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 30 (Energy and Utilities), Chapter 35 (Temporary Activities) and Chapter 36 (Noise)

Legal Submissions for Queenstown Airport Corporation Limited (Submitter 433 and Further Submitter 1340)

Dated: 9 September 2016

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lane neave.
Level 1, 2 Memorial Street
PO Box 701
Queenstown
Solicitor Acting: Rebecca Wolt
Phone: 03 409 0321
Fax: 03 409 0322
Email:
rebecca.wolt@laneneave.co.nz

Introduction

1. These legal submissions address Queenstown Airport Corporation Limited's (**QAC**) submissions and further submissions on Chapters 30 (Energy and Utilities), 35 (Temporary Activities) and 36 (Noise) of the Proposed Queenstown Lakes District Plan (**Proposed Plan**).

QAC

2. QAC is the Airport Authority responsible for operating Queenstown Airport.

3. Queenstown Airport is presently owned by QLDC (75.1%) and the Auckland International Airport Limited (**AIAL**) (24.9%).

4. QAC also manages operations at, and the administration of, Wanaka Airport, on behalf of QLDC, and has a caretaker role for Glenorchy Airport.

5. Queenstown Airport is a significant strategic resource that provides direct and indirect benefits to the local and regional economies. It provides an important national and international transport link for the local, regional and international community. The Airport is a fundamental part of the social and economic wellbeing of the community.

6. Through its submissions and further submissions on Chapters 30, 35 and 36, QAC is broadly concerned to ensure that the Proposed Plan:

Chapter 30

(a) Affords appropriate recognition of and makes appropriate provision for utilities, which include regionally significant infrastructure (such as airports);

(b) Recognises that the technical requirements of utilities may necessitate a specific design and location, which may mean that not all adverse effects can be avoided;

(c) Does not promote a regime whereby the general utility provisions override and render nugatory more specific airport related provisions (specifically, those in Chapter 17, Airport Mixed Use Zone);

Chapter 35

(d) Makes appropriate provision for temporary airshows;

(e) Appropriately recognises and protects the designated obstacle limitation surfaces at Queenstown and Wanaka Airports, particularly from the risk of infringement by temporary activities;

(f) Ensures that relocatable buildings are required to adhere to the relevant zone's development standards, specifically, so as not to circumvent the noise insulation and other airport noise related provisions established under PC35;

Chapter 36

(g) Ensures that noise from aircraft operations is not caught by the general provisions pertaining to noise, given such noise is already managed under the airport designations;

(h) Appropriately and consistently manages noise from other airport activities;

(i) In respect of mitigating the effects of aircraft noise, contains sound insulation and mechanical ventilation requirements that are effective, workable and can be readily complied with.

7. These issues will be addressed in further detail shortly.

Previous Legal Submissions Adopted for Chapter 27 Hearing

8. Comprehensive legal submissions (dated 29 February 2016) were presented for QAC at the hearing of submissions on Chapters 3, 4 and 6 of the Proposed Plan. They are adopted for the purposes of this hearing, to the extent they are relevant to QAC's submissions on Chapters 30, 35 and 36.

9. Particular attention is drawn to the following parts of QAC's February legal submissions:

(a) Paragraphs 4 – 10, where an overview of Queenstown Airport is provided;

(b) Paragraphs 11 – 22, where the statutory framework within which QAC operates is set out;

(c) Paragraphs 23 – 30, where QAC's landholdings are detailed;

(d) Paragraphs 31 – 38, where QAC's recent growth and projects are discussed;

(e) Paragraphs 39 – 41, where QAC's management of Wanaka Airport is explained (see also the evidence of QAC's CEO, Mark Edghill, dated 29 February, paragraphs 4.1 – 4.3);

(f) Paragraphs 45 – 63, where the statutory framework within which submissions on the Proposed Plan must be considered, and decisions made, is detailed; and

(g) Paragraphs 80 – 114, where the background to Plan Change 35, and the reasons why its provisions should be incorporated into the Proposed Plan without substantive amendment, is set out.

10. A copy of QAC's 29 February 2016 legal submissions is **attached,** for the Panel's convenience.

Evidence

11. Expert planning evidence has been pre-lodged for QAC as follows:[1]

(a) Scott Roberts (Building Services Engineer) in respect of QAC's submission on Chapter 36 (Noise);

(b) Chris Day (Acoustics Engineer) in respect of QAC's submission on Chapter 36 (Noise);

(c) Kirsty O'Sullivan (Planner) in respect of QAC's submissions and further submissions on Chapters 30 (Energy and Utilities), 35 (Temporary Activities) and 36 (Noise).

[1] All dated 2 September 2016

QAC's Submissions and Further Submissions on Chapters 30, 35 and 36

Chapter 30 (Energy and Utilities)

12. QAC further submitted on a number of original submissions on Chapter 30, generally supporting those submissions which seek that the Proposed Plan:

    (a) recognise the social, cultural and environmental benefits of utilities;

    (b) recognise that the technical requirements of utilities may necessitate a specific design and location, which may mean that not all adverse effects can be avoided (e.g. aircraft navigational aids in an ONL which, for functional reasons may be required to be highly visible);

    (c) provide for buildings ancillary to and associated with utilities as a permitted activity (where not located in and ONL or ONF, and provided the relevant underlying zone standards are met).

13. Points (a) and (b) above are consistent with and to some extent repeat QAC's submission on the higher order chapters of the Proposed Plan (i.e. Chapters 3 and 6), and legal submissions and evidence have previously been presented for QAC in respect of them. Ms O'Sullivan addresses this further in her evidence, and refers the Panel to the earlier evidence for QAC, as relevant.

14. It is submitted that point (c) is a foreseeable consequence of QAC's submission in support of Chapter 17, and more generally, its submission that the Proposed Plan appropriately recognises and provides for Queenstown and Wanaka Airports to operate in an efficient and effective manner, with appropriate flexibility to provide for the range of activities expected of modern airports and to respond quickly to changes and growth in the tourism market (see for example, paragraphs 4.10, 4.25 and 4.28 of QAC's original submission).

15. QAC's further submission on point (c) above was necessary given the relationship between the provisions of Chapters 17 and 30, specifically, Clarification Note 30.3.3.3 which provides that the rules contained in

Chapter 30 "*take precedence over any other rules that may apply to energy and utilities in the District Plan…*".

16. The "trumping" effect of the Chapter 30 provisions over Chapter 17 (as a consequence of Clarification Note 30.3.3.3) is addressed further shortly.

17. Firstly however, it is appropriate to set out the background to QAC's further submission on Chapter 30, as it may assist the Panel with understanding the issue QAC seeks be addressed.

QAC's Further Submission On Chapter 30

18. The word "utility" connotes a commodity or service, such as electricity, water, or telecommunications, for example. Airports do immediately come to mind as a "utility", as that word is commonly used.

19. The definition of "utility" in the Operative District Plan includes "*structures, facilities, plant and equipment necessary for navigation by water or air*". This definition appears to capture only the navigational equipment associated with air travel, but not the airport operation as a whole.

20. Under the Proposed Plan the definition of "utility" is broadened to include "*Anything described as a network utility operation in s166 of the Resource Management Act 1991*".

21. "Network utility operation" is not expressly defined in the Act, but is stated as having a meaning that corresponds with "network utility operator", which is defined in section 166 as including:

"…(g) an airport authority as defined by the Airport Authorities Act 1966 for the purposes of operating and airport as defined by that Act."

22. QAC and QLDC are airport authorities under the Airport Authorities Act (for Queenstown and Wanaka Airports respectively).

23. Accordingly, the operations conducted by QAC at Queenstown Airport and by QLDC at Wanaka Airport are "utilities" for the purposes of the Proposed Plan, and on the face of it, are caught by the provisions of Chapter 30.

24. That is, however, problematic for a number of reasons, now explained.

Inconsistencies Between Proposed Chapters 17 and 30

25. Chapter 17 (Queenstown Airport Mixed Use Zone) of the Proposed Plan comprehensively provides for airport and airport related activities at Queenstown Airport.[2]

26. Airport and Airport related activities at Queenstown Airport[3] are defined in the Proposed Plan as follows:

> ***"Airport Activity:*** *means land used wholly or partly for the landing, departure, and surface movement of aircraft, including but not limited to:*
>
> *(a) aircraft operations, private aircraft traffic, domestic and international aircraft traffic, rotary wing operations, aircraft servicing, general aviation, airport or aircraft training facilities and associated offices.*
>
> *(b) Runways, taxiways, aprons, and other aircraft movement areas.*
>
> *(c) Terminal buildings, hangars, control towers, rescue facilities, navigation and safety aids, lighting, car parking, maintenance and service facilities, catering facilities, freight facilities, quarantine and incineration facilities, border control and immigration facilities, medical facilities, fuel storage and fuelling facilities, facilities for the handling and storage of hazardous substances, and associated offices."*
>
> ***"Airport Related Activity:*** *means an ancillary activity or service that provides support to the airport. This includes, but is not limited to, land transport activities, buildings and structures, servicing and infrastructure, police stations, fire stations, medical facilities and education facilities provided they serve an aviation related purpose, retail and commercial services, industry and visitor accommodation associated with the needs of Airport passengers, visitors and employees and/or aircraft movements and Airport businesses."*

27. These definitions provide for the full range of activities enabled by the Queenstown Airport Aerodrome Purposes Designation, including

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[2] As the Panel will be aware, it is proposed to extend the ambit of Chapter 17 to include Wanaka Airport. The merits and details of this will be addressed at the Business Zones hearing stream, scheduled to commence in late November.

[3] Noting separate definitions are proposed for Wanaka Airport

supporting infrastructure[4] and servicing, as well as activities currently established at the Airport (or likely to be established in the foreseeable future).

28. The section 32 evaluation of the Queenstown Airport Mixed Use Zone describes the purpose of the Zone as being to provide for the activities that currently and are anticipated to occur at Queenstown Airport over the next planning period[5] and to generally align the provisions of the Zone with overlying Queenstown Airport Aerodrome Purposes Designation,[6] so as to enable the efficient and effective functioning of the Airport.[7]

29. It is submitted that when read as a whole, it is clear that the Queenstown Airport Mixed Use Zone is intended to be a complete code for existing and future activities at Queenstown Airport.

30. In contrast, Chapter 30 does not contemplate the range of activities provided at and expected of modern airports. Chapter 30 is instead more broadly framed, and appears to focus on "traditional" utilities, such as electricity, telecommunications, wastewater etc.

31. When read as a whole, it is clear that the majority of the Chapter's provisions are of no direct relevance to airports. In fact, neither the notified Chapter nor the section 32 evaluation of it make any mention of airports at all.

32. Nonetheless, given the Proposed Plan's definition of "utility", the Chapter 30 provisions do apply to airports, and by virtue of Clarification Note 30.3.3.3, take precedence over the more specific airport focussed provisions contained in Chapter 17.

33. This is particularly problematic for, by way of example, buildings and structures at Queenstown Airport. Under the provisions of Chapter 17, buildings and structures within the Airport Mixed Use Zone are permitted

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[4] The term "infrastructure" is not defined in the Proposed Plan, but is defined in the RMA, and this definition appears to include all "utilities" as defined in the Proposed Plan. This supports the submission at paragraph 29 below.
[5] Section 32 Evaluation Report, Queenstown Airport Mixed Use Zone, Section 7, page 6.
[6] Ibid, Section 8, page 11.
[7] Ibid.

activities,[8] whereas under Chapter 30, they are controlled activities (provided they are associated with a utility).[9] Given Clarification Note 30.3.3, the Chapter 17 provision is negated, meaning all buildings and structures within the Airport Mixed Use Zone are controlled activities.[10]

34. The implications of this inconsistency are obvious for QAC: all buildings and structures within the Airport Mixed Use zone that it seeks to establish will require resource consent.[11]

35. However, this is not the case for all persons seeking to establish buildings and structures within the Zone. Any persons other than QAC (e.g. private landowners and persons holding ground leases from QAC), will not be caught by the Chapter 30 provisions (as they are not network utility operators/operations) and will therefore have the benefit of the more permissive regime under Chapter 17.

36. There are numerous other inconsistencies between the Chapters 17 and 30, which will be detailed by Ms O'Sullivan.

37. Clearly this two tiered regime for land use within the Airport Mixed Use Zone was not intended when Chapter 30 was drafted and notified, noting there has been no evaluation or justification of its implications and costs under section 32 of the Act. In fact, the section 32 evaluation of Clarification Note 30.3.3.3 identifies no costs at all.

