Before the Queenstown Lakes District Council

In the Matter of	the Resource Management Act 1991
And	
In the Matter of	the Queenstown Lakes Proposed District Plan
	Hearing Stream 18 (Rural Visitor Zone)

Legal Submissions for Queenstown Airport Corporation Limited (Further Submitter 31054)

Dated: 6 August 2020

Counsel | Rebecca Wolt | Barrister
Email | rebecca@rebeccawolt.co.nz
Phone | +64 21 244 2950

Introduction

1. These legal submissions are filed on behalf of Queenstown Airport Corporation Limited (**QAC**) in respect of its further submission on the Queenstown Lakes Proposed District Plan (**PDP**) addressing an original submission (OS31021) by Corbridge Estates Limited Partnership (**Corbridge**) to rezone approximately 322 ha of land located at 707 Wanaka-Luggate Highway Limited from Rural Zone to Rural Visitor Zone (**RVA**).

2. The Corbridge land is proximate to Wanaka Airport (**Airport**), under the Airport's main flight path, and partly within the Airport's Operative Outer Control Boundary (**OCB**).

3. QAC is responsible for the management and planning of Wanaka Airport pursuant to a long-term lease by Queenstown Lakes District Council (**QLDC**).

4. QAC opposes the Corbridge submission for reverse sensitivity and amenity reasons and seeks retention of the land's Rural zoning.

Legal Framework

5. Ms Scott for QLDC has addressed the statutory framework within which decisions on submissions and further submissions must be made.[1] Ms Scott's submissions are generally accepted as correct and adopted here.

6. The issue of jurisdictional scope arises for the Corbridge submission, and Ms Scott's submissions on that[2] will be addressed and elaborated upon shortly.

QAC

7. QAC was incorporated in 1988 and is responsible for operating Queenstown Airport. It is the requiring authority for that airport.

8. QAC is owned:

---

[1] Opening Legal Submissions for QLDC, 29 June 2020, Appendix 1.
[2] Opening Legal Submissions for QLDC, 29 June 2020, paragraphs 4.2 – 4.5

(a) 75.01% by QLDC; and

(b) 24.99% by Auckland International Airport Limited.

9. Wanaka Airport is owned by QLDC. QAC has been managing operations at the Airport on behalf of QLDC since 2009, initially pursuant to management agreements, and since April 2018, pursuant to a long-term lease.

10. Under the long-term lease, which commenced on 1 April 2018 for a term of 100 years, QAC is responsible for the operation, planning, development and governance of Wanaka Airport. QAC is also responsible for all legal obligations pertaining to Wanaka Airport, including statutory compliance.

11. Wanaka Airport is located approximately 9km south-east of Wanaka at 16 Lloyd Dunn Place, and is adjacent to the Wanaka-Luggate Highway, State Highway 6.

12. An Outer Control Boundary (**OCB**) applies at Wanaka Airport, having been confirmed in or around 2013 and based on aircraft noise levels predicted for 2036.

13. Presently Wanaka Airport is predominately used for scenic, charter and skydiving operations as well helicopter training and maintenance. A number of general aviation and recreational aircraft are also based at the Airport.

14. While there are currently no scheduled jet services operating at the Airport, the operative OCB makes provision for these.

15. The OCB applies to part of the Corbridge land. The OCB is addressed in further detail shortly.

16. The Corbridge land is under the main flight path. This is addressed further shortly also.

Long Term Planning for Wanaka Airport

17. Over recent years, Queenstown Airport has been experiencing significant growth and has embarked on long term planning to assist it with understanding the speed of growth and potential consequential

infrastructure and service requirements over the next 30 years. This has involved community and stakeholder engagement on masterplan options.

18. The published Queenstown Airport masterplan options do not include future development plans for Wanaka Airport, as they were prepared ahead of QLDC's decision to grant QAC a Long-Term Lease for Wanaka Airport. However, Wanaka was identified as a complementary airport in a study undertaken as part of the Queenstown Airport masterplan options work in respect of airport siting. Wanaka Airport is also a key element of QAC's "one airport business, two complementary airports" approach to support economic growth across the region.

19. Long term planning work for Queenstown and Wanaka Airports is on hold while QLDC investigates the economic and social impact of the District's airports and undertakes regional spatial planning.

Wanaka Airport - Regionally Significant Infrastructure

20. The PDP recognises Wanaka Airport as "Regionally Significant Infrastructure"[3]. Chapter 3 of the PDP contains a suite of strategic provisions that recognise and protect the District's Regionally Significant Infrastructure, including Wanaka Airport. These have been modified and strengthened on appeal, by agreement. The relevant parties have filed consent documentation, although this is yet to be formally endorsed by the Court.

21. Of particular relevance is Strategic Policy 3.3.37, which the parties have agreed to as follows:

SP 3.3.37 Protect regionally significant infrastructure by managing the adverse effects of incompatible activities.

22. The PDP provisions agreed through the appeal process have been informed by the Partially Operative Otago Regional Policy Statement[4] (**PORPS**) which also contains provisions that recognise and require protection of regionally significant infrastructure[5], including:

---

[3] PDP, Chapter 2.
[4] Partially Operative RPS, 2019.
[5] See PORPS Policy 4.3.2, which lists the infrastructure that is of national and regional significance and includes the region's airports and associated navigation infrastructure.

