

**Before the Queenstown Lakes District Council**

In the Matter of                      the Resource Management Act 1991

And

In the Matter of                      the Queenstown Lakes Proposed District Plan

**Chapter 3 (Strategic Direction), Chapter 4 (Urban  
Development) and Chapter 6 (Landscape)**

**Supplementary Legal Submissions for  
Queenstown Airport Corporation Limited  
Addressing Issues Arising From  
Reconvened Hearing (Submitter 433 and  
Further Submitter 1340)**

Dated: 1 April 2016

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## Introduction

1. These supplementary legal submissions address legal issues arising from the reconvened hearing of Queenstown Airport Corporation Limited's (**QAC**) submission on Chapter 3 (Strategic Direction), Chapter 4 (Urban Development) and Chapter 6 (Landscape) of the Queenstown Lakes Proposed District Plan (**Proposed Plan**), which took place on 31 March. Specifically, they address the legal issues arising from comments made by submitters on the Expert Witness Conferencing Statement dated 22 March 2016, and the Panel's questions in relation to that.

## Southern Architecture + Women, NZIA Southern (NZIA)

2. NZIA submitted that the amendments to goal 3.2.8 (and presumably objective 3.2.8.1), objective 4.2.8 and policies 4.2.8.1, 4.2.4.3 and 4.2.4.4 are beyond the scope of the Proposed Plan and should be notified to the wider public for comment.
3. This is plainly incorrect. QAC sought the inclusion of these or similar provisions via its original submission on the Proposed Plan: see for example QAC's submission, Annexure A, page 8, proposed new objective 3.2.8.1, and page 11, proposed new objective 4.2.X, and proposed new policies 4.2.X.2, 4.2.X.3, 4.2.X.4 and 4.2.X.5. Members of the general public had the opportunity to address and comment on these provisions through the further submission process. Accordingly, no scope issues arise from the conferencing statement.
4. In terms of the deletion of policy 4.2.4.3, which is opposed by NZIA for reasons also pertaining to scope, the deletion is simply a consequential change arising from the inclusion of the more detailed provisions later in Chapter 4 (proposed new objectives 4.2.7 and 4.2.8 and their attendant policies). No scope issues arise.
5. The deletion of policy 4.2.4.4, which is also opposed by NZIA for reasons pertaining to scope, was, it appears, agreed to at conferencing in an attempt to ensure a succinct and consolidated Proposed Plan, which QAC understands is one of the Council's aims of this review. If the Panel considers the policy is necessary to highlight QAC's

obligations under its designation (which, it is noted, exist irrespective of the policy) QAC takes no issue with its retention.

6. NZIA submitted that QAC has ‘stopped’ residential land around the airport from being rezoned to higher densities. That is an incorrect statement. During the formulation of the Proposed Plan, the Council consulted with QAC as to the ‘upzoning’ of land around the Airport, including within the OCB, and consequently decided such upzoning would not be pursued as part of the review. This decision followed a detailed briefing of Councillors by QAC and its advisors regarding the approach taken in PC35.

### **Peter and Margaret Arnott**

7. Counsel for Peter and Margaret Arnott (**Arnott**) submits that the proposed inclusion of the words “*or within the Outer Control Boundary*” in policy 4.2.2.4 are ultra vires as no party made a submission seeking such changes. It is assumed the submission for Arnott is that there is no scope for the inclusion of these words.
8. This is incorrect. QAC raised this issue in general terms at paragraphs 4.41.1 and 4.41.4 of its original submission, and also in Annexure A, page 10, where specific amendments to the policy 4.2.2.4 are sought. There QAC seeks the inclusion of the words “*or within close proximity to airports*” which has the same or possibly a wider application (i.e. the potential to affect more land, provided it is within close proximity to the airport) than the words “*or within the Outer Control Boundary*”. Accordingly, no scope issues arise.
9. It is noted however that Mr Kyle accepted in questioning by the Panel that the policy could be amended further to clarify that it is only ASAN development that may not be appropriate in this location. This may allay Arnott’s concerns, and also concerns raised by RPL, which are addressed below.