38. Nor does it contain any analysis as to why it is appropriate for the provisions of the chapters listed in the Note (namely Historic Heritage, Hazardous Substances and Earthworks) to take precedence over the provisions in Chapter 30.

39. Accordingly, the more restrictive approach to land use by network utility operators within the Airport Mixed Use Zone appears to be an inadvertent, rather than intentional consequence of the Clarification Note in Chapter 30.

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[8] Proposed Rule 17.4.1.
[9] Proposed Rule 30.4.17 (using the referencing in Appendix 1 of the Section 42A Report).
[10] Note that if Wanaka Airport is also addressed by Chapter 17, it is proposed that all Airport an Airport Related activities (which airport related buildings and structures) are also controlled activities; however the proposed matters over which the Council reserves its control are different to those stated in Chapter 17.
[11] Noting however, that in many (but not all) instances QAC will be able to rely on its Aerodrome Purposes Designation for such activities, but only where they fall within the ambit of the Designation.

40. It is submitted the two tiered approach could not survive scrutiny under section 32 if such assessment were to be undertaken.

41. It is submitted it is a wholly undesirable and inappropriate state of affairs that needs to be rectified, noting that in addition to the problems outlined in the preceding paragraphs, the inconsistencies will inevitably give rise to confusion and uncertainty for both users of the Proposed Plan, and those administering it.

42. Accordingly, QAC's further submission sought to address (in part)[12] this complicated and potentially inefficient and ineffective circumstance by part supporting submissions which seek that buildings and structures ancillary to and associated with utilities be permitted activities, provided they comply with the relevant zone standards, (Proposed new Rule 30.4.10).

43. While the original submissions that QAC supports[13] are broadly framed and seek permitted activity status for buildings associated with and ancillary to utilities in all zones, QAC's further submission supports the original relief only to the extent that it applies to utilities at Queenstown and Wanaka Airports.

44. The purpose and intent of QAC's further submission is to ensure that the general provisions in Chapter 30 are consistent with, and do not negate the more specific Chapter 17 provisions that otherwise apply at these airports,[14] (at least in respect of buildings and structures).

45. It is acknowledged that the relief sought by QAC through its part support of the submissions seeking permitted activity status for utility related buildings and structures may to difficult to draft. It also does not resolve the other identified inconsistencies between the two Chapters.

46. It is therefore submitted that a better and preferable way to addresses this issue is to include a new clause in Clarification Note 30.3.3.3, which

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[12] QAC's further submission only addresses Proposed Rule 30.4.15 (being Rule 30.4.17 in Appendix 1 of the Section 42A Report), as there was no scope to address the other inconsistencies via a further submission.
[13] Submitters 179, 191 and 781.
[14] Acknowledging that the Panel is yet to hear and make a decision on whether Chapter 17 should apply to Wanaka Airport. If the Chapter 17 provisions do not apply to Wanaka Airport, QAC's original submission was that a bespoke set of rural zone provisions apply, which would achieve the same outcome.

expressly states that the general provisions in Chapter 30 do not take precedence over the more specific airport related provisions in Chapter 17.

47. This would achieve the same outcome as granting the relief supported by QAC in its further submission, and would additionally address and resolve all the inconsistencies between Chapters 17 and 30 (not only those relating to buildings and structures). Ms O'Sullivan addresses this further in her evidence.

48. It is submitted the Panel has scope to amend the Proposed Plan in this (alternative) way because:

    (a) case law has established that the scope to amend a Plan is not limited by the words of the submission[15];

    (b) in this case, the alternative drafting is within the ambit of what was raised by QAC in its original and further submissions, and it is an outcome that is foreseeable from those submissions, and from Chapter 17 as notified;

    (c) given the above, no issues of prejudice arise for any party;

49. Detailed legal submissions addressing the jurisdictional issue of scope have previously been presented to the Panel (differently comprised) in the context of QAC's submission on Chapter 21. These earlier submissions are of relevance presently (and form the basis for the submission in paragraph 48 above), and for the Panel's convenience are set out in **Appendix A**.

50. Counsel for QLDC also presented detailed legal submissions on the issue of scope in the course of its written right of reply in relation to Chapter 27 (Subdivision).[16] QLDC's submissions are entirely consistent with and complement these submissions, and are adopted presently. For the Panel's convenience the relevant paragraphs of QLDC's legal submissions are reproduced in **Appendix B**.

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[15] *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556, and 574 – 575.
[16] Legal Submissions Behalf of QLDC as Part of Council's Reply, dated 26 August 2016, paragraphs 13.2 – 13.4.

51. Similarly, the legal opinion provided by Meredith Connell to the Panel (dated 9 August 2016) on a related but slightly differently focussed jurisdictional issue is consistent with both these and QLDC's legal submissions, as summarised above. For the Panel's convenience, a copy of Meredith Connell's opinion is attached as **Appendix C**.

52. Applying these legal principles presently, it is noted that QAC's original submission was broadly framed and sought that the Proposed Plan appropriately recognise and provide for Queenstown and Wanaka Airports to operate in a safe, efficient and effective manner, with appropriate flexibility to provide for the range of airport and airport related activities expected of modern airports and to quickly respond to change and growth in the tourism market (refer paragraphs 4.9, 4.10, 4.25 and 4.28 of QAC's original submission).

53. QAC's original submission also supported Chapter 17 in its entirety (subject to some minor amendments – refer paragraph 4.24 – 4.28 and Annexure A of QAC's original submission).

54. QAC's original submission relates to <u>all</u> airport and airport related activities within the Airport Mixed Use Zone, including "infrastructure" which encompasses a number of "utilities" as defined in the Proposed Plan and therefore potentially captured by Chapter 30.

55. It is therefore submitted that, when considered in the round, QAC's original submission provides scope for the exclusion[17] in their entirety of all activities carried out within the Airport Mixed Use Zone from the application of Chapter 30, (as would be provided for by the amendment to Clarification Note 30.3.3.3 sought by QAC).

56. Additionally, QAC's further submission in support of proposed new Rule 30.4.10 provides express scope for the exclusion of buildings and structures associated with a utility within the Queenstown Airport Mixed Use Zone from the application of Chapter 30.

57. It is noted that if Clarification Note 30.3.3.3 is amended in the manner described above (and further described by Ms O'Sullivan), the general

[17] "Exclusion" in the sense that the Chapter 17 provisions will prevail over those contained in Chapter 30.

Chapter 30 provisions will not apply to any utility activities carried out within the Airport Mixed Use Zone, but will apply to any activities QAC (or any other network utility operator) seeks to undertake outside that Zone – for example, the installation of navigational or meteorological facilities on the land around on the Airport. This is considered appropriate as it is only land within the Airport Mixed Use Zone that has the benefit of the comprehensive and specific Chapter 17 provisions.

Chapter 35 (Temporary Activities)

58. QAC's submission and further submission on Chapter 35:

(a) Supports the inclusion of objectives and policies that recognise the contribution that temporary activities make to the social, economic and cultural well being of the community;

(b) Seeks the inclusion of new provisions that expressly enable temporary airshows at Wanaka Airport, such as Warbirds Over Wanaka;

(c) Seeks the inclusion of new provisions relating to the protection of the designated obstacle limitation surfaces at Queenstown and Wanaka Airports;

(d) Opposes submissions that seek to provide a new framework for relocatable buildings, in so far as that may circumvent specific development standards (specifically, those established under PC35).

59. There is little at issue between the Section 42A Report Writer and QAC in respect of these submission points.

60. The Section 42A Report Writer recommends that QAC's submission on points (a) and (d) above be accepted, which, for the reasons given in QAC's submission, is appropriate.

61. The recommendation in respect of point (b) is that the issue be dealt with later, at the hearing of submissions on Chapter 17 – Airport Mixed Use Zone, which QAC also accepts is appropriate.

62. In respect of point (c), the Section 42A recommendation is that QAC's submission be rejected, as it will result in unnecessary duplication of the requirements of section 176 RMA.

63. QAC acknowledges this point has some validity, and therefore proposes that the issue instead be addressed by the inclusion of a non-regulatory advice note as to the OLS designations, and the requirement for a consent applicant to obtain QAC's (for Queenstown Airport) or QLDC's (for Wanaka Airport) written approval for any proposed activity that will penetrate the (relevant) OLS.

64. It is submitted the inclusion of an advice note is an appropriate and balanced way of addressing this issue in that it will bring the need to comply with, or otherwise seek the relevant requiring authority's written approval for, any breach of the OLS to resource consent applicants' (and the Council's) attention, but will avoid the duplication of control with which the Section 42A Report Writer is concerned.

65. It is submitted that the Section 42A Report Writer's recommended alternative option, being to remain silent on the issue in the Proposed Plan, and instead rely on persons to be aware of their obligations under section 176 RMA, (i.e. retention of the status quo), is inappropriate given it has been previously demonstrated as ineffective.

66. Ms O'Sullivan elaborates on this submission point and the alternative relief in her evidence.

Chapter 36 (Noise)

67. QAC made a submission and further submission on Chapter 36 which:

    (a) Supports some provisions as notified,[18] including provisions which clarify that the noise limits set out in the Chapter do not apply to sound from aircraft operations at Queenstown and Wanaka Airports;

    (b) Seeks to ensure that only one set of noise provisions applies to Queenstown Airport;

[18] E.g. the Zone Purpose statement, provisions relating to noise from aircraft operations at Queenstown and Wanaka Airports, and a number of airport noise related definitions.

(c) Seeks minor amendments to Table 4, which relates to sound insulation requirements for buildings containing activities sensitive to aircraft noise (**ASAN**) within the Air Noise Boundary (**ANB**) for Queenstown Airport; and

(d) Seeks more substantive amendments to Table 5, which relates to mechanical ventilation requirements for buildings containing ASAN within the ANB and Outer Control Boundary (**OCB**) for Queenstown and Wanaka Airports.

68. Ms O'Sullivan addresses each of these submission points in detail, including the section 42A recommendations in respect of them. These legal submissions need only address above points (c) and (d).

Sound Insulation and Mechanical Ventilation Requirements

69. The sound insulation and mechanical ventilation requirements in Tables 4 and 5 of the Proposed Plan apply to new ASAN (including additions and alterations to existing ASAN) within the Queenstown Airport noise boundaries (although their application is dependant on the exact location of an ASAN within the noise boundaries). For ASAN located within the OCB at Wanaka Airport, only the mechanical ventilation requirements in Table 5 apply, because there is currently no ANB for that Airport.

70. The purpose and intent of the sound insulation and mechanical ventilation requirements is to ensure an appropriate level of indoor amenity is achieved, where external aircraft noise levels are (or will be at some point in the future) greater than 55 dB L^{dn}, thereby protecting persons residing or working in buildings affected by aircraft noise, and protecting the Airports from potential reverse sensitivity effects. Mr Day explains this in further detail.

71. Under the Operative and notified Proposed Plans, new, and alterations and additions to existing ASAN must include sound insulation and/or mechanical ventilation (depending on location) in accordance with Tables 4 and 5 of the Proposed Plan (being the same as Appendix 13, Tables 1 and 2 of the Operative Plan), or alternatively submit a certificate to the Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the specified Indoor Design Sound Level (being 40 dB L_{dn} in all Critical Listening Environments), with the windows open.

72. In addition, under the Aerodrome Purposes Designation for Queenstown Airport, QAC is required to fund or part fund (depending on location) the retrofitting of sound insulation and/or mechanical ventilation (depending on location) for Critical Listening Environments of ASAN that existed when the Designation was confirmed (being May 2013).

73. Accordingly, QAC's interest in these provisions is significant.

Sound Insulation Requirements

74. The notified sound insulation and mechanical ventilation requirements were established under PC35 and appear to have been carried over from the Operative District Plan (as that Plan was amended by PC35).

75. However, the sound insulation requirements in Table 4 of the Proposed Plan contain a small typographical error (in respect of the required thickness of gypsum or plasterboard) which, through its submission QAC seeks be corrected. Both the Council's expert acoustics engineer (Dr Chiles) and the Section 42A Reporting Officer agree this correction is necessary.

76. Additionally, QLDC made a submission seeking the glazing requirements stated in Table 4 be updated to provide for modern double glazing. Mr Day addresses this in his evidence, and agrees with both Dr Chiles and the Section 42A Report Writer, that the amendment should be made as sought.

77. Accordingly, given the experts are in full agreement, it is submitted that the amendments to Table 4 as sought by QAC and QLDC and recommended by the Section 42A Report Writer should be adopted by the Panel.