(a) Objective 4.3 "*Infrastructure is managed and developed in a sustainable way*";

(b) The related issue statement, which acknowledges that "*activities locating in proximity to infrastructure may lead to reverse sensitivity effects on that infrastructure*";

(c) Policy 4.3.5 which requires the *protection* of infrastructure with national or regional significance by:

(i) *"Restricting the establishment of activities that may result in reverse sensitivity effects";*

(ii) *"Avoiding significant adverse effects on the functional needs of such infrastructure";*

(iii) *"Avoiding, remedying or mitigating other adverse effects on the functional needs of such infrastructure";*

(iv) *"Protecting infrastructure corridors from activities that are incompatible with the anticipated effects of that infrastructure sensitive activities, now and for the future."*

23. Under section 75(3) RMA, the PDP, including decisions on zonings under it, must give effect to the PORPS.

24. When considering submissions on the PDP, under section 32 decisions on zonings must be the most appropriate to achieve the PDP's objectives, including importantly, the strategic objectives of Chapter 3.

25. In the case of the Corbridge land, the zoning decision must be cognisant of the land's proximity to Wanaka Airport, as regionally Significant Infrastructure, and must implement the strategic objectives in both the PDP and PORPS, outlined above.

Corbridge Submission – The Jurisdictional Issue

26. The Corbridge land is presently zoned Rural, with a Rural Character Landscape (**RCL**) overlay. This zoning was notified via Stage 1 of the PDP and was not challenged by Corbridge at that time.

27. Stage 3B of the PDP addresses the Rural Visitor Zone. The notified zone addresses only four areas, all of which are located within ONLs. QLDC has accepted however that is open to submitters to seek new RVA zonings, including in RCLs, and says that such submissions are "on" the plan change.[6]

28. Through a submission on Stage 3B of the PDP Corbridge seeks an RVA zoning of its land. Corbridge's land was not zoned RVA in the notified PDP or the under the Operative District Plan (**ODP**). As summarised above, QLDC accepts that submissions like Corbridge's are "on" the Plan Change/Stage 3B of the PDP,[7] however QLDC has not, as yet, analysed the detail of the Corbridge submission to ascertain whether it does, in fact and substance, seek an RVA zone, or something else (a resort zone for example). In my submission this analysis must be undertaken before a conclusion can be reached that the Corbridge submission is, in fact and substance, "on" Stage 3B of the PDP.

Scope - the Legal Principles

29. The question of whether a submission made under clause 5 of the First Schedule to the Act can be considered "on" a plan change, per that clause, has been considered extensively by the Courts. In the seminal case, *Clearwater Resort Ltd v Christchurch City Council*[8] the High Court adopted a bipartite approach, where it said the first question that must be asked is whether the submission addresses the change to the status quo advanced by the proposed plan change, and the second, whether there is a real risk that persons potentially affected by such a change will be denied an effective opportunity to participate in the plan change process if the submission is allowed.

---

[6] Opening Legal Submissions for QLDC, 29 June 2020, paragraphs 4.5.
[7] Ibid, para 6.5.
[8] HC Christchurch AP34/02.

30. The first question was elaborated upon in *Palmerston North City Council v Motor Machinists Limited*[9], where the High Court held that one way of analysing whether a submission reasonably falls within the ambit of the plan change is to ask whether the submission raises matters that should have been addressed in the section 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource is altered by the plan change. If it is not, then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change, unless the change is merely incidental or consequential.

31. In *Option 5 Inc v Marlborough DC*[10] the High Court held that the question of whether a submission in "on" a plan change is one of "scale and degree", which in my submission, links back to the question of whether the submission addresses the plan change to the extent that the plan change alters the status quo. To put it another way, in my submission there is range of outcomes a submission can seek, with the status quo being at one end of the range, and the plan change at the other. A submission can then seek anything in between.

The Corbridge Submission – Without Scope

32. Applying the law to the facts presently:

    (a) The "status quo" for the Corbridge land is the Stage 1 PDP Rural zoning (which has not been appealed).

    (b) Stage 3B of the PDP introduces a new PDP zone, the RVA, which has a purpose of providing for "*visitor industry activities in remote locations within Outstanding Natural Landscapes at a limited scale and intensity, where each particular Zone can accommodate the adverse effects of land use and development*."

33. Stage 3B does not alter the status quo for the Corbridge land, in that the RVA does not apply to the land, per the notified extent of the zone. However, as touched on earlier, QLDC has taken a liberal view of the scope question and has accepted, as within scope, submissions that seek

---

[9] [2013] NZHC 1290.
[10] (2009) 16 ELRNZ 1 (HC).

an RVA zoning for land which was not notified as such, and where located outside an ONL. Without taking a firm a view on the legitimacy of this approach, but applying it presently, the relief Corbridge can seek, and you can grant, is, in my submission, therefore anything between the status quo (Rural Zone) and the PDP RVA.