### **RPL**

10. The legal submissions of counsel for RPL raise a number of issues that require a response.

11. Firstly, the concerns expressed at paragraph 26 as to the conferencing process are unfounded. The Panel's minute dated 16 March directed QAC and the Council's witnesses to conference in respect of QAC's submission on Chapters 3 and 4 of the Proposed Plan. Although the minute did not raise it, QAC was very mindful of other submitters' interests in these provisions and therefore sought to ensure all submitters were advised that the conference was taking place.
12. RPL's representative, Ms Carter, was at the hearing when the possibility of conferencing was discussed, and QAC's planning witnesses spoke with her about the process and whether her client wished to be involved in it immediately after. Ms Carter advised that she was happy not to participate and would instead review the conferencing statement and make any necessary comments subsequently.
13. QAC's counsel and planning consultants also reviewed the original and further submissions to ascertain those submitters whose interests were most likely to be directly (possibly adversely) affected by the outcomes sought by QAC and contacted them directly to advise that conferencing was taking place. QAC's planning consultants also obtained a list of all relevant submitters from the Council to confirm it had correctly identified those parties. Mr Fergusson expressed an interest in participating in conferencing behalf of the Hansen Family Partnership, which QAC's planning consultants accommodated.
14. Accordingly, RPL's counsel's concerns as to the process and intent of the conferencing are unwarranted and unfounded.
15. RPL's concerns expressed at paragraph 7 of its counsel's legal submissions have been addressed in part at paragraph 9 above. RPL's remaining concerns in respect of the different approach taken in the RPZ illustrate why it is important for the PC35 provisions to be incorporated in the Proposed Plan without significant amendment (as sought by QAC in its original submission) and the issues that could arise if the higher order PC35 provisions are too 'generalised' in the Proposed Plan.
16. QAC is happy to see the PC35 provisions translated into the Proposed Plan verbatim to address RPL's concerns, however it understands that

Council's (and possibly the Panel's) preference is to ensure the higher order strategic provisions are more 'generic' as opposed to referring to specific zones and the different approach taken in each of those. It is understood this preference informed the approach taken at conferencing. These comments apply equally to paragraphs 17 – 21 of RPL's legal submissions.

17. QAC takes no issue with paragraphs 9, 12 and 16 of RPL's submissions.
18. In paragraphs 22 – 24 of RPL's submissions, its counsel opposes objectives 3.2.8.2 and its attendant policies. The scope for RPL's legal submissions on these policies is dubious. The objective is addressed at paragraph 4.17 of RPL's original submission and in submission points 37 and 38 of its further submission. These submissions do not take issue with the recognition of and provision for Queenstown and Wanaka Airports as regionally significant infrastructure. The legal submissions on this point are therefore potentially beyond the scope of RPL's original and further submissions.
19. Additionally, RPL's opposition to policy 3.2.8.2.1 is confused. RPL opposes the objective on the basis that the subject matter of the policy is addressed by PC35, stating that Queenstown Airport can '*safeguard its operation by mitigating its noise*'. However the issue of noise, as addressed by PC35 is a different and much narrower issue than those addressed by policy 3.2.8.2.1 and its related provisions. RPL's legal submissions conflate these issues and therefore fundamentally 'miss the point' of these chapter 3 provisions.

#### **QLDC - Craig Barr**

20. QAC's expert planning witnesses conferenced with Mr Paetz on the understanding that he was the relevant Council planning expert with whom the incorporation of the PC35 provisions and other aspects of QAC's submissions should be discussed and agreed if possible. Indeed, Mr Paetz was the section 42A report writer for Chapters 3 and 4 of the Proposed Plan.
21. QAC was very surprised to be advised at yesterday's hearing that Mr Barr, the Council's section 42A Report writer for Chapter 6 of the

Proposed Plan, had prepared a statement of evidence disputing the matters agreed at conferencing.