Mechanical Ventilation Requirements

78. The mechanical ventilation requirements in Table 5 require more substantive amendment.

79. As explained by Mr Roberts, since these requirements were first promulgated (around 2008) there have been a number of changes in technology and building techniques which have rendered the requirements of the Table now somewhat outdated.

80. In addition, QAC's practical experience with implementing mechanical ventilation in existing buildings containing ASAN in accordance with the requirements of Appendix 13 of the Operative District Plan (which Table 5 of the Proposed Plan replicates), has demonstrated that the stated requirements are not well suited to the Queenstown environment.

81. Accordingly, through its submission on the Proposed Plan QAC sought that Table 5 be amended to address these issues, and proposed specific wording.

82. In assessing this submission, Dr Chiles acknowledges the issues QAC has raised and agrees that Table 5 ought to be amended, but recommends a different approach to that proposed by QAC in its submission. Dr Chiles also recommends that a submission David Jerram[19], in respect of a requirement for a cooling function, be accepted.

83. Mr Roberts and Mr Day have considered Dr Chiles' suggested alternative approach (including his recommendation in respect of a cooling function), and agree it has some merit and is generally more straight forward than that proposed in QAC's submission, but consider it requires further amendment to ensure it is appropriate for Queenstown, and addresses all relevant matters. Mr Roberts details these further amendments (with reasons) in his evidence.

84. The key differences in the approaches recommended by Dr Chiles and Mr Roberts relate to:

    (a) The high setting of the system: Dr Chiles recommends a high fan setting of 6 air changes per hour, whereas Mr Roberts considers 5 air changes per hour is sufficient. Mr Roberts considers Dr Chiles' recommendation will result in 2 or more fans being required to achieve the high and low settings, which will be costly to install and operate, (being an issue with the existing rule) with no real additional benefit;

    (b) The low setting of the system: Dr Chiles recommends the low setting requirements replicate those of clause G4 of the Building

[19] Submitter 80.

Code, whereas Mr Roberts considers this is inappropriate as the purpose of the Building Code ventilation requirements is differently focussed to that of Table 5. Further, Dr Chiles' recommendation will result in the need for at least two fans to achieve the high and low settings, which will be costly to install and operate, with no real additional benefit;

(c) Provision of passive relief venting: Dr Chiles' recommendation does not address this issue, whereas Mr Roberts consider it should be addressed to ensure the safe and efficient operation of other combustion appliances within the building;

(d) Recognition of existing systems toward compliance with the Table: Dr Chiles' recommendation does not address this issue, whereas Mr Roberts considers that where there is an exiting system that complies with the requirements stated in Table 5, there should be no requirement to duplicate that system to ensure compliance with the Table.

85. It is submitted the Panel should prefer Mr Roberts' evidence over Dr Chiles', as Mr Roberts is an expert in the installation and operation of mechanical and other ventilation systems, and has experience (through his review work) with the installation of such systems in Queenstown buildings.

86. A further issue as between Dr Chiles and Mr Day is the measurement point for noise from the mechanical ventilation system itself.[20] Both agree the notified rule is ambiguous on this issue and requires amendment. Dr Chiles recommends a measurement point of 1 metre distant from the mechanical ventilation diffuser, whereas Mr Day recommends a measurement point of 2 metres distant.

87. As Mr Day pragmatically reasons, a measurement point of 2 metres distant from the unit is logical and appropriate given the ventilation systems contemplated by the Table are ordinarily located such that it is difficult for a person to come within 2 metres of them (e.g. a high wall unit).

[20] Noting the experts are in agreement as to what the permissible noise levels of the mechanical ventilation system should be.

88. Although not expressly addressed in the evidence, it is understood (and logical to infer) that the closer the measurement point, the quieter the system will need to be and the more difficult it will be to comply with the noise limits stated in the Table.

89. The stated measurement point in the notified Table was a point "1m to 2m distant" from any diffuser. QAC's submission did not expressly address the measurement point distance, nor did any other submission.

90. It is submitted that Mr Day's recommendation of a measurement point 2 metres distant is within the scope of the notified rule, whereas Dr Chiles' recommendation for a measurement point 1 metre distant is not.

91. Mr Day's recommendation is within the upper bounds of the notified rule; that is, noise from the system could in every case be measured at a point 2 metres distant from the diffuser and in every case that measurement point would comply with the notified rule.

92. In contrast, if the measurement point stated in the Table is amended to a point 1 metre distant from the diffuser, as recommended by Dr Chiles, noise from a system that previously complied at a measurement point of 2 metres distant, may no longer comply at this closer measuring point.

93. Dr Chiles' recommendation is therefore more onerous than and alters the status quo, in circumstances where no submitter has sought the change. His recommendation is therefore without scope, and can not be adopted by the Panel.

94. Conversely, Mr Day's recommendation maintains the status quo, but addresses (by removing) a minor ambiguity. It is submitted that Mr Day's recommendation should therefore be preferred.

95. A revised Table 5 (Rule 36.6.3) incorporating the further amendments summarised above and detailed more fully by Mr Roberts and Mr Day is set out in Ms O'Sullivan's evidence.

96. Overall, the revised rule (as set out in Ms O'Sullivan's evidence) is more certain, better suited and relevant to the Queenstown environment, and compliance is more readily attainable (i.e. the revised rule is more

effective) than either the notified rule (Table 5) or Dr Chiles' recommended revision of it.

97. The revised rule (as set out in Ms O'Sullivan's evidence) is also more straightforward and adaptable to changing technologies than the revisions expressly sought in QAC's original submission.

98. It will result in cost savings and efficiencies in terms of installation and operation, providing a benefit to building owners and occupiers to whom the rule applies, and to QAC who, under its Aerodrome Purposes Designation is required to fund the retrofitting of mechanical for existing ASAN located within the Airport's noise boundaries in accordance with the Table.[21]

99. Finally on this issue, it is noted that based on the technical advice of Dr Chiles, the Section 42A Report Writer has recommend merging into one Table the mechanical ventilation requirements of Table 5, which relate to and have been specifically drafted for Queenstown and Wanaka Airports, with the mechanical ventilation requirements of Table 6, which relate to various Town Centre, Shopping and Business Zones.

100. Ms O'Sullivan sets out the problems with this recommendation at para 5.33 of her evidence.

101. Significantly, Ms O'Sullivan identifies that no person submitted on Table 6, or sought that it be amended in any way. There is therefore no scope to amend Table 6, other than in a minor or consequential way.

102. There is certainly no scope to amend Table 6 in the same, substantive manner as it is proposed to amend Table 5, noting the amendments to Table 5 arise directly from QAC's submission as to the same.

103. The only way by which Table 6 can now be amended so as to align with Table 5 is by way of a variation under clause 16A RMA. However, for the reasons given by Ms O'Sullivan, it is inappropriate to merge the Tables, irrespective of any jurisdictional issue.

[21] Refer paragraphs 5.23 – 5.26 of Ms O'Sullivan's evidence dated 2 September 2016.

Summary

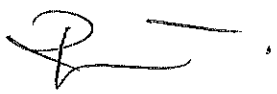
104. Chapter 30 requires amendment to ensure its general provisions do not override and render nugatory the more specific airport related provisions of Chapter 17.

105. The appropriateness of the Chapter 17 provisions has been scrutinised in detail, whereas (other than that undertaken by Mr O'Sullivan) there appears to have been no scrutiny at all of the Chapter 30 provisions in so far as they relate to, and potentially constrain activities at, Queenstown and Wanaka Airports.

106. Given the regional importance of these Airports as significant infrastructure, and the economic and social benefits they contribute to the District's community, it is imperative the amendment to Clarification Note 30.3.3.3 is made, as sought by QAC.

107. Similarly, given the importance of the Airports, it is necessary to ensure that the Proposed Plan appropriately brings to the attention of Plan users and those administering it, the need to comply with the Airports' Obstacle Limitation Surfaces Designations, so as to ensure the Airports can continue to operate safely and efficiently.

108. Various amendments are required to Chapter 36 of the Proposed Plan to ensure it appropriately, efficiently and effectively addresses airport noise related matters, both to maintain residents' amenity, and to ensure the Airports are appropriately protected from potential reverse sensitivity effects. Additionally, to ensure the approach to airport and airport related noise is clear and consistent across the Proposed Plan.



R Wolt
Counsel for Queenstown Airport Corporation Limited

Appendix A

1. Case law has established that when considering the scope of possible decisions on submissions on a plan change (or review), the issue is to be approached objectively, and with a degree of latitude so as to be realistic and workable, rather than a matter of legal nicety.[22]

2. To elaborate, the legal principles relating to the scope of decisions in submissions available to a council (and thus, the Panel) are as follows:

   (a) It is trite that a council can not grant relief beyond the scope of the submissions lodged in relation to a Proposed Plan.

   (b) However, the scope of a council's decision making under clause 10 of the First Schedule to the Act is not limited to accepting or rejecting a submission. To take a legalistic view that a council could only accept or reject a submission would be unreal.[23]

   (c) The paramount test is whether or not the amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the Proposed Plan. This will usually be a question of degree to be judged by the terms of the Proposed Plan and the content of submissions.[24]

   (d) The assessment of whether any amendment is reasonably and fairly raised in the course of submissions should be approached in a realistic and workable fashion, rather than from the perspective of legal nicety.[25]

   (e) Another way of considering the issue is whether the amendment can be said to be a 'foreseeable consequence' of the relief sought in a submission; the scope to change a plan is not limited by the words of the submission.[26]

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[22] *EDS v Otorohanga District Council* (2014) NZEvnc 070, at [43]
[23] *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 165.
[24] Ibid, at 166.
[25] *Royal Forest and Bird Society Inc v Southland District Council* [1997] NZRMA 408 at 413, (HC).
[26] *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556, and 574 – 575.

(f) It is relevant to consider what an informed and reasonable owner of affected land should have appreciated might result from a decision on a submission, although this is not the sole test (given the danger of endeavouring to ascertain the mind or appreciation of a hypothetical person).[27]

(g) A council can not permit a planning instrument to be appreciably amended without real opportunity for participation for those potentially affected.[28]

(h) Ultimately, it is a question of procedural fairness. Procedural fairness extends to the public as well as to the submitter and the council.[29]

[27] *Countdown Properties*, Supra at 166 – 167.
[28] *Clearwater Resort Ltd v CCC*, unreported: High Court, Tauranga, CIV-2008-470-456, 30 October 2009, Allan J, at para [30].
[29] *Westfield (NZ) Ltd*, Supra, at [74].

APPENDIX B

13. SCOPE ISSUES

13.1 The evidence of a number of submitters on the Subdivision chapter has brought about the need to address issues of scope. The legal principles relating to scope have been addressed in depth in the Council's various submissions on Hearing Streams 1A and 1B[28] Hearing Stream 2[29] and these submissions are not repeated here.

27 See Council's right of reply legal submissions, Streams 01A and 01B, dated 7 April 2016 at paragraphs 10.1 – 10.2

28 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7; Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2.

29 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

The relevant principles are however summarised below for the convenience of the Panel.

Legal principles

13.2 The legal principles regarding scope and the Panel's powers to recommend (and subsequently the Council's power to decide) are:

(a) a submission must first, be *on* the proposed plan;[30] and

(b) a decision maker is limited to making changes within the scope *of the submissions* made *on the* proposed plan.[31]

13.3 The two limb approach endorsed in the case of *Palmerston North City Council v Motor Machinists Ltd*,[32] subject to some limitations, is relevant to the Panel's consideration of whether a submission is *on* the plan change.[33] The two limbs to be considered are:

(a) whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and

(b) whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.

13.4 The principles that pertain to whether certain relief is within the scope of a submitter's submission can be summarised as follows:

(a) the paramount test is whether or not amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP. This will usually be a question of degree to be judged by the terms of the PDP and the content of submissions;[34]

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30 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7.
31 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.
32 [2014] NZRMA 519.
33 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at paragraph 7.3-7.12.
34 *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 166.