34. Turning now to consider what each of these zones provides for:

(a) The purpose of the Rural Zone is to "*enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystems, nature conservation values, to soil and water resources and rural amenity*"[11]. The Rural Zone contains objectives, policies and rules to ensure these outcomes, and overall provides for very little development, and certainly nothing of the scale or degree of development that Corbridge seeks through its Stage 3B submission.

(b) The notified RVA provides for "…*visitor accommodation and related ancillary commercial activities, commercial recreation and recreation activities*"[12] in "*remote locations…at a scale and intensity, where each particular Zone can accommodate the adverse effects of land use and development*"[13] and where "*the landscape can accommodate change, and the adverse effects on landscape values from land use and development will be cumulatively minor.*" [14] Residential activity is not anticipated within the zone.[15] These outcomes are ensured by a suite of objectives, policies and rules.

35. The Corbridge submission seeks an RVA zoning, however then it seeks to, by and large, be exempted from the notified RVA zone provisions, and to be instead subject to a bespoke RVA regime, comprising an entirely new set of bespoke provisions. These bespoke provisions bear no

---

[11] Zone Purpose Statement - Decisions Version.
[12] Notified RVA Zone Purpose statement.
[13] Ibid.
[14] Ibid.
[15] Non-complying under rule 46.4.13. See also 46.4.16.

resemblance to the notified RVA, nor the Rural zone that currently applies to the Corbridge land.

36. In my submission, while the bespoke zoning Corbridge seeks may be an RVA zone in name, it is certainly not an RVA zone in substance. In substance, the Corbridge zone is a standalone special zone, akin to a resort zone. As such, it is not, in my submission, within the ambit of Stage 3B and is therefore not "on" the plan change. It is without jurisdiction.

37. My submission is supported by analysing the section 32 evaluation. Neither resort zones, nor other special zones, are addressed in the evaluation. One very significant difference between a resort zone and an RVA zone, is that a resort zone (and the zone advanced by Corbridge) is a standalone special zone which provides for residential activities, centred around a substantial recreation activity (for example, a golf course). This is type of zone is a fundamentally different proposition to the notified RVA, the benefits and costs of which have not been contemplated or assessed in the section 32 evaluation.

38. To further support my submission, I note that the zoning *per se* of the Corbridge land is not at large under Stage 3B of the PDP. The zoning question was at large under Stage 1 of the PDP, when the Rural Zone, including its provisions and extent, was notified. The zoning of the Corbridge land was addressed at this time when it was included within the Rural zone. If Corbridge sought a different zoning to the notified Rural zoning (other than RVA, or possibly another Stage 3B zone), it ought to have made a submission on Stage 1 of the PDP requesting that. Decisions on Stage 1, and the extent of the Rural zone, have already been made. The decision was to confirm the Rural zoning of Corbridge's land.

39. That said, it is accepted that, due to the staged manner in which QLDC has notified and progressed the PDP, and that given the RVA is being dealt with on a district wide basis at this later stage (Stage 3B), it is arguably open to submitters whose land was zoned under Stage 1 to seek, through Stage 3B, an RVA zoning. This is the position that QLDC has taken in its opening legal submissions. However, in my submission it cannot be legitimately argued that a submission made via Stage 3B for a zoning other than RVA (or another Stage 3B zone), can now be advanced as being "on" the plan change/Stage 3B. In my submission there is plainly no

jurisdictional scope under Stage 3B of the PDP for a decision that rezones land anything other than RVA (or another Stage 3B zone).[16]

40. For the avoidance of doubt, this submission extends to an alternative zoning, such as a resort zoning, which has faintly been suggested as an alternative in the section 42A evidence.

41. Without derogating in any way from the jurisdictional argument just made, QAC's substantive concerns with the Corbridge zoning proposal are now addressed.

QAC's Concerns – Reverse Sensitivity

42. As stated earlier, QAC opposes any zoning of the Corbridge land that would enable activities sensitive to aircraft noise (**ASAN**)[17] to establish.

43. As also outlined earlier, the Corbridge land is proximate to Wanaka Airport, located directly under the main flightpath, and partly within the Operative OCB, being the "corridor"[18] for this regionally significant infrastructure.

44. QAC acknowledges that there is an extant subdivision consent for the Corbridge land that would enable to creation of 35 lots and building platforms. Ms Scott, for QLDC, has made submissions about the relevance of resource consents and the 'consented baseline'[19] to plan making, which are adopted presently.

45. QAC submits that the consented baseline is of little relevance or assistance when considering the Corbridge zoning proposal because the zoning proposal is fundamentally different in scale and degree and bears no resemblance to what has been consented. Of particular concern to QAC, the zoning proposal would enable a significantly greater degree of ASAN development than has been consented.

---

[16] Or Industrial or Settlement Zone, as the case may be, but neither of which are relevant presently.
[17] PDP Definition: Activity Sensitive to Aircraft Noise - *Means any residential activity, visitor accommodation activity, residential visitor accommodation activity, homestay activity, community activity and day care facility activity as defined in this District Plan including all outdoor spaces associated with any education activity, but excludes activity in police stations, fire stations, courthouses, probation and detention centres, government and local government offices.*
[18] Refer PORPS Policy 4.3.5.
[19] Opening Legal Submissions for QLDC, 29 June 2020, paragraphs 6.7 – 6.13.

