

**Before the Queenstown Lakes District Council**

In the Matter of                      the Resource Management Act 1991

And

In the Matter of                      the Queenstown Lakes Proposed District Plan

**Hearing Stream 13 (Queenstown Mapping)**

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

Dated: 26 July 2017

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## Introduction

1. These legal submissions address Queenstown Airport Corporation Limited's (**QAC**) further submission on the Proposed District Plan (**PDP**) in respect of numerous rezoning requests relating to land around Queenstown Airport.
2. They do not address Remarkables Park Limited's (**RPL**) submission in opposition to the extent of the notified Airport Mixed Use Zone (**AMUZ**), as it has been agreed between RPL, QAC and the Queenstown Lakes District Council (**QLDC** or **Council**) and accepted by the Hearings Panel,<sup>1</sup> that this submission can be decided on the basis of the evidence and argument presented at the hearing of submissions on the AMUZ in November and December last year (Hearing Stream 8).
3. QAC's submission in respect of planning maps 31a, 33 and 37, in so far as they depict the Air Noise Boundary (**ANB**) and Outer Control Boundary (**OCB**) for Queenstown Airport will be briefly addressed, having regard to the Panel's minute dated 12 June 2017, and the Council's memorandum in response dated 30 June 2017.

## Previous Legal Submissions Adopted for Present Hearing

4. Comprehensive legal submissions have been presented for QAC at previous PDP hearings, and are adopted for the purposes of this hearing, to the extent they are relevant.
5. Particular attention is drawn to the following parts of QAC's 29 February 2016 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;

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<sup>1</sup> Refer minute of the Hearing Panel dated 19 May 2017.

- (d) Paragraphs 31 – 38, where QAC’s recent growth and projects are discussed (although note that these are updated in Ms Tregidga’s evidence for this hearing<sup>2</sup>);
- (e) Paragraphs 45 – 63, where the statutory framework within which submissions on the PDP must be considered, and decisions made, is detailed; and
- (f) 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. This issue will also be traversed in some detail later in these submissions.

### **Evidence**

- 6. The following evidence has been pre-lodged for QAC:<sup>3</sup>