(b) another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought in a submission; the scope to change a plan is not limited by the words of the submission;[35]

(c) ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter;[36] and

(d) scope is an issue to be considered by the Panel both individually and collectively. There is no doubt that the Panel is able to rely on "collective scope". As to whether submitters are also able to avail themselves of the concept is less clear. To the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief, it is submitted that the submitter could not advance relief.[37]

APPENDIX C

Memorandum

To:	Queenstown Lakes District Council - Hearing Panel
From:	Meredith Connell
Date:	9 August 2016
Subject:	**Request for legal opinion regarding consequential amendments**

1 We refer to the Hearing Panel's request for legal advice of 4 August 2016 as to whether:

> Where a submitter has sought amendments to the rules but not to the overlaying objectives and policies, it is within scope to amend the objectives and policies that the rule(s) are implementing to ensure that there remains a consistent series of implementation links from objectives to policies and policies to rules by classing such changes as consequential amendments?

2 In our view, the Panel is not prevented from amending the overlaying objectives and policies where a submitter has only sought amendments to the relevant rule(s) as long as any such amendments do not go beyond what is fairly and reasonably raised in the submission.

3 The Courts have considered this matter in past cases where local authorities have proposed amendments in response to submissions, but which are not included in the specific relief sought. The Courts have taken a liberal approach to these situations, finding that a legalistic view whereby local authorities (the Panel in this case) can only accept or reject the specific relief sought in submissions is unrealistic.

4 This is on the basis that decision-makers generally need to reconcile multiple conflicting submissions and submissions are often prepared without professional assistance, so a submitter may not understand the planning framework and the requirement for implementation links from objectives to policies and policies to rules.

5 Accordingly, the Panel should ask itself whether any amendment it proposes, in order to ensure a consistent series of implementation links, goes beyond what is fairly and reasonably raised in the submission.

6 This will be a question of degree, to be judged by the terms of the proposed change (ie is it a significant change, perhaps to the structure of the Proposed Plan or in respect of a Plan-wide matter? Or is it simply a minor change?) and the content of the relevant submission. As an example, an amendment to a rule might be the specific relief sought, but the grounds for the submission might outline what the submission seeks to achieve, which the Panel could find to encompass a change to the relevant objectives and policies.

7 The Environment Court in *Campbell v Christchurch City Council* [2002] NZRMA 332 (EC) set out three useful steps in asking whether a submission reasonably raises any particular relief:[1]

(a) Does the submission clearly identify what issue is involved and some change sought in the proposed plan?

(b) Can the local authority rely on the submission as sufficiently informative for the local authority to summarise it accurately and fairly in a non-misleading way?

(c) Does the submission inform other persons what the submitter is seeking?

8 In applying this test and proposing "consequential" amendments, the Panel should also be careful to consider any proposed amendments to the overlaying objectives and policies in the context of the Proposed Plan more broadly. There may be consequences in terms of objective and policy direction that goes beyond what is fairly and reasonably raised in the relevant submission.

9 Some submissions will likely include "any other consequential changes" as relief sought. While the changes are, in effect, consequential amendments, it is open to the Panel to simply class the changes as within the scope of submissions (so long as the "fairly and reasonably" test is met).

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1 *Campbell v Christchurch City Council* [2002] NZRMA 332 (EC). See also *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145 (HC).

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)

Legal Submissions for Queenstown Airport Corporation Limited (Submitter 433 and Further Submitter 1340)

Dated: 29 February 2016

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lane neave.
Level 1, 2 Memorial Street
PO Box 701
Queenstown
Solicitor Acting: Rebecca Wolt
Phone: 03 409 0321
Fax: 03 409 0322
Email:
rebecca.wolt@laneneave.co.nz
QUE912172 4766976.1

Introduction

1. These legal submissions are filed on behalf of Queenstown Airport Corporation Limited (**QAC**) in respect of its submission on Chapter 3 (Strategic Direction), Chapter 4 (Urban Development) and Chapter 6 (Landscape) of the Queenstown Lakes Proposed District Plan (**Proposed Plan**).

2. These submissions and the evidence to be presented for QAC also address, at a high level, the changes QAC seeks to other chapters of the Proposed Plan[1] to appropriately incorporate the regime established under Plan Change 35 (**PC35**) for managing noise sensitive land use around Queenstown Airport.

3. Although these chapters are not the subject of this hearing, it is necessary and appropriate to present an overview of the changes QAC has sought to them (to be addressed in detail at later hearings) in order to properly understand the changes it has sought to Proposed Chapter 4. This will be explained in further detail later in these submissions.[2]

Queenstown Airport – An Overview

4. Queenstown Airport (**Airport**) is an important existing strategic asset to the Queenstown Lakes District and Otago Region. It provides an important national and international transport link for the local, regional and international community and has a major influence on the Region's economy. The Airport is a fundamental part of the social and economic wellbeing of the community.

5. Queenstown Airport is one of the busiest airports in New Zealand, operating a mixture of scheduled flights, corporate jets, general aviation and helicopters. It is by some margin the largest of the regional airports

[1] Specifically, Chapters 7, 15, 17, 21, 36 and 37.

[2] It is noted this circumstance was raised with the Panel Chair in advance of the hearing, and appears to be expressly contemplated on page 3, 4th paragraph of the First Procedural Minute, dated 25 January 2016. For the avoidance of doubt, further detailed evidence (and possibly legal submissions) will be presented at the later hearings of chapters on which QAC has submitted and where the appropriate incorporation of the operative PC35 provisions is at issue, but the evidence and submissions presented for at this hearing will not be repeated.

and the fourth largest in New Zealand in terms of passenger numbers and revenue.

6. The Airport is one of Australasia's fastest growing airports, and as the gateway to southern New Zealand, is a vital part of the national and regional tourism industry.

7. It provides an essential link for domestic and international visitors to New Zealand's premier destinations of Queenstown, the Lakes District, Milford Sound and in general, the lower South Island. Consequently, it is a significant strategic resource and provides direct and indirect benefits to the local and regional economy.

8. Queenstown Airport has been experiencing significant growth in the use of its facilities and infrastructure over recent years, particularly in international and domestic passengers. Growth is predicted to continue.

9. Accordingly, QAC is concerned to ensure that the Proposed Plan appropriately recognises and provides for the ongoing operation and growth of the Airport, in a safe an efficient manner, whilst ensuring that reverse sensitivity effects are avoided.

10. QAC is also concerned to ensure that Wanaka Airport is appropriately recognised and provided for, given its management of that airport on behalf of QLDC.

QAC's Statutory Framework

11. QAC was formed in 1988 under section 3(1) of the Airport Authorities Act 1966 to manage Queenstown Airport.

12. Queenstown Airport is presently owned by QLDC (75.1%) and the Auckland International Airport Limited (**AIAL**) (24.9%).

13. QAC also manages Wanaka Airport, and has an informal caretaker role for Glenorchy Aerodrome, on behalf of QLDC. (As well as its more general submissions on Chapters 3, 4 and 6 of the Proposed Plan, QAC has made submissions that are specific to Wanaka Airport, which will be addressed at later hearings.)

14. QAC is a council-controlled trading organisation (**CCTO**) of QLDC pursuant to the Local Government Act 2002 (**LGA**). Section 59 LGA sets out the principal objectives of a CCTO which are to:

    (a) achieve the objectives of its shareholders, both commercial and non-commercial, as specified in the statement of intent (**SoI**); and

    (b) be a good employer; and

    (c) exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so; and

    (d) conduct its affairs in accordance with sound business practice.

15. The objectives stated in QAC's SoI 2016 – 18 include the following:

    "5. Pursue operational excellence including being an outstanding corporate citizen within the local community."

16. As an Airport Authority, QAC must operate or manage the Airport as a commercial undertaking (section 4(3) Airport Authorities Act).

17. As an Airport Authority QAC is also a network utility operator under section 166 of the Resource Management Act (**RMA** or **Act**).

18. QAC is an approved acquiring authority under Resource Management (Approval of Queenstown Airport Corporation Limited as Requiring Authority) Order 1992/383 and Gazette Notice 1994/6434. As well as general approval for the operation, maintenance, expansion and development of Queenstown Airport, this Order conferred approval as a requiring authority for airport related works on all the land that is to the south of the Airport, between the existing airport and the Kawerau River; all the land to the north between the existing airport and SH6, and all the land to the east between the existing airport and Shotover River (i.e. the whole of Frankton Flats).

19. QAC is currently the requiring authority for three designations in the Operative District Plan:[3]

    (a) Designation 2 - Aerodrome Purposes, the purpose of which is to protect the operational capability of the Airport, while at the same time minimising adverse environmental effects from aircraft noise on the community until at least 2037. The Designation is subject to conditions which include obligations on QAC in respect of noise management and mitigation.

    (b) Designation 3 - Air Noise Boundary, the purpose of which is to define the location of the Air Noise Boundary (**ANB**) for the Airport. This designation is outdated and QAC has given notice to QLDC that it is to be withdrawn[4].

    (c) Designation 4 - Airport Approach and Land Use Controls, the purpose of which is to provide obstacle limitation surfaces around the Airport to ensure the safe operation of aircraft approaching and departing the Airport.

20. Excepting Designation 3, QAC seeks these designations be 'rolled over,' with modifications, in the Proposed Plan. The modifications will be addressed at separate hearings.

21. QAC is a 'lifeline utility' under the Civil Deference Emergency Management Act 2002 (**CDEMA**). Under this Act, lifeline utilities have a key role in planning and preparing for emergencies, and for response and recovery in the event of an emergency. As a lifeline utility QAC must, amongst other things, ensure it is able to function to the fullest possible extent, even though this may be at a reduced level, during and after an emergency (section 60 CDEMA).

22. QAC's operation of Queenstown Airport as an aerodrome is subject to the provisions of the Civil Aviation Act 1990 and to the controls imposed on civil aviation by that Act, and the regulations and rules made under it, which include matters relating to safety.

[3] Refer Schedule of Designations on page A1-2 of the Operative District Plan.
[4] Noting that under PC35 the ANB is shown in the District Plan maps instead.

QAC's Current and Future Landholdings

23. QAC owns approximately 137 ha of land on Frankton Flats comprising:

(a) Approximately 83 ha incorporating the airfield, runways and aprons, rescue fire facilities and air traffic control. This land is generally located within the Aerodrome Purposes Designation (Designation 2). The underlying zoning of this land in the Operative District Plan (**Operative Plan**) is Rural, however under the Proposed Plan it forms part of the Queenstown Airport Mixed Use Zone, which is essentially a new zone[5] and is generally supported by QAC.[6]

(b) 8 ha of terminal, carparking, road network and commercial land leased to airport related business. This land is currently a mix of zonings under the Operative Plan, however in the Proposed Plan it also forms part of the new Airport Mixed Use Zone.

(c) 17 ha of land used by general aviation, generally located within Designation 2. QAC anticipates this general aviation activity will ultimately be relocated from its current location to free it up for other Airport related uses.

(d) 17 ha of undeveloped land recently rezoned for industrial activity under Plan Change 19. This land is not included in Stage 1 of the Proposed Plan.

(e) 12 ha of undeveloped rural and golf course land. The golf course land is leased to QLDC (for a nominal rate) for the Frankton Golf Course.

24. Mr Kyle's evidence[7] contains a plan showing these landholdings and the location of the Aerodrome Purposes designation boundary.

[5] The zone exists in the Operative Plan but is significantly amended and extended in the Proposed Plan.
[6] To be addressed at a later hearing.
[7] Dated 29 February 2016.

Lot 6

25. QAC is currently seeking to designate and ultimately acquire part (approximately 16 ha) of Lot 6 DP 304345 (**Lot 6**) for Aerodrome Purposes. Lot 6 is located immediately south of the main runway and east of the cross wind runway, and is owned by Remarkables Park Limited (**RPL**).

26. The designation of Lot 6 will enable, *inter alia*, general aviation and helicopter activities to relocate from their currently constrained cul-de-sac location near Lucas Place, enabling further growth in these activities and freeing up the land comprising their current location for other Airport related uses. It will also enable the establishment of new private jet and Code C aircraft facilities, and the creation of a Code C parallel taxiway, which will significantly enhance the Airport's capacity at peak times.

27. RPL opposes the designation and acquisition of its land and consequently the matter has had a complex and lengthy Environment and High Court history, and currently remains unresolved. A final decision on the notice of requirement is expected to be issued by the Environment Court later this year (having been referred back to it by the High Court for reconsideration).

28. An interim decision was issued in December 2012[8] in which the Court confirmed that the Lot 6 land is the appropriate location for the relocation of GA and helicopter activities and the other works described above, and that the area required is about 16 ha, as sought by QAC. The Court is expected to confirm the 16 ha designation once QAC completes an aeronautical study (currently underway) in relation to, and obtains CAA approval for, the works enabled by the Designation.