46. Accordingly, QAC does not only oppose the zoning of the Corbridge land that is located within the OCB, but rather the zoning of the land in its entirety, to the extent that it provides for ASAN development proximate to the Airport and under the main aircraft flight path. In doing so QAC takes a long-term view of planning and growth at and around the Airport, particularly where it concerns ASAN development in areas that are or may be affected by aircraft noise now or in the future.

47. QAC submits it is appropriate to restrict the number of people exposed to the effects of aircraft noise, now and in the future, by retaining the planning status quo, being the rural zoning of the Corbridge land. The reasons for this are twofold:

    (a) To ensure that adverse amenity effects on persons potentially working or residing in these areas are avoided; and

    (b) To ensure that Wanaka Airport is protected against potential reverse sensitivity effects.

48. QAC anticipates a counter argument that, when considering reverse sensitivity effects and related issues, an airport's noise boundaries, in this case the Wanaka Airport OCB, are/is the relevant 'line on the map' for planning purposes, and provided development is located outside the line, and absent an extant proposal to expand the noise boundaries, restricting development outside the line cannot be justified. QAC rejects this counter argument because:

    (a) As a matter of fact, noise does not 'stop' at the OCB. The effects of aircraft noise are experienced beyond the noise boundary line. By way of example, expert acoustic evidence given at an earlier PDP hearing was that there is no perceptible difference between aircraft noise experienced on land located 100 metres outside an OCB and the noise environment on land located 100 metres within the OCB.[20]

    (b) Complaints about airports are frequently received from further afield, beyond the line (as has occurred at Queenstown Airport).

[20] Evidence of Chris Day dated 9 June 2017, PDP Hearing Stream 13, at paragraph 81.

(c) NZS 6805, from which the noise boundary concept is derived, emphasises that a planning regime which restricts noise sensitive land uses within the noise boundaries should be adopted *as a minimum*, and if there is an opportunity to take a more restrictive approach, it should be taken up.

(d) Focusing on only the operative noise boundaries is short-sighted. Plan-making and investment in major infrastructure such as an airport are both long-term exercises, and zoning decisions should be based on a long-term forward-looking view of land use and the environment, including the future noise environment.

(e) Once a zoning decision is made to enable development, it is largely irreversible, especially once development is implemented.

(f) A zoning decision that rejects a submission seeking the enablement of ASAN development in an area that may in the future be exposed to moderately high levels of aircraft noise does not expose any additional restriction on land or costs on a landowner where the land has not historically been available for ASAN development of the nature and density sought, and is still available for a range or permitted uses.[21]

49. Additionally, in respect of the Corbridge land:

(a) It is located directly under the current main flight path (refer **attached** plans[22]) and is exposed to moderately high levels of aircraft noise on a regular basis. Noise levels may increase in the future.

(b) The noise assessment submitted with the Corbridge proposal does not take account of future jet movements, which are significantly louder than general aviation, and are permitted by the Operative OCB.

---

[21] *Robinsons Bay Trust v CCC*, C60/2004 at [50].

[22] The first and second plans are taken from Corbridge's pre-lodged evidence for Stream 18, per Ben Espie and Michael Smith's evidence, respectively. The third plan also shows the flights tracks for Wanaka Airport (Visual Flight Rules), per the Aeronautical Information Publication NZ.

(c) Rejection of the Corbridge submission, to the extent that it seeks to enable ASAN, will not result in any additional cost for Corbridge because the land has not been historically been available for ASAN development of the nature of scale requested in the submission. Additionally, aircraft noise is by no means the only constraints to ASAN development. There are also other significant constraints regarding landscape, infrastructure provision and servicing, for example.

50. Detailed legal submissions have been presented in earlier PDP stages on the concepts of noise and amenity and reverse sensitivity under the RMA, and their relevance to plan making, and additionally, on NZS 6805 and the community's response to aircraft noise. These earlier submissions are relevant to the points made above and are adopted presently. Because the Panel for the Stage 3 hearings is differently comprised to the Panel for earlier stages, they are summarised in **Appendix 1**.

51. Additional points now made are that:

(a) The risk of reverse sensitivity effects inevitably increases when a greater number of people are exposed to aircraft noise. A reverse sensitivity effect is a cost borne by an Airport, and also the wider community, because if aircraft operations are curtailed, there will be flow on effects to the community in terms of economic and social well-being.

(b) Noise levels between 50 – 55 dB L_{dn} (i.e. beyond the OCB) can cause annoyance, which is an amenity effect that should properly be taken into account under the RMA, particularly section 5. Amenity effects are costs borne by landowners/occupiers under flight paths.

(c) Reverse sensitivity and amenity effect are potential costs of the Corbridge submission that cannot be ignored and must be weighed in the section 32 evaluation.

(d) Land use planning is as an important and effective way to reduce the population exposure to aircraft noise.[23] Minimising the number of people exposed to aircraft noise by restricting residential development from establishing in areas affected by aircraft noise is an effective form of mitigation.[24] Minimisation in this case requires avoidance. Avoidance is the appropriate option because there is no alternative planning means by which the costs can be addressed.

