapter.

## **8. REZONING OF STOPPED ROADS**

**8.1** The following rules, located within Section A.1 Stopped Roads on page 37-41 of the Designations Chapter provide for the rezoning of land when roads are stopped:

### ***A.1 Stopped Roads***

*Council shall stop all roads in accordance with either the Local Government Act 1974 or the Public Works Act 1981.*

*Where the boundary of a legal road is re-aligned, or a legal road is stopped, the Council shall apply to the land no longer designated road a zone(s), in accordance with one or more of the following provisions:*

*(i) Zoning shall be that which best accommodates any existing land use activities on the site of the stopped road, and which cause no more than minor effect to the environment; and/or*

*(ii) Zoning shall reflect any topographical or natural features that constitute logical reason for zoning; and/or*

*(iii) Stopped roads shall be zoned in accordance with the adjoining zone of least intensive development potential (refer to Table A.1).*

---

<sup>66</sup> See Part 8 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (QLDC), 23 September 2016

**Table A.1 – Least Intensive District Zoning to most Intensive District Zoning**

- (i) Rural
- (ii) Gibbston Character
- (iii) Rural Lifestyle/Bendemeer
- (iv) Rural Residential
- (v) Resort/Rural Visitor
- (vi) Arrowtown Residential Historic Management
- (vii) Township
- (viii) Low Density Residential/Penrith park
- (ix) High Density Residential/Medium Density
- (x) Corner Shopping Centre
- (xi) Industrial
- (xii) Business
- (xiii) Remarkables Park
- (xiv) Town Centre
- (xv) Airport Mixed Use

- 8.2** The Council advises that roads in the PDP are not currently zoned. The above rules appear to have the effect that if a road is lawfully stopped, relevant zone rules will apply from the date of the road stopping. The Council understands that a plan change process would need to be worked through in order to change the zoning on the planning maps, but in the meantime the zone rules could be applied.
- 8.3** The evidence of Ms Holden is that rule A.1 was rolled over from the ODP into the PDP. The origin of the rule in the ODP is explained in the s 42A report of Ms Holden relating to Council designations.<sup>67</sup>
- 8.4** It is the position of the Council that rules of this type are valid if they provide certainty as to the zone provisions that will apply to a stopped road. The Council submits that Rules A.1(i) and A.1(ii) do not provide sufficient certainty, as they reserve significant discretion to council officers. Accordingly, Rules A.1(i) and A.1(ii) appear *ultra vires* and should be removed from the Designations Chapter.
- 8.5** On the other hand, it is the position of the Council that Rule A.1(iii) is sufficiently valid. Although, the Council has underlying concerns that the rule could be regarded as a 'plan change by stealth,' it accepts that when read with Table A.1, it provides

<sup>67</sup> See Part 8 of the Section 42A report of Ms Rebecca Holden on Chapter 37 Designations (QLDC), 23 September 2016.

sufficient certainty as to the zoning that will be applied to a stopped road and can be objectively understood.

## **9. WITNESSES**

**9.1** The Council will call evidence from Ms Rebecca Holden on the following s 42A reports:

- (a) s 42A report Chapter 37 Designations – QLDC;
- (b) s 42A report Chapter 37 Designations – General; and
- (c) s 42A report Chapter 37 Designations – Airports.

**9.2** At the time of filing this synopsis, evidence from submitters and requiring authorities has not yet been filed. In its full legal submissions, counsel will address key areas of contention raised through submitter and requiring authority evidence and any legal submissions filed in advance in accordance with the Panel's Fourth Procedural Minute dated 8 April 2016. For responses to specific submissions, the table in Appendix 2 of the section 42A reports on Chapter 37 Designations sets out whether the Council has accepted, accepted in part or rejected each of the submission points.

**DATED** this 7<sup>th</sup> day of October 2016



---

J G A Winchester / K L Hockly  
Counsel for Queenstown Lakes  
District Council