29. If QAC is ultimately successful with the designation and acquisition of Lot 6, its Aerodrome Purposes Designation will be expanded by approximately 16 ha.

30. The matter of Lot 6 is traversed in these submissions as the outcome of the proceeding will have a bearing on the Environment Court's final

[8] [2015] NZEnvC 222.

decision on the location of the PC35 noise boundaries. This is further explained later in these submissions.

Airport Growth and Recent Projects

Recent Growth

31. 2015 continued the trend of previous years and was another record breaking year of growth for the Airport. The Airport recorded a total of 1.5 million passengers for the first time over a 12 month period, comprised of just under 450,000 international passengers and just over 1,050,000 domestic[9] passengers. There were also significant increases in private jet and commercial general aviation operations. [10]

32. An economic analysis[11] undertaken in 2014 found that the Airport generates gross output into the District's economy of some $88 million dollars, sustaining the equivalent of 520 fulltime workers each year. The same report found it facilitates between $392m and $423m of tourist spending in the District's economy, which is between 26% and 28% of the total tourist spend.[12]

33. An economic analysis undertaken for QAC in relation to Plan Change 35 indicated that in 2037 gross output will increase to $522 million and will sustain the equivalent of 8,100 fulltime workers each year. This contribtuon is likely to be understated given recent Airport growth projections.[13]

34. Given the above, it is clear the Airport provides significant direct and indirect benefits to the local and regional economies.

35. Consequently, and noting again QAC's role as a lifeline utility under the CDEMA, Queenstown Airport can be considered a regionally significant strategic resource and infrastructure.

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[9] Noting a significant portion of these domestic passengers were themselves international visitors to the region – refer QAC's Annual Report for Financial Year Ended 30 June 2015.
[10] Refer Mark Edghill's evidence dated 29 February 2016.
[11] '*Queenstown Airport Mixed Use Zone Economic Assessment'*, Market Economics Limited, November 2014.
[12] Ibid.
[13] Refer Mr Edghill's evidence.

36. Further, the ongoing operation, growth and development the Airport, absent undue constraint, is of significant importance to the social and economic wellbeing of the District's community and the wider region.

Recent Projects

37. 2015 saw QAC complete a raft of airport development projects, including:

    (a) a significant terminal expansion;

    (b) commencement of significant works to enable evening flights, which are due to commence in winter 2016;

    (c) continued with giving effect to its obligations under Designation 2, in respect of the mitigation of effect of aircraft noise on existing properties located within the Airport's ANB and OCB[14]; and

    (d) commenced a master planning process to cater for the next 30 years of Airport growth.

38. These projects are detailed further in Mr Edghill's evidence. They serve to emphasise the continual and dynamic growth and development of the Airport, along with its commitment to being socially and environmentally responsible,[15] and an outstanding corporate citizen in the local community.[16]

Wanaka Airport

39. Wanaka Airport accommodates aircraft movements associated with scheduled general aviation and helicopter operations, and is a major facilitator of commercial helicopter operations within the District. It provides a complementary and supplementary facility to Queenstown Airport.

[14] As updated by PC35.
[15] As required by section 59, LGA
[16] 2016 – 2018 Sol, Objective 5.

40. Wanaka Airport is the subject of two designations in the Operative District Plan,[17] for which QLDC is the requiring authority. QAC manages the airport on QLDC's behalf.

41. While not an identified lifeline utility under the CDEM, Wanaka Airport will likely provide important air access to the District in the event that road access is compromised during an emergency event.[18] Consequently, Wanaka Airport can also be considered regionally significant infrastructure, which plays an important role in providing for the community's safety and well being.

QAC's Submissions on Proposed Plan

42. QAC's submissions and further submissions on the Proposed Plan can be broadly summarised as concerning the following:

    (a) The policy framework provided for regionally significant infrastructure (Chapter 3);

    (b) The integration of Plan Change 35 (PC35) into the Proposed Plan (Chapter 4);

    (c) The recognition of functional and locational constraints of infrastructure (Chapter 6).

43. QAC has also made submissions relating to the planning maps (in particular the incorporation of the PC35 noise boundaries); the Proposed Queenstown Airport Mixed Use zone (which it generally supports); a number of designations/notices of requirements (including those relating to Queenstown and Wanaka Airports); natural hazards (in particular the wording used in the proposed provisions) and further submissions on rezoning requests in proximity to Queenstown and Wanaka Airports (which it generally opposes in the absence of adequate information to assess the potential effects). QAC's submissions on these issues will be addressed at subsequent hearings.

[17] Aerodrome Purposes" (Designation 64) and "Approach and Land Use Control" purposes (Designation 65).
[18] Refer John Kyle's evidence.

44. When considering QAC's and other submissions, and the section 42A Reports, the Panel must do so within the framework of the Act, as detailed below.

Statutory Framework

45. The purpose of the preparation, implementation, and administration of district plans is to assist councils to carry out their functions *in order to achieve the purpose of the Act*.[19]

Act's Purpose

46. The purpose of the RMA is, under section 5 of the Act, to promote the sustainable management[20] of natural and physical resources. Under section 6, identified matters of national importance[21] must be recognised and provided and, under section 7, particular regard is to be had to the 'other matters' listed there which include kaitiakitanga, efficiency, amenity values and ecosystems. Under section 8, the principles of the Treaty of Waitangi are to be taken into account.

47. Section 5 is a guiding principle which is intended to be followed by those performing functions under the RMA, rather than a prescriptive provision subject to literal interpretation.[22]

48. In the sequence of '*avoiding, remedying or mitigating*' under section 5(2)(c): [23]

    (a) '*avoiding*' means '*not allowing*' or '*preventing the occurrence of*';

    (b) '*remedying*' and '*mitigating*' indicate that developments which might have adverse effects on particular sites can nonetheless be permitted if those effects are mitigated and/or remedied.

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[19] Section 72 of the Act.
[20] As that phrase is defined in s 5(2) of the RMA.
[21] Relating to the natural character of the coastal environment, the protection of outstanding natural features and landscapes, significant indigenous vegetation and habitats, the maintenance and enhancement of public access to the coastal marine area, lakes and rivers, the relationship of Maori and the culture and traditions with their ancestral lands, waters, sites, waahitapu and other taonga and the protection of historic heritage and customary rights.
[22] *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38 (**King Salmon**).
[23] Ibid.

(c) The word '*while*' in section 5(2) means 'at the same time as'.

49. Section 5 is to be read as an integrated whole. The wellbeing of people and communities is to be enabled at the same time as the matters in section 5(2) are achieved.[24]

Section 31

50. Section 31 sets out councils' functions for the purpose of giving effect to the RMA. Importantly, these include (*inter alia*):

(a) "*the establishment, implementation, and review of objectives, policies and methods, to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district*"[25]; and

(b) "*the control of any actual or potential effects of the use, development, or protection of land*"[26]; and

(c) "*the control of the emission of noise and the mitigation of the effects of noise*.[27]"

Sections 32 and 32AA

51. Section 32 sets out the legal framework within which a council (and thus the Hearings Panel) must consider the submissions, evidence and reports before it in relation to a proposed plan, in conjunction with the matters specified in section 74.

52. Under section 32, an evaluation report on a proposed plan must examine whether proposed objectives are the most appropriate way to achieve the purpose of the Act, and whether the provisions are the most appropriate way of achieving the objectives. To do that, a council must identify other reasonably practicable options to and assess the efficiency and effectiveness of the proposed provisions through identifying the benefits and costs of the environmental, economic, social and cultural effects, including opportunities for economic growth and employment.

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[24] Ibid.
[25] Section 31(1)(a).
[26] Section 31(1)(b).
[27] Section 31(1)(d).

53. Section 32AA requires a further evaluation to be undertaken for any changes made or proposed to a proposed plan since the section 32 evaluation was completed. This further evaluation must either be published as a separate report, or referred to in the decision making record in sufficient detail to demonstrate it was carried out.

District Plan Preparation (Sections 74 and 75)

54. A council's (and the Hearing Panel's) decision on a proposed plan must be in accordance with (relevantly):[28]

    (a) the council's functions under section 31; and

    (b) the provisions of Part 2; and

    (c) its obligation to prepare and have regard to an evaluation report prepared in accordance with section 32; and

    (d) any regulations.

55. Additionally, when preparing or changing a district plan a council *shall have regard*[29] to the instruments listed in section 74, which include any proposed regional policy statement, proposed regional plan and any management plans and strategies prepared under other Acts. It *must take into account*[30] any relevant planning document recognised by an iwi authority. It must also *have particular regard*[31] to an evaluation report prepared under section 32.

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[28] Section 74(1) of the Act.

[29] "*Have regard to*" means to give genuine attention and thought to the matter, see: *NZ Fishing Industry Assn Inc v Ministry of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at pp 17, 24, 30 and also the Environment Court decision in *Marlborough Ridge Ltd v Marlborough District Council* (1997) 3 ELRNZ 483 and *Unison Networks Ltd v Hastings District Council* [2011] NZRMA 394, at [70] (albeit a resource consent decision, as to s104).

[30] "*Must take into account*" means the decision maker must address the matter and record it has have done so in its decision; but the weight to be given it is a matter for its judgment in light of the evidence, see: *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC) at [42].

[31] "*Have particular regard to*" means to give genuine attention and thought to the matter, on a footing that the legislation has specified it as something important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion, see: *Marlborough District v Southern Ocean Seafoods Ltd* [1995] NZRMA, which concerned a resource consent, however in its decision on the Strategic Directions Chapter of Proposed Christchurch Replacement Plan (dated 26 February 2015) the Independent Hearings Panel accepted as valid the application of the principle to district plan formulation (at paragraph [43]).

56. Under s 75, a council *must give effect to*[32] any national policy statement, any New Zealand coastal policy statement and any regional policy statement, and *must not be inconsistent with*[33] a water conservation order or a regional plan (for any matter specified in subsection 30(1)).

57. Finally, under section 75(1), district plan policies must state the objectives for the district plan; the policies to *implement* the objectives, and the rules (if any) to *implement* the policies.

Case Law

58. The Environment Court gave a comprehensive summary of the mandatory requirements for the preparation of district plans in *Long Bay-Okura v North Shore City Council*[34]. Subsequent cases have updated the *Long Bay* summary following amendments to the RMA in 2005 and 2009, one of the more recent and comprehensive being the decision in *Colonial Vineyard Ltd v Marlborough District Council*[35]. However, since that decision section 32 has been materially amended again[36]. The 2013 Amendment changed the requirements for and implications of section 32 evaluations, but did not change the statutory relationship between the relevant higher order documents (discussed in the preceding paragraphs).

59. An updated version of the *Long Bay/Colonial Vineyard* test, incorporating the 2013 Amendments, is set out in **Appendix A**.

60. Further principles relevant to the implementation of section 32 as set out in the Act and derived from the case law include the following:

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[32] "*Give effect to*" means to implement according to the applicable policy statement's intentions, see: *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, at [80], and at [152]-[154]. This is a strong directive creating a firm obligation on those subject to it.

[33] This is usefully tested by asking:

- Are the provisions of the Proposed Plan compatible with the provisions of these higher order documents?
- Do the provisions alter the essential nature or character of what the higher order documents allow or provide for?

See *Re Canterbury Cricket Association* [2013] NZEnvC 184, [51]–[52] for the first of the above questions, and *Norwest Community Action Group Inc v Transpower New Zealand EnvC* A113/01 for the second, as applied by the Independent Hearings Panel in its decision on the Strategic Directions Chapter of Proposed Christchurch Replacement Plan (dated 26 February 2015) at paragraph [42].

[34] A078/08.

[35] [2014] NZEnvC 55.

[36] By section 70 of the Resource Management Amendment Act 2013, which came into force in December 2013.