(e) Avoidance of ASAN development on the Corbridge land carries with it the significant benefit of future proofing the regionally significant infrastructure and physical resource that is Wanaka Airport.

Evidence – Some Specific Comments

52. I now make some specific comments on the pre-lodged Corbridge evidence.

Michael Smith – Acoustic Engineer - Corbridge

53. Mr Smith's evidence on behalf of Corbridge addresses the potential effects of the Corbridge proposal on Wanaka Airport.

54. At paragraph 14[25] Mr Smith states that the operative OCB for Wanaka Airport is based on a larger runway (than exists presently) and includes a small number of jets aircraft movements. However, he does not appear to factor this into his subsequent assessment.

55. For example, at paragraph 21 he opines that, when flying directly overhead at 1000 feet above ground level, the maximum sound level from a Cessna or Piper is likely to be between 55-65 dB LAFmax, which he compares to noise from vehicle pass-by at 10 metres on 50km/h residential street, although he acknowledges that noise from an aircraft will endure longer.

56. What he does not acknowledge however is that noise from a jet aircraft will be significantly louder. QAC's acoustic advisor, Mr Day (Marshall Day

[23] Ibid, at paragraph 30.
[24] Ibid, at paragraph 67.
[25] Smith Evidence dated 28 May 2020.

Acoustics) advises[26] that noise from an overflying jet would be in the order of 83 LAMax.

57. Similarly, his discussion at paragraphs 31 takes no account of jet movements, either those permitted under the Operative OCB, or possible future movements.

58. These significant omissions by Mr Smith highlight that his evidence should be approached with caution.

59. Further, at paragraph 32 he opines that at a noise level of 55 dB, being the noise level upon which the OCB is based, 50 % of visitors would perceive the noise environment as "excellent". The logical inference to be drawn here is that the other 50% will consider that this level of noise is not excellent. Mr Smith's comments also only take account of the current noise environment, but take no account of any future noise environment, should Wanaka Airport seek to accommodate more jets or expand for example.

Section 42A Evidence

60. QAC generally accepts and agrees with the conclusions reached in the section 42A evidence, bar the suggestion that a resort zone could be considered as an alternative to the RVA zoning sought by Corbridge. The jurisdictional issues with this suggestion have been dealt with earlier.

61. QAC notes and particularly agrees with the Ms Grace's opinion that the current Rural Zoning of the Corbridge land framework provides greater protection for Wanaka Airport from reverse sensitivity effects.[27]

Summary and Conclusion

62. Wanaka Airport is a significant strategic resource that provides direct and indirect benefits to the local and regional economies. This is recognised in the PDP and PORPS.

63. In opposing the Corbridge submission, QAC seeks that the significance and importance of Wanaka Airport is recognised, and its ability to continue

---

[26] Pers Comm.
[27] Paragraph 10.10 of Ms Grace's primary evidence.

to operate, grow and develop in an efficient, effective and sustainable manner is protected.

64. It seeks to avoid potential and actual reverse sensitivity effects and to protect the amenity of the District's community by avoiding unnecessary ASAN development under the Airport's flight paths in areas that are or may be in the future affected by moderately high levels of aircraft noise.

65. QAC's submission is premised on the logical inference that as an ASAN development increases in number or intensifies in areas affected by aircraft noise, so do the environmental costs in terms of the number of people exposed to the risk of suffering adverse amenity effects, and the consequential risks of complaints about aircraft noise and therefore reverse sensitivity effects on the Airport.

66. QAC's submission is forward looking and takes of view of the environment over the life of the PDP and beyond.

67. Ultimately, the Panel must determine whether the purpose of the Act, including sections 5 and 7, is better achieved by enabling new or intensified ASAN development in areas that are or may be in the future affected by aircraft noise, with the attendant amenity and potential reverse sensitivity "costs", or by not enabling ASAN within these areas.

68. In my submission, sustaining the Airport as in important physical resource and providing for the community's economic and social wellbeing, while maintaining its amenity, requires acceptance of QAC's submission.

R Wolt

Counsel for Queenstown Airport Corporation Limited

APPENDIX 1

Noise and Amenity under the RMA

1. Under the RMA, territorial authorities must have a district plan for their districts,[28] and for the purpose of carrying out their functions, the plan must include rules. The functions of territorial authorities include the control of the emissions of noise and the mitigation of the effects of noise.[29]

2. A district plan has the function of assisting in achieving the purpose of the RMA in relation to the district.[30] The purpose of the RMA, as set out in section 5, is the promotion of sustainable management of natural and physical resources.[31]

3. In achieving the purpose of the RMA, councils must also recognise and provide for the matters in section 7, including the efficient use and development of resources, and the maintenance and enhancement of amenity values and the quality of the environment.[32]

4. Persons making decisions under the RMA must therefore carefully assess how best to allow for important activities to continue to operate and expand, such as regionally and nationally significant infrastructure, including airports, to meet the communities' needs, while also imposing suitable noise limits on them in order to protect neighbouring amenities.