22. It is very unusual and somewhat unorthodox for a party, whose expert witness has partaken in expert witness conferencing, but who is unhappy with the outcome of that conferencing, to call additional evidence that directly contradicts what was agreed at conferencing, particularly when the author of that evidence chose not to be involved in that conferencing.
23. The Environment Practice Note (2014) states that conferencing *'is a structured discussion amongst peers within a field of expertise which can narrow points of difference and save hearing time (and cost). All experts have a duty to ensure that any conference is a genuine dialogue between them with the aim of reaching a common understanding of the relevant facts and issues.'* (Practice Note, Appendix 3). ‘
24. Mr Barr could have participated in expert witness conferencing. That he did not, yet now provides evidence that disputes the issues agreed at conferencing may negate the very purpose of the conferencing. His additional evidence certainly does not aid efficiency of the cost of this hearing process.
25. The value of Mr Barr's evidence to the Panel is questionable. By his own admission, Mr Barr has very little understanding of PC35, including why it was promulgated, how it meets the requirements of section 32 (including the Environment Court's detailed analysis of that) or Part 2 of the Act. He has come to the issue very late, noting again he was not the author of Chapters 3 or 4, or of the section 32 and 42A reports for those chapters, and was not involved in and has no real understanding of the PC35 proceedings. The Panel must therefore place very little weight on his evidence.
26. Mr Barr notes, at paragraph 1.6 of his evidence that while he has not provided any revised provisions as part of his evidence, in his opinion the version of the Chapters 3 and 4 provisions attached to Mr Paetz' section 42A report should be preferred for the reasons stated by Mr Paetz in that report, and in the section 32 analysis (also prepared by Mr Paetz). That is somewhat odd given Mr Paetz himself no longer

supports those provisions or his previously stated reasons (as can be inferred from his agreement to amended provisions at expert witness conferencing).

27. Mr Barr states at paragraph 2.6 of his evidence that in his opinion the amendments to objective 3.2.1.2 and its related policies are not '*within the scope of the conferencing because there are not any confirmed PC35 provisions that are applicable*', and notes that QAC's submission does not address this objective.
28. Mr Barr is correct that QAC's submission does not address this objective. That is because the provisions to which he refers were not notified as part of the Proposed Plan, but rather were recommended for inclusion by Mr Paetz in his section 42A report, including to (purportedly) address, in part, QAC's submission seeking 'greater strategic recognition of the airport's important role' (refer paragraph 12.23 of Mr Paetz' section 42A report). It is understood the amendments to objective 3.2.1.2 agreed at conferencing were an endeavour to improve the drafting, and to reframe the provision as an objective, in accordance with the Panel's direction about that. QAC has no particular interest in the objective however, and is happy for it, and its attendant policies, to be deleted.
29. Finally, it is noted that whilst PC35 was promulgated by QAC, it was adopted by QLDC prior to notification, and is therefore effectively a Council plan change. Noting this, QAC finds it difficult to understand the Council's apparent resistance to the inclusion of the PC35 provisions in the Proposed Plan

### **NZ Standard**

30. There appears to be some confusion as to the approach adopted by PC35, relative to the NZ Standard<sup>1</sup> (**Standard**).
31. To clarify, PC35 does not adopt a more restrictive approach than recommended by the Standard.

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<sup>1</sup>New Zealand Standard 6805:1992: Airport Noise Management and Land Use Planning (NZS 6805:1992)