(a) The proposed plan should achieve integrated management of the effects of the use, development and protection of land and associated natural and physical resources of the district.[37]

(b) The decision maker does not start with any particular presumption as to the appropriate zone, rule, policy or objective.[38]

(c) No onus lies with a submitter to establish that the subject provisions should be deleted, nor is there a presumption that the provisions of a proposed plan are correct or appropriate. The proceedings are more in the nature of an inquiry into the merits in accordance with the statutory objectives and existing provisions of policy statements and plans;[39]

(d) The decision maker's task is to seek to obtain the optimum planning solution within the scope of the matters before it based on an evaluation of the totality of the evidence given at the hearing, without imposing a burden of proof on any party.[40]

(e) The provisions in all plans do not always fit neatly together and where that is the case consideration should be had through the filter of Part 2 of the Act.[41]

(f) Section 32 requires a value judgment as to what, on balance, is the 'most appropriate' when measured against the relevant objectives. 'Appropriate' means 'suitable'; there is no need to place any gloss upon that word by incorporating that is to be superior.[42]

(g) The words 'most appropriate" in section 32 allow ample room for the Council (or its officers) to report that it considers one approach 'appropriate' and for the decision maker to take an entirely different

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[37] Section 31(1)(a).
[38] *Eldamos Investments Limited v Gisborne District Council* W47/05, affirmed by the High Court in *Gisborne District Council v Eldamos Investments Ltd*, CIV-2005-548-1241, Harrison J, High Court, Gisborne, 26/10/2005. See also *Sloan and Ors v Christchurch City Council* C3/2008; *Briggs v Christchurch City Council* C45/08, and *Land Equity Group v Napier City Council* W25/08.
[39] *Hibbit v Auckland City Council* 39/96, [1996] NZRMA 529 at 533.
[40] *Eldamos* paragraph [129];
[41] Ibid, paragraph [30]. This is not inconsistent with *King Salmon*.
[42] *Rational Transport Society Inc v NZTA* [2012] NZRMW 298 (HC) at [45].

view, on the basis of the accepted evidence and other information it has received.[43]

(h) Section 32 is there primarily to ensure that any restrictions on the complete freedom to develop are justified rather than the converse. To put it more succinctly, it is the 'noes' in the plan which must be justified, not the 'ayes'.[44]

61. More generally, the Supreme Court's decision in *King Salmon*[45] reinforces the following general principles in relation to the preparation and change of district plans:

(a) The hierarchy of planning documents required under the RMA and the importance of the higher level documents in directing those that must follow them;

(b) That planning documents are intentional documents and mean what they say;

(c) That language is important, and wording (and differences in wording) does matter;

(d) The need to be precise and careful with words, to create certainty of meaning;

(e) That policies, even in higher level documents, can be strong and directive, and then need to be implemented as such;

(f) That reconciling the potential for conflicts between different provisions of a planning document is important.

62. In respect of Part 2 of the Act, the *King Salmon* case has clarified:

(a) While environmental protection is a core element of sustainable management, no one factor of the '*use development and protection'*

[43] See the Independent Hearings Panel's decision on the Strategic Directions Chapter of Proposed Christchurch Replacement Plan (dated 26 February 2015) at paragraph [67].
[44] *Hodge v CCC* C1A/96, at page 22.
[45] *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38.

of natural and physical resources in section 5 creates a general veto;

(b) While environmental bottom lines may be set to protect particular environments from adverse effects, that will depend on a case by case assessment as to what achieves the sustainable management purpose of the Act;

(c) Sections 6, 7 and 8 'supplement' section 5 by further elaborating on particular obligations on those administering the Act;

(d) 'Inappropriateness' in sections 6(a) and (b) should be assessed by reference to what it is that is sought to be protected or preserved.

63. The more particular implications of the *King Salmon* case for district plan formulation include:

(a) More directive objectives and polices carry greater weight than those expressed in less direct terms;

(b) Directive objectives and policies to avoid adverse effects should usually be accompanied by restrictive activity status, such as non-complying or prohibited, (although minor or transitory effects may be permissible);

(c) When considering higher order documents (such as an RPS) do not refer to Part 2 or undertake a 'balancing' or 'in the round' interpretation of its provisions unless the policy statement does not 'cover the field' in relation to the issues being addressed, or its wording is uncertain or conflicting. Put another way, to the extent the policies of a higher order document (e.g. an RPS) are directive they must be given effect to by a district plan, unless there is a conflict in the higher order document, and only then can the decision maker refer to Part 2.

64. Applying the approach in sub-paragraph (c) above presently, the starting point when considering the appropriateness of the Proposed Plan's provisions is the higher order statutory documents (e.g. the RPS) it must implement. Part 2 must be considered only if these higher order

documents contain internal conflicts, or do not cover the field in terms of resource management issues the Proposed Plan must address.

65. Acknowledging that the Operative Otago Regional Policy Statement uses more general, as opposed to directive wording, and addresses resource management issues for the Region at a fairly high level, *King Salmon* makes clear that a careful consideration of its provisions is nonetheless required, which includes the provisions pertaining to infrastructure, as discussed by Mr Kyle. These provisions must be implemented by the Proposed Plan. This is discussed further shortly.

Application of Legal Principles to QAC's Submissions

Chapter 3 - Designated Airports as Regionally Significant Infrastructure

66. The Strategic Directions chapter of the Proposed Plan introduces goals, objectives and policies with the purpose of setting an appropriate resource management direction for the District.[46] It '*sets the scene*' for the whole Proposed Plan and seeks to provide a high level policy framework that responds to all the major resource management issues of the District[47]. It is intended to sit over Chapters 4 and 6, and over the Proposed Plan as a whole,[48] and to provide the strategic basis for subsequent chapters and rules.[49] It is intended to distil the key resource management issues for the District, and provide a strong policy direction as to how those issues should be managed.[50] Its objectives and policies will be utilised in assessing resource consent applications.[51]

67. QAC's submission on this chapter seeks to ensure that the Proposed Plan adequately recognisees and provides for regionally significant infrastructure, including airports, at this fundamental level.

68. QAC has sought a suite of policies to support Proposed Objective 3.2.1.5, noting the Proposed Plan contained no supporting policies for this objective when notified. QAC has also sought the inclusion of a new goal, objective and policies that recognise, *inter alia*, that the functional or operational

[46] Section 32 Evaluation report, Strategic Direction, page 3.
[47] Section 42A Officer's Report, Chapter 3 and 4, 19 February 2015, paragraph 1.1
[48] Ibid, para 8.4.
[49] Ibid, para 8.5.
[50] Ibid, para 8.6.
[51] Ibid.

requirements of regionally significant infrastructure can necessitate a particular location, and where it is within an ONL or ONF, the impacts of the infrastructure on that landscape are to be mitigated. Ms O'Sullivan's evidence discusses QAC's proposed approach in more detail.

69. QAC's submission is supported by:

(a) Section 7(b) of the Act which requires particular regard to be had to the efficient use and development of natural and physical resources. Airport infrastructure is an existing physical resource.

(b) The Operative and Proposed Regional Policy Statements (**RPS**) for Otago which provide specific policy recognition of infrastructure and acknowledge its importance in providing for the social, economic and cultural wellbeing of people and communities. The Proposed Plan must respectively implement and have regard to these policy statements, not only generally but in terms of their specific objectives and policies. Mr Kyle outlines these provisions in more detail.

70. As stated by Ms O'Sullivan, it is of utmost importance that the policy framework adopted in Chapter 3 is robust, sound, and properly addresses the key resource management issues of the District, of which provision for infrastructure is one, given it provides the strategic basis for the subsequent (lower order) chapters and rules.

71. Although acknowledging[52] there is merit in QAC's and similar submissions, the Reporting Officer's stated view is that rather than provide exceptions at the strategic level (i.e. in Chapter 3) any exceptions should instead be addressed in the lower order chapters and/or provisions, or on a case by case basis through resource consent applications.

72. This reasoning is flawed for the following reasons:

(a) It overlooks the fact that the strategic directions chapter '*sets the scene*' for the entire Proposed Plan and sits over Chapters 4 and 6, and the remainder of the Plan as a whole, and provides the strategic basis for subsequent chapters and rules;

[52] At paragraph 12.109

(b) It overlooks the fact that the chapter is intended to distil the key resource management issues for the District, and provide a strong policy direction as to how those issues should be managed.

(c) It overlooks the fact that its objectives and policies will be utilised in assessing resource consent applications.

(d) It elevates the 'protection' of landscapes so as to create a general 'veto' on development, even when development (i.e. of regionally significant infrastructure) may be enabling of economic wellbeing and health and safety, and absent any proper consideration of the suggested alternative approach.

73. Accordingly, if exceptions that enable regionally significant infrastructure to locate within specified landscapes are not provided in Chapter 3, it will be very difficult, if not impossible to justify them in the 'lower order' chapters, when those chapters are required to 'fall into line' with Chapter 3.

74. Similarly, it will be very difficult, if not impossible to obtain resource consent for such infrastructure when the policy direction of the strategic chapter is very clearly and quite absolutely directed at protecting specified landscapes (in particular ONFs and ONLs) from *all* development (refer Objective 3.2.5.1).

75. The Officer's recommended approach is therefore disenabling, and does not recognise and provide for regionally significant infrastructure as directed by Objective 3.2.1.5 (as recommended to be amended in the section 42A Report), the Operative and Proposed Regional Policy Statements, and section 7(b) of the Act.

Chapter 4 - Incorporation of PC35 Provisions in Proposed Plan

76. As noted at the outset of these legal submissions, QAC's submissions in respect of the incorporation of the PC35 Provisions in the Proposed Plan will be addressed in some detail, even though it involves traversing provisions that are not the subject of this hearing. It is necessary to do so in order to properly understand and consider QAC's submission on Chapter 4.

QAC's Submission

77. QAC's submission seeks the PC35 provisions be incorporated into the Proposed Plan, including important higher order objectives and policies in Chapter 4, without substantive amendment.

78. The Proposed Plan as notified included many but not all of the PC35 provisions. Of those provisions that have been included, some have been altered substantively, with significant, but possibly unintended consequences for the overall land use management regime introduced by the Plan Change. In recommending that QAC's submission on Chapter 4 in respect of the PC35 provisions be rejected, it appears the Reporting Officer does not properly appreciate or understand this.

79. Given the complex and technical nature of the provisions, and the complicated litigation history of PC35, it may be of assistance to the Panel to first understand the background to the Plan Change, before considering QAC's submission on Chapter 4.

Background

80. PC35 was initiated by QAC and adopted by QLDC in or around 2008. In conjunction with a related notice of requirement (**NOR**) to alter the Aerodrome Purposes designation (Designation 2)[53], PC35 sought to rationalise and update the noise management regime that applies to the Airport, while providing for the predicted ongoing growth in aircraft operations and protecting it (to the extent possible giving existing development around the Airport) from reverse sensitivity effects. (The concept of reverse sensitivity is summarised in **Appendix B**).

81. Accordingly, Plan Change 35 updated the Airport's noise boundaries (Air Noise Boundary (**ANB**) and Outer Control Boundary (**OCB**)) to provide for predicted growth in aircraft operations to 2037, and made numerous changes across a number of zones and to other parts of the District Plan,

[53] In conjunction with PC35 QAC gave notice of a requirement to modify Designation 2 to update its aircraft noise monitoring obligations and introduce new obligations relating to the management and mitigation of aircraft and engine testing noise, including a requirement that QAC prepare a Noise Management Plan and establish a Noise Liaison Committee. Additionally, the NOR required QAC to operate within the noise limits set by the updated (PC35) noise boundaries. The NOR was confirmed by the Environment Court in Decision [2013] NZEnvC 28. The obligations it contains have and continue to be given effect to (as explained QAC's Acting CEO, Mark Edghill's evidence), and QAC seeks the obligations be rolled over in the Proposed Plan.

including changes to various objectives, policies, rules, statements, implementation methods, definitions and planning maps, relating to land use within the updated noise boundaries likely to be affected by increased aircraft noise. Mr Kyle's evidence explains the rationale and effect of PC35 in further detail.

82. PC35 was largely confirmed by QLDC, but was the subject of a number of Environment Court appeals. The appeals were largely resolved by agreement in early 2012, which was jointly presented to the Court during the course of two hearings and the filing of subsequent memoranda.

83. During the course of the Court proceedings the provisions were, at the Court's direction, significantly redrafted by the parties to correct errors, ambiguities and inconsistencies contained in QLDC's decision. A final set of provisions, giving effect to the Court's directions, was filed jointly by the parties in May 2013.

84. The Court issued three interim decisions that together, confirmed the Plan Change, as agreed by the parties: *Air New Zealand Ltd v Queenstown Lakes District Council* [2013] NZEnvC 28, [2012] NZEnvC 195, [2013] NZEnvC 93.

85. The Court's decisions were framed as 'interim' because they did not make a final decision on the planning map (District Plan Map 31a) which is to show the location of the updated ANB and OCB, or more particularly, final a decision on the location of these boundaries in the vicinity of Lot 6 (i.e. within the Remarkables Park Zone).

86. As explained earlier in these submissions, part of Lot 6 is subject to an NOR by QAC for Aerodrome Purposes, which is opposed the Lot 6 landowner, RPL, and is currently before the Environment Court, unresolved.