Reverse Sensitivity

5. Conflicts can arise where new noise sensitive uses seek to locate on land affected by noise from other nearby existing noisy activities, such as airports. These new uses are often incompatible and may, as a consequence of complaints, result in the placing of restrictions or constraints on the existing lawful activity and its growth or expansion, thereby potentially preventing the sustainable management of these

---

[28] RMA, section 73(1).
[29] RMA, section 31(1)(d).
[30] RMA, section 72.
[31] RMA, section 5(2).
[32] RMA, section 7(b), (c) and (f).

important physical resources. This effect or concept is known as "reverse sensitivity".

6. Reverse sensitivity has long been recognised as an environmental effect under the RMA[33] and is relevant to a territorial authorities' functions and duties in respect of plan formulation under sections 31 and 32, and to Part 2 of the RMA generally.

7. Reverse sensitivity has been described as:

"…*the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The "sensitivity" is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity*".[34]

8. While it is incumbent under the RMA that adverse environmental effects of an activity be avoided, remedied or mitigated by the person carrying out the activity,[35] it has been observed that some key physical resources, such as airports, cannot, in practical terms, internalise all adverse effects, and that the concept of reverse sensitivity recognises this:

"*While case law has discussed the concept of "internalisation" of adverse effects, requiring, at the most absolute, that users limit their adverse effects to within their own property boundaries, the reality of modern life has meant that a more robust view has to be taken for those activities that cannot reasonably contain their adverse effects. Noise is a good example of an adverse effect that is difficult, and sometimes impossible, to internalise, such as children at play in the outside area of a school, and transport noise. While some academics have seen the concept of reverse sensitivity as taking away common law property rights, the Environment Court has made it clear that it has no difficulty with private property rights being*

---

[33] See for example: Nolan (ed), *Environmental and Resource Management Law* (5th ed, Lexis Nexis, Wellington, 2015) at [13.32], page 906 and the cases cited there in footnote 3.
[34] *Affco NZ Ltd v Napier CC* EnvC W082/2004, at [29]. See also *Auckland RC v Auckland CC* [1997] NZRMA 205, at 206: "*The term 'reverse sensitivity' is used to refer to the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in carrying on of those other activities".*
[35] Section 17 RMA.

limited by the public benefit, "because that is authorised by the RMA if certain preconditions exist" [Gargiulo v CCC EnvC C 137/2000, at [42]]. The Courts have recognised that because key physical resources such as ports, airports and quarries cannot internalise all their adverse effects, restraints on other properties will sometimes be necessary to address reverse sensitivity issues. This encompasses a wider view that requires proper management to minimise adverse effects while at the same time recognising that restraint on other properties will sometimes be necessary."[36]

9. It is common for district plans to include rules to protect or enable the sustainable management of existing and lawfully established activities that are not able to internalise their adverse effects. Often, as is the case with Wanaka Airport, these activities are of significant local or regional importance and contribute significantly to social and economic wellbeing.

10. Specifically, in relation to land use around airports, the Court has acknowledged that it is desirable to limit the right to carry out noise sensitive activities, and to require that any buildings housing such activities, if they are permitted, incorporate appropriate acoustic treatment to mitigate the effects of aircraft noise.[37]

11. Additionally, the Court has held that it is not appropriate in resource management terms simply to allow the market to determine where uses may or may not establish. Specifically, the Environment Court has rejected:

"..*submissions based on leaving promotors of enterprises to judge their own locations needs, not protecting them from their own folly, or failing to consider the position of those who come to a nuisance. We consider that those submissions do not respond to the functions of territorial authorities*

---

[36] Nolan at [13.32].

[37] *Christchurch International Airport Ltd v Christchurch City Council* [1997] NZRMA 145 (building code not limiting noise insulation conditions under plan or resource consent); *Independent New Auckland Ltd v Manukau City Council* (2003) 10 ELRNZ 16 (refusal of high density housing below flight-path); *Gargiulo v Christchurch City Council* NZEnvC Christchurch C 137/2000, 17 August 2000 (refusal of consent for subdivision with the 55 Ldn airport noise contour); *National Investment Trust v Christchurch City Council* NZEnvC Christchurch C 041/05, 30 March 2005 (subdivision under aircraft noise contour disallowed); *Dome Valley District Residents Society Inc v Rodney District Council* [2008] 3 NZLR 821 (helicopter base allowed); *Cammack v Kapiti Coast District Council* NZEnvC Wellington W 069/09, 3 September 2009 at [98]-[145].

under the Resource Management Act. ...[T]o reject provisions of the kind proposed, on the basis of leaving promotors to judge their own needs, or not protecting them from their own folly, and of failing to consider the effects of those who may come to the nuisance, would be to fail to perform the functions prescribed for territorial authorities. It would also fail to consider the effects on the safety and amenities of people who come to a premises and employees, customers, and other visitors."[38]

12. The concept of reverse sensitivity includes, and indeed focuses on, potential and future effects.[39] The focus of the concept is to ensure that actual effects (e.g. alteration or curtailment of lawfully established, existing activities) are avoided via appropriate land use planning decisions.