32. As stated by Mr Kyle in evidence, the Standard identifies that the OCB is based on a noise contour at or beyond which aircraft noise should not exceed 55dB L<sub>dn</sub>. The Standard recommends that any new residential dwellings, schools, hospitals or other noise sensitive uses (ASANs) should be prohibited within the OCB, *unless* the District Plan permits such uses. Then they should be subject to a requirement to incorporate appropriate acoustic insulation to ensure a satisfactory internal noise environment. The Standard also recommends that alterations or additions to existing residences or other ASANs inside the OCB should be appropriately insulated from aircraft noise to achieve an acceptable internal design sound level.
33. PC35 adopts the latter of the two approaches recommended by the Standard, which is the *least restrictive* option.
34. As explained by Mr Kyle, at the time PC35 was promulgated, QAC recognised that historical development and associated zoning for residential purposes has occurred in close proximity to the Airport runway. QAC therefore adopted a more moderated approach to the prohibition recommended by the Standard, in that it recognised and continued to provide for existing development rights of residential sites within the OCB, subject to appropriate noise insulation being installed. Through its submission on the Proposed Plan QAC seeks a continuation of this approach, with development rights (i.e. intensification) being recognised and provided for at the levels contained in the Operative Plan.
35. To further illustrate the more moderated approach adopted by PC35 as compared with that recommended by the Standard, Appendix A of Mr Kyle's supplementary evidence dated 16 March 2016 helpfully provides a direct comparison of the PC35 zone provisions against the NZ Standard.

### **Inappropriate Development – King Salmon**

36. The Panel has requested legal submissions addressing whether allowing infrastructure in ONLs and ONFs, which may give rise to significant adverse effects, gives effect to section 6(b) of the Act, in light of the commentary in *King Salmon*.



37. The legal submissions of Mr Gardner Hopkins for Matukituki Trust Limited dated 22 March (Submitter 355) squarely address this issue (at paragraphs 4.7 – 4.17) and are adopted by counsel as a response to the Panel's query.
38. Additionally, paragraph [149] of the *King Salmon* decision highlights that while section 6 does not give primary to preservation or protection of ONLs and ONFs, giving primacy to preservation or protection of such landscapes *may* be appropriate in some particular circumstances. However, whether that is so will depend on the case at hand, including the nature and policy direction of any higher order statutory planning documents that must be considered, the section 32 evaluation, including an assessment of the costs of the approach, and the evidence.
39. *King Salmon* must be read in light of its facts, specifically, the specific wording of the NZCPS which the Supreme Court was required to interpret and apply in that case. *King Salmon* is not authority for the proposition that section 6(b) landscapes must be protected from *all* land-use or development that may give rise to adverse effects. Whether that approach is appropriate in any given case can only be determined after a factual inquiry and a consideration of the matters identified in the preceding paragraph.

#### **Inclusion of PC35 Noise Boundaries in Proposed Plan**

40. Due to the time constraints with filing these legal submissions, the scope issue pertaining to the inclusion of the PC35 noise boundaries as raised by the Panel at yesterday's hearing can not be addressed in any detail. The issue will however be addressed comprehensively at the later hearing on the planning maps.
41. Suffice to say at this point that the note in the District Plan Maps Legend and User Information that the location of the OCB and ANB are not being reviewed in Stage 1 of the Proposed Plan is clearly an error.
42. The Proposed Plan Maps show the PC35 noise boundaries (albeit it an inadvertently incorrect version) which suggest the intention was to include those noise boundaries in the Proposed Plan.

43. This seems logical and appropriate, noting the Operative Plan's noise boundaries are very outdated and do not provide for the current levels of noise generated by aircraft activities, let alone any growth in aircraft activities.
44. It would be nonsensical to include the PC35 provisions, and related to that, QAC's noise mitigation obligations in Designation 2 in respect of increased aircraft noise enabled by PC35, if the PC35 noise boundaries are not also included in the Proposed Plan.
45. QAC squarely raised the issue of the inclusion of the PC35 noise boundaries ('With Lot 6' version) in its original submission on the Proposed Plan. QAC's original submission was notified in the Council's Summary of Submissions and further submissions could have been made by the general public in respect of it, including in particular in respect of the inclusion of the PC35 noise boundaries in the Proposed Plan.
46. The Panel can therefore be satisfied that no issues of prejudice to potential submitters arise if the PC35 noise boundaries are included in the Proposed Plan, notwithstanding the note in the District Plan Maps Legend and User information, as the general public was clearly put on notice of the potential change by QAC's original submission.

**R Wolt**  
**Counsel for Queenstown Airport Corporation Limited**