87. The outcome of the Lot 6 NOR proceeding will affect the location of the updated (i.e. PC35) ANB and, to a much lesser extent, the OCB.[54] The extent of the effect is known to the Court and to the parties to the PC35 proceedings. That is because during the PC35 proceedings the parties

[54] Because the Airport's noise 'footprint' will alter depending on where GA and helicopter activities are located. It will only alter in the vicinity of Lot 6 however.

jointly presented the Court with two different versions of Planning Map 31a – one that provides for the designation of part of Lot 6 (i.e. assumes the Lot 6 NOR is confirmed) and one that does not. Copies of these two planning maps are **attached** to these submissions.

88. The 'With Lot 6' map shows the location of the updated (PC35) noise boundaries if the Lot 6 NOR is confirmed. It is very similar to or the same as QLDC's first instance decision (**Council Decision Version**) on the location of the boundaries as shown in that planning map.

89. The 'Without Lot 6' map shows the location of the updated noise boundaries if the Lot 6 NOR is not confirmed. A comparison of the two maps shows the boundaries only differ in the vicinity of Lot 6.

90. Excepting the decision on Planning Map 31a, the PC35 appeals have been resolved. There is no opportunity for any further debate as to the content of the District Plan provisions and the Court is *functus officio*[55] in respect of them.

91. Specifically, and for the avoidance of doubt, the provisions filed jointly by the parties in May 2013 (at the direction of the Court – the **Court Confirmed Provisions**) are the final provisions which give effect to the Court's interim decisions.

92. Accordingly, other than Planning Map 31a, which is addressed further shortly, these provisions (the Court Confirmed Provisions) can be treated as operative under section 86F.

93. It is understood that this interpretation is not at issue, noting that many (but not all) of the Court Confirmed PC35 Provisions are included in the Proposed Plan. A full set of the Court Confirmed PC35 Provisions is attached to Mr Kyle's evidence.

Proposed Plan

94. The Proposed Plan rewrites in their entirety a number of chapters of the Operative Plan which are addressed by PC35.

[55] That is, the appeals can not be reopened and the Court can not revisit its Decision.

95. The proposed new chapters are very different in form and structure to the Operative chapters they replace, and incorporating the PC35 Court Confirmed Provisions into these new chapters is not a straightforward exercise.

96. As noted, the Proposed Plan includes many, but not all the Court Confirmed PC35 Provisions. QLDC appears to have made substantive decisions about which of provisions to include and which to omit, presumably to achieve a better 'fit' with the new structure and format of the Proposed Plan. QAC does not agree with all of these decisions.

97. For example, important PC35 higher order objectives and policies[56] are omitted from Chapter 4 of the Proposed Plan, meaning there may be insufficient policy justification or foundation, in section 32 terms, for some of the important rules and other lower order provisions.

98. Some of the important rules, the purpose of which is to protect the Airport from reverse sensitivity effects, are excluded entirely, as are a number of important definitions, rendering some of the rules uncertain and/or ambiguous.

99. The errors, ambiguities and omissions in the Proposed Plan in respect of the incorporation of the PC35 Court Confirmed Provisions, and the changes sought by QAC to address those are detailed in Ms O'Sullivan's evidence.

100. In summary, QAC seeks the PC35 Court Confirmed Provisions be included in the Proposed Plan in their entirety and without substantive amendment.[57] QAC considers this is appropriate because:

(a) The PC35 Court Confirmed Provisions have been the subject of considerable and detailed scrutiny. They have been through two public hearing processes (Council and Environment Court).

(b) They have been agreed by the most affected parties (i.e. those original submitters who chose to be joined to the Environment Court proceedings as section 274 parties).

[56] Contained in the District Wide Chapter of the Operative Plan, as amended by PC35.
[57] Other than very minor amendments as may be appropriate to better fit with the style and form of the Proposed Plan.

(c) The wording of each and every provision has been carefully and thoroughly considered by the Court and evaluated under section 32, and the objective, policy and rules package has been considered and evaluated as an integrated whole.

(d) This detailed scrutiny has been undertaken recently; the Environment Court's final (interim) decision was only issued in May 2013.[58]

(e) Given (c) and (d) above it would be inefficient and may lead to unintended consequences and inconsistencies if the Court Confirmed Provisions are substantively altered or otherwise 'tinkered' with in the Proposed Plan.

(f) The Court Confirmed Provisions are the most appropriate to ensure Queenstown Airport is adequately protected against reverse sensitivity effects, and in terms of section 32.

(g) QAC has commenced noise mitigation works on those properties likely to be affected by increased aircraft noise,[59] as required by Designation 2,[60] in reliance on PC35 and the updated noise boundaries being confirmed. It is therefore only fair and reasonable that these provisions be included in the Proposed Plan.

PC35 Provisions Operative for Less Than 10 Years

101. The Proposed Plan generally excludes from review – so as not to alter - those provisions of the Operative Plan that became operative within the last 5 - 7 years, or where the provisions relate to a discrete topic or zone.[61] On this approach the PC35 provisions should have been excluded from the review.

102. It is acknowledged that QLDC only included the PC35 provisions in the Proposed Plan (albeit in a modified form) at QAC's request. QAC was concerned that if the provisions were excluded from Stage 1 of the Proposed Plan, the only way they could be incorporated into the Plan at a

[58] *Air New Zealand Ltd v Queenstown Lakes District Council* [2013] NZEnvC 28.
[59] Refer Mr Edghill's evidence.
[60] As modified by the NOR associated with PC35.
[61] Section 42A Report, Chapters 3 and 4 of the Proposed Plan, para 6.3.

later date would be by way of a variation, which would be a further public process. The provisions could not be excluded altogether given they relate to a large number of zones, including those addressed in Stage 1 of the review (for example, the Rural and Residential zones).

103. Accordingly QAC requested that QLDC include the PC35 provisions in Stage 1 of the Proposed Plan without amendment. However, as previously explained, many, but not all the PC35 provisions have been included, and some have been substantively amended.

104. That amendments have been made to the provisions (notwithstanding QAC's request that they be included unaltered) is inconsistent with the general approach to exclude from the Proposed Plan - so as not to alter - those chapters or provisions that have become operative in the last 5 – 7 years. While for the reasons just stated, the PC35 provisions could not be excluded entirely, it would be generally consistent with the approach taken to the other recently operative provisions, to refrain from substantively altering them.

105. To illustrate why the provisions should not be substantively altered, consider Proposed Policy 4.2.4.3. That policy seeks to:

"*Protect the Queenstown airport from reverse sensitivity effects, and maintain residential amenity, through managing the effects of aircraft noise within critical listening environments of new or altered buildings within the Air Noise Boundary or Outer Control Boundary*."

106. The Proposed Policy is not a PC35 provision, but is rather a rewrite and conflation of ten PC35 Court Confirmed District Wide objectives and policies (refer Ms O'Sullivan's evidence, specifically Appendix B).

107. In rewriting the policy, the purpose and intent of the PC35 provisions is misconstrued. The purpose of the ten PC35 objectives and policies is varied but primarily includes protecting the Airport from reverse sensitivity effects, and providing a policy foundation and justification for lower order rules and other provisions that prohibit noise sensitive activities in certain parts of certain zones, and require noise insulation and/or mechanical ventilation in others, both of which are integral to the PC35 land use management regime. Proposed Policy 4.2.4.3 does not provide a policy

justification of either of these land management approaches however. In fact, it provides no protection for the Airport at all.

108. Instead, the first part of Policy 4.2.4.3, which contains its intention, being to "*protect Queenstown Airport from reverse sensitivity effects*" is negated by the second part which seeks to "*manage the effects of aircraft noise*". When read literally, the policy requires QAC to manage its own effects in order to protect itself from reverse sensitivity. That is nonsensical.

109. The fundamental principle of reverse sensitivity is that the effects of new sensitive activities (in this case ASAN/residential activities) on lawfully established "emitters" (in this case the Airport).[62] The current wording of the policy requires QAC to manage its own emitted effects in order to avoid a reverse sensitivity effect, and in so doing it perpetuates a reverse sensitivity (to some extent)[63]. It certainly does not protect the Airport from new sensitive land uses, or provide a policy foundation for lower order provisions that will ensure that protection. Ms O'Sullivan addresses this in further detail.

110. Suffice to say, given the complex and technical nature of the PC35 Provisions, and reiterating that they have recently been thoroughly tested and assessed by the Court, it is appropriate they be included in the Proposed Plan without substantive amendment.

111. Finally, the PC35 provisions QAC seeks be included in Chapter 4 of the Proposed Plan include provisions that address zones that are not included in Stage 1 of the Proposed Plan (in particular the Industrial, Remarkables Park, and Frankton Flats (A) Zones). As noted, these provisions have been previously agreed by the parties to the PC35 proceedings, which included Remakables Parks Limited and the Frankton Flats (A) zone developer. QAC seeks these provisions be included in Chapter 4 now as it is difficult to conceive of how they will otherwise be included at a later date. Notably, no person has submitted in opposition to this approach.

[62] Refer Appendix B.
[63] Acknowledging that an 'effect' would only arise if complaints lead to the need for QAC to curtail its activities, which would not eventuate in this case.

Inclusion of PC35 Noise Boundaries in Proposed Plan – Planning Map 31a

112. The notified Proposed Plan includes the 'Without Lot 6' PC35 noise boundaries (ANB and OCB), which is of significant concern to QAC for reasons to be explained at the later hearing addressing the Planning Maps. Through its submission QAC's seeks the 'With Lot 6' noise boundaries be included in the Proposed Plan instead.

113. The final location of the noise boundaries is not critical to the Panel's analysis of QAC's submissions on Chapter 4 however, as whatever the outcome of the Lot 6 NOR, the Operative and Proposed Plan will contain noise boundaries; i.e. the issue is where they are to be located, not whether they should be contained in the Proposed Plan at all.

114. The appropriate location of the noise boundaries will be addressed in detail at later hearings.[64]

Chapter 6 – Recognition of the Functional and Locational Constraints of Infrastructure

115. QAC has sought the inclusion of four new provisions in Chapter 6 which recognise there are sometimes operational, technical or safety related requirements for infrastructure to be located within an ONL, ONF or rural landscape. This relief correspondends with the relief sought in relation to Chapter 3, with the changes sought to that chapter intended to provide the strategic foundation for the changes to Chapter 6. QAC's submission is supported by other infrastructure providers.

116. The section 42A report writer recommends QAC submission be accepted in part, in that he recommends a new policy be included in the Chapter: Policy 6.3.1.12 which requires regionally significant infrastructure to be located so as to '*avoid degradation of the landscape, while acknowledging locational constraints*'.[65]

117. In recommending this new policy the Officer acknowledges the importance of the contribution that regionally significant infrastructure makes to the social and economic wellbeing and the health and safety of the District,

[64] In particular, the hearing of submissions on the Planning Maps.
[65] Refer paras 9.24 – 9.30 of the S42A report for Chapter 6.

and its locational constraints.[66] Notwithstanding, there are several significant flaws with the Officer's recommended new policy:

(a) The meaning of the word '*degrade*' in the policy is uncertain and unclear. The Officer refers to its ordinary meaning, namely to '*lower the character or quality of*', however this too is of little assistance. Conceivably any development proposal could be considered to lower the character or quality of the landscape, particularly infrastructure development where the options for sensitive design and mitigation may be constrained by functional, technical and/or safety requirements.

(b) The word *'avoid'* (i.e. 'avoid degradation') means prohibit or not allow.[67] When read together with 'degradation' the first part of the policy is very absolute: any lowering of the character or quality of the landscape is not allowed.

(c) The intention of the words '*while acknowledging locational constraints'* is assumed to be to provide for some exceptions to absolute avoidance, as is potentially otherwise required by the first part of the policy. However these words are vague and their application and effect is unclear and uncertain. To what end and extent are locational constraints to be acknowledged, particularly when the first part of the policy is stated in such absolute terms?

(d) The policy conflicts with Chapter 3, Objective 3.2.1.5 (as recommended to be amended by the Reporting Officer in response to QAC's submission on that Chapter). Objective 3.2.1.5 (as amended) seeks to "*Maintain and promote the efficient and effective operation, maintenance, development and upgrading of the District's regionally significant infrastructure, including designated airports…*". In light of the *King Salmon* case, the use of the word 'avoid' in proposed new policy 6.3.1.12 necessitates a corresponding activity status of prohibited or non-complying, neither of which would be enabling of infrastructure, as directed by Objective 3.2.1.5.