13. As is evident from the word "vulnerability" in the case law cited above,[40] it is not necessary to demonstrate that a reverse sensitivity effect will arise/that the lawful existing activity will be curtailed in some way. Rather, it is sufficient to demonstrate an increased risk of complaint, as it will inevitably give rise to an increased potential for a reverse sensitivity effect.[41]

14. The concept is therefore forward looking; it is inherently dealing with a potential future scenario in that a reverse sensitivity effect has the potential to eventuate in the future if, over time, complaints lead to the curtailment of the existing activity's operations.

15. This accords with the forward looking nature of the RMA which is reflected in the focus in section 5 of the RMA on providing for "future generations", and the section 3 definition of "effect" which includes "future" and "potential" effects.

16. The concept also encapsulates an existing activity's future operations, including future upgrades and development. By way of example, in a decision on the Christchurch Replacement District Plan the Independent

---

[38] *Auckland RC v Auckland CC* [1997] NZRMA 205, at 214.
[39] Noting also that "potential" and "future" effects are encapsulated in the section 3 RMA definition of "effect".
[40] *Affco NZ Ltd v Napier CC*.
[41] See for example *Independent News Auckland Ltd & AIAL v Manukau City Council* (2003) 10 ELRNZ 16 at [21] – [126], where the High Court found "*a clear relationship between the number of people exposed to high aircraft noise and the introduction of, or increase in strength or opposition to aircraft operations."*

Hearings Panel's (**IHP**) noted that the central focus of its valuation was on "*striking an appropriate balance such that enablement of intensification and other residential development would not jeopardise the Airport's efficient and effective provisions, operation, maintenance or upgrade*", [42] (emphasis added).

17. In *Ports of Auckland v Auckland City Council*[43] the High Court found that an inadequately insulated residential development near the Port could result in complaints which could restrain the Port's current operations but also "*inhibit the sensible development of the Port by opposing future planning applications*." (emphasis added).

18. Noting the above, the reverse sensitivity concept clearly encapsulates an existing activity's ability to future proof its operations, and the inability to grow as planned because of public pressure arising from complaints can be considered a reverse sensitivity effect.[44]

NZS 6805

19. New Zealand Standard NZS 6805:1992 "Airport Noise Management and Land Use Planning" (**NZS 6805** or **Standard**) is recognised as a key guiding document for managing aircraft noise at and around New Zealand airports. It recommends "*the implementation of practical land use planning controls and airport management techniques to promote and conserve the health of people living and working near airports, without unduly restricting the operation of airport*."[45]

20. NZS 6805 sets out that a balance needs to be achieved between accommodating the needs of an airport on an on-going basis and providing for the health and amenity values enjoyed by those occupying land around an airport.

---

[42] Residential (Part) - Stage 1, dated 10 December 2015, being a decision concerning, inter alia, the most appropriate land use planning regime around Christchurch International Airport post the Christchurch Earthquakes.
[43] [1998] NZRMA 481
[44] See *Robinsons Bay Trust v Christchurch City Council* C60/2004 at [49] where the benefit of future proofing Christchurch International Airport by limiting the number of people exposed to aircraft noise was recognised.
[45] NZS 6805, section 1.1.3, page 5

21. NZS 6805 was promulgated with a view to getting greater consistency in noise planning around New Zealand airports, and has been in use by almost all territorial authorities since 1992.[46] It was one of only a few New Zealand Standards that has not been put up for revision since that time.[47]

22. NZS 6805 is a guide rather than a mandatory requirement and contains non-binding recommendations for territorial authorities. As a matter of practice however the New Zealand Standards are commonly incorporated into plans or consent conditions that do have statutory force. Local authorities and consent agencies will usually have regard to the recommendations of the New Zealand Standards and treat them as a guide to the most appropriate approach to take in a particular circumstance.[48]

23. NZS 6805 has been applied and used as guidance in the relevant district plans for all of New Zealand's international airports, as well as those regional airports with regular scheduled commercial passenger operations.[49]

24. NZS 6805 has two objectives:

    (a) To control the long-term emission of noise from airport operations; and

    (b) To provide guidelines to establish appropriate land use controls for areas surrounding airports.[50]

25. To achieve these objectives, NZS 6805 uses a "noise boundary" concept to both establish compatible land use planning around an airport and set noise limits for the management of aircraft noise at airports.[51]

26. This involves fixing an Air noise boundary (**ANB**), which is located by predicting the 65 dB L_{dn} contour at some future level of aircraft operations,

---

[46] Nolan. See also Chris Day's EIC, dated 9 June 2017, Hearing Stream 13 (**EIC**), at paragraph 21.
[47] Ibid.
[48] Nolan, [13.13], and the cases cited there in footnote 2.
[49] Nolan, [13.17].
[50] Nolan, [13.17].
[51] NZS6805, Clause 1.1.2

and commonly also an Outer Control Boundary (**OCB**), which is generally based on the 55 dB L_{dn} future noise contour. [52]

27. NZS 6805 recommends that within the ANB, new residential activities, schools, hospitals or other nose sensitive uses (i.e. ASAN) are prohibited. It recommends that, within the OCB, any new ASAN should be prohibited unless the relevant district plan permits such use, in which case it should be subject to requirement to incorporate appropriate acoustic insulation to ensure a satisfactory internal noise environment.[53]

28. Accoustic engineer, Mr Day has previously given evidence in an earlier stage of the PDP that the clear preference of NZS 6805 is the avoidance of the establishment of ASAN activity within an airport's noise boundaries, with provision of acoustic insulation being a less preferred and inferior option.[54]

29. NZS 6805 allows for discretion to be exercised by local authorities in positioning the noise boundaries further from, or closer to the airport – that is, to take a more or less restrictive approach - if that is considered more reasonable in the circumstances of the case.

30. For example, at Christchurch International Airport, the OCB is based on a 50 dB L_{dn} future noise contour, which approach was recently endorsed by the IHP after hearing submissions on the Christchurch District Replacement Plan.[55]

31. Similarly, although in a resource consent context, the Environment Court in *Re Skyline Queenstown Limited*[56] considered that while compliance with NZS6805 is a bottom line for consent, because of the wording used within the Standard, stricter noise controls may be justified in some circumstances:

"The wording in paragraph 1.1.4 of the standard reinforces that compliance with it is a bottom line for consent. As Mr Day acknowledged in cross-examination the standard does not impose " ... a reasonable level but a

---

[52] Chris Day, EIC. Wanaka Airport has only an OCB.
[53] NZS6805, Tables 1 and 2
[54] Chris Day, EIC, at paragraph 68 and 69.
[55] Refer footnote 31 above for decision citation.
[56] [2014] NZ EnvC 108.

minimum requirement". In certain contexts there may be other factors relating to noise which should be weighed by the local authority (here the court) and stricter noise controls then imposed. A key issue in this case is whether the minimum is adequate in the circumstances."[57]

32. The L_{dn} parameter adopted in NZS 6805 is based on average noise levels over a 24 hour period, (with a 10 dB penalty applied to noise between 10pm and 7am).[58] The Environment Court has found that in some instances use of the L_{dn} parameter may not directly recognise loud noise events. For example, where there is a limited number of loud "single" noise events, (say four of five a day) these may not materially alter the daily average/L_{dn} noise level. For this reason the Court has stated that while the L_{dn} parameter is a useful gauge for measuring annoyance at moderate to high noise levels (noise between 55 – 65 dB L_{dn}), it is a less reliable indicator at lower noise levels (noise below 55 dB L_{dn}), and that for the purpose of assessing the potential for adverse amenity and reverse sensitivity effects, lower L_{dn} noise levels (i.e. noise levels lower than 55 dB L_{dn}) must be treated with some caution[59] (because people may still be highly annoyed/suffer an adverse amenity effect from loud but infrequent single event noise).

33. Finally, it is relevant to note that NZS 6805 does not address the degree of effect people experience at various levels of noise exposure, nor does it analyse the risk of reverse sensitivity effects.

Community Response to Aircraft Noise

34. While response to noise is subjective and may vary between individuals, widely accepted research indicates that people are generally more annoyed by aircraft noise than other transport noise sources.[60]

35. The research indicates that for people living within areas that areas that are exposed to aircraft noise levels of 50 – 55 dB L_{dn}, 3 to 12% of the population will be "highly annoyed"; that is, suffer an adverse amenity

---

[57] Ibid at [80].
[58] Chris Day's EIC at 28.
[59] *Robinsons Bay Trust* at [23], [28] – [32].
[60] Chris Day's EIC, at paragraph 17.

effect.[61] For those living in areas exposed to aircraft noise levels of 55 – 65 dB L_{dn} 12 to 28 % of the population will be "highly annoyed". These figures are based on international research.[62]

36. Christchurch research suggests that New Zealanders are more annoyed by aircraft noise, particularly at lower levels, with 10 to 15% of the population "highly annoyed" by aircraft noise levels of 50 – 55 dB L_{dn}, and 15 to 32% of the population "highly annoyed" by aircraft noise levels of between 55 – 65 dB L_{dn}.[63]

37. Put another way, according to this research there is a 10 – 15% chance that a person living within the 50 – 55 dB L_{dn} noise area will be highly annoyed by aircraft noise, or alternatively, that 1 to 2 persons out of 10 will be highly annoyed in this area, and that 3 out of 10 persons will be highly annoyed by noise levels of between 55 – 65 dB $L_{dn.}$

38. By way of general comparison, the PDP indicates that in the Queenstown context, noise levels that equate to 50 dB L_{dn} are appropriate for residential activity. [64] The Court has held that this can be treated as indicative of the expectation in respect of noise amenity generally.[65]

---

[61] Refer *Robinsons Bay Trust* at [24] and [59], which is discussed in some detail later in these submissions.
[62] Refer Chris Day's EIC, Figure 2 and related paragraphs.
[63] Ibid, noting these percentage figures have been extrapolated from Mr Day's Figure 2.
[64] See PDP Rule 7.5.6.3 vii (chapter 7), and Chris Days' EIC, at paragraphs 45 – 48.
[65] *Robinsons Bay Trust*, at paragraph [63], where the comment was made in the context of the Christchurch City Plan, but the principle can be considered of general application.