[66] Ibid, para 9.28.
[67] *King Salmon*.

118. In generally addressing[68] various recommended amendments to the wording of provisions, the Officer discusses the use of RMA language and states that in the Landscape Chapter RMA language has been used sparingly and that "*the RMA and its 'tests' are the legislative framework that need to be given local expression in a way that is appropriate to local issues*"[69].

119. RMA language is understood by a wide range of professionals and members of the public, and has been tested and interpreted by the Courts. Introducing new and vague terms, (such as 'degrade') will inevitably lead to uncertainty as to meaning and application, and ultimately to litigation to clarify that.

120. In light of the Supreme Court's decision in *King Salmon*, the words of District Plans, particularly directive high level objectives and policies, must be carefully chosen as they mean what they say. This is particularly important for the Landscape Chapter, given the typically subjective nature of landscape assessments.

121. Accordingly, the Officer's recommended new Policy 3.3.1.12 is not appropriate because:

(a) it does not achieve the strategic objectives of the Proposed Plan, in particular proposed Objective 3.2.1.5;

(b) it is not efficient or effective, noting the language used in the policy is vague and uncertain, and the two component parts of the parts of the policy conflict; and

(c) it comes at significant cost, in that it will necessitate (at best) non-complying resource consent applications for infrastructure seeking to locate in landscapes. Applicants may find it difficult to obtain consent given the absolute language used in the policy against which their applications will be assessed.

122. Conversely, the amendments sought in QAC's submission, and addressed in Ms O'Sullivan's evidence, are appropriate as they recognise and provide

[68] Section 42A Report, paragraphs 9.31 – 9.37
[69] Ibid,paragraph 9.34

for the need for regionally significant infrastructure to sometimes locate in specified landscapes, but require it to be located so as to minimise adverse effects on the quality of the landscape as far as practicable.

Proposed Policy 6.3.1.8

123. As notified, Proposed Policy 6.3.1.8 seeks to "*ensure that the location and direction of lights does not cause glare to other properties, roads, and public places or the night sky.*"

124. Having considered submissions on the policy, the Reporting Officer has recommended the following changes, purportedly in response to submissions 761 and 806.

"Ensure that the location and direction of lights ~~does not cause glare to other properties, roads, and public places~~ ~~or~~ avoids degradation of the night sky, landscape character and sense of remoteness where it is an important part of that character.

125. The recommended amendments significantly and substantively alter the focus, purpose, intent and application of the policy. They introduce a focus on landscape character and remoteness, and degradation of the night sky, where previously none existed. They remove the protection from glare afforded to other properties, roads and public places.

126. QAC did not submit on Policy 6.3.1.8, but is concerned by the Officer's recommended amendments, particularly given their potentially broad application and effect. QAC would have submitted on the policy had it been notified in its amended form, and accordingly considers it is prejudiced by the amendments.

127. The legal principles relating to the scope of changes able to be made to a Proposed Plan, or more particularly, the scope of decisions able to be made on submissions, are well established and settled. The scope of changes to and any decision able to be made on a Proposed Plan is founded in the Proposed Plan as notified, submissions received, and anything in between.[70]

[70] See for example *Countdown Properties (Northland) Ltd v Dunedin CC* 1994] NZRMA 145

128. For Proposed Policy 6.3.1.8, the Reporting Officer identifies and relies on submissions 761 and 806 for the recommended amendments. These submissions are stated in the following terms:

> **Submitter 761**
> Position on Policy 6.3.1.8 :Oppose
> Reasons: *"Whilst the policy is appropriate to manage the effects of glare, the policy is not intended to manage effects on landscape values, and therefore would more appropriately sit elsewhere in the plan."*
> Relief: *Delete Policy*
>
> **Submitter 806**
> Position on Policy 6.3.1.8: Oppose
> Reasons: "*Policies 6.3.1.8 and 6.3.1.8 are accepted. However they are fairly specific and would be better located within the rural zone itself."*
> Relief: *Delete policies 6.3.1.8 and 6.3.1.9 and provide for them in the rural chapter.*

129. Neither submission sought changes to the text of the policy, only that it be relocated to the Rural Chapter. Accordingly, the scope of decisions open to the Panel are: retain the policy as notified, or relocate it to the rural chapter, or anything (if anything) in between.

130. The substantive changes recommended by the Council Officer to the text of Policy 6.3.1.8 (renumbered 6.3.1.7) do not fall anywhere on or within this 'spectrum'. They are, to coin a judicial phrase '*out of left field*'. They are not founded on the policy as notified, or any submission received on it. They are therefore beyond the scope of decisions available to the Panel.

131. For the avoidance of doubt, given what was notified and the submissions received, there is no scope for the Panel to alter the text of Policy 6.3.1.8.

Conclusion

132. Queenstown and Wanaka Airports are regionally significant infrastructure and make an important and significant contribution to the District's social and economic wellbeing, and its health and safety.

133. Queenstown Airport in particular facilitates a significant proportion of tourist spending in the District, is a significant employer, and a significant facilitator of people and freight to and through the District. In addition, Queenstown Airport is the gateway to the Lakes District and the Lower South Island.

134. Given the significant contribution designated airports make to the District, including to its economic wellbeing, and its health and safety, it is

imperative their ongoing operation, growth and development is appropriately provided for in the higher order strategic provisions of the Proposed Plan, and for Queenstown Airport, that it is adequately protected from potential reverse sensitivity effects.

135. The Strategic Directions, Urban Development and Landscape Chapters are of fundamental importance in providing the policy framework for the subsequent 'lower order' chapters of the Proposed Plan. It is therefore necessary and wholly appropriate for these strategic chapters to recognise and provide for, and in some instances protect, significant infrastructure, particularly where it is of regional importance, and provide sufficient foundation, in terms of section 32, for the lower order policies and methods that will follow.

136. The amendments sought by QAC to these chapters are the most appropriately way of achieving this. They are consistent with and give effect to the higher order statutory documents (in particular the Operative and Proposed RPS) and achieve Part 2 of the Act. They have been thoroughly assessed, and in the case of the PC35 provisions, rigorously scrutinised and tested, and found to be appropriate in terms of section 32.

137. Accordingly, QAC's submissions on these chapters should be accepted.

List of witnesses

138. QAC will call the following witnesses:

(a) Mark Edghill - Acting CEO of QAC;

(b) John Kyle – Planner. Mr Kyle will address QAC's submission at strategic level, including providing an overview of the background to an rationale for PC35;

(c) Kirsty O'Sullivan - Planner. Ms O'Sullivan will address the detailed relief sought in QAC's submission.

R Wolt
Counsel for Queenstown Airport Corporation Limited

APPENDIX A

The Long Bay/Colonial Vineyard test incorporating the amendments to Section 32 made by Section 70 of the Resource Management Amendment Act 2013

General Requirements

- A district plan should be designed in accordance with[71], and assist the territorial authority to carry out – its functions[72] so as to achieve, the purpose of the Act.[73]

- When preparing its district plan the territorial authority must give effect to a national policy statement, New Zealand coastal policy statement or regional policy statement.[74]

- When preparing its district plan the territorial authority shall have regard to any proposed regional policy statement.[75]

- In relation to regional plans:

    a. the district plan must not be inconsistent with an operative regional plan for any matter specified in s 30(1) or a water conservation order[76]; and

    b. shall have regard to any proposed regional plan on any matter of regional significance etc.[77]

- When preparing its district plan the territorial authority:

    a. shall have regard to any management plans and strategies under any other Acts, and to any relevant entry on the New Zealand Heritage List and to various fisheries regulations (to the extent that they have a

[71] RMA s 74(1).
[72] As described in s 31 RMA.
[73] RMA ss 72 and 74(1)(b).
[74] RMA s 75(3)(a)-(c).
[75] RMA s 74(2).
[76] RMA s 75(4).
[77] RMA s 74(2)(a).

bearing on resource management issues in the region)[78], and to consistency with plans and proposed plans of adjacent authorities;[79]

b. must take into account any relevant planning document recognised by an iwi authority;[80] and

c. must not have regard to trade competition.[81]

- The district plan must be prepared in accordance with any regulation.[82]
- A district plan must[83] also state its objectives, policies and the rules (if any) and may[84] state other matters.
- A territorial authority has obligations to prepare an evaluation report in accordance with section 32 and have particular regard to that report.[85]
- A territorial also has obligations to prepare a further evaluation report under section 32AA where changes are made to the proposal since the section 32 report was completed.[86]

Objectives

- The objectives in a district plan are to be evaluated by the extent to which they are the most appropriate way to achieve the purpose of the RMA.[87]

Provisions[88]

- The policies are to implement the objectives, and the rules (if any) are to implement the policies.[89]

[78] RMA s 74(2)(b).
[79] RMA s 74(2)(b).
[80] RMA s 74(2)(b).
[81] RMA s 74(3) .
[82] RMA s 74(1)(f).
[83] RMA s 75(1).
[84] RMA s 75(2).
[85] RMA s 74(1)(d) and (e).
[86] RMA s 32AA
[87] RMA s 32(1)(a).
[88] Defined in s32(6), for a proposed plan or change as the policies, rules or other methods that implement of give effect to, the objectives of the proposed plan or change.
[89] RMA s75(1).

- Each provision is to be examined, as to whether it is the most appropriate method for achieving the objectives of the district plan, by:

    a. identifying other reasonably practicable options for achieving the objectives;[90]

    b. assessing the efficiency and effectiveness of the provisions in achieving the objectives, including:[91]

        - identifying and assessing the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and employment that are anticipated to be provided or reduced;[92] and

        - quantifying these benefits and costs where practicable;[93] and

        - assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.[94]

Rules

- In making a rule the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.[95]

Other Statutes

- The territorial authority may be required to comply with other statutes.

[90] RMA s32(1)(b)(i).
[91] RMA s32(1)(b)(ii).
[92] RMA s32(2)(a).
[93] RMA s32(2)(b).
[94] RMA s32(2)(c).
[95] RMA s76(3).

APPENDIX B

Reverse Sensitivity

- The concept of reverse sensitivity is used to refer to the effects of new sensitive activities (such as residential activity) on other existing legitimate (i.e. lawful) activities in their vicinity, particularly if it becomes necessary to restrain those existing activities in order to accommodate the new sensitive activity.[96]

- The Court has recognised reverse sensitivity as an "*effect*" for the purposes of the Act, and as such there is a duty, subject to other statutory directions, to avoid, remedy or mitigate it, so as to achieve the Act's purpose of sustainable management. [97]

- The Court has adopted the following of definition of the term:[98]

  "Reverse sensitivity is 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."

[96] See for example *Auckland Regional Council v Auckland City Council* A10/97.
[97] See for example *Winstone Aggregates v Matamata-Piako DC* W55/2004. Also refer section 76(3) (District Rules) of the Act which provides that in making a rule, a territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.
[98] See for example, *Gateway Funeral Services v Whakatane District Council* W5/08, and *Winstone Aggregates v Matamata-Piako DC* W55/2004, referring to '*Reverse Sensitivity – the Common Law Giveth and the RMA Taketh Away'*; 1999 3 NZSEL 93.

Lake Hayes Estate

Glenda Drive

State highway 6

Shotover River

Remarkables Park Shopping Centre

Kawarau River

Lake Wakatipu

Map Legend

- Cadastral
- Runways
- ANB (Ldn 65)
- OCB (Ldn 55)

MARSHALL DAY Acoustics

January 2012 Figure 0 - Decision Version Boundaries with 'Lot 6'

Client: Queenstown Airport Corporation Ltd
Path: J:\JOBS\1980_93\92166B Qtn\2010 PC35\Environment Court\Env Crt Figures
Filename: 1201 Jan2012 Figure 0 R01.SGS INM Case: R20abc
Prepared by: SJP Date: 25/01/12

Scale 1:22500

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Lake Hayes Estate

Glenda Drive

State highway 6

Shotover River

Remarkables Park Shopping Centre

Kawarau River

Lake Wakatipu

Map Legend

- Cadastral
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MARSHALL DAY Acoustics

January 2012 Figure 1a - Decision Version Boundaries without 'Lot 6'

Client: Queenstown Airport Corporation Ltd
Path: J:\JOBS\1980_93\92166B Qtn\2010 PC35\Environment Court\Env Crt Figures
Filename: 1201 Jan2012 Figure 1a R01.SGS INM Case: R20ab
Prepared by: SJP Date: 25/01/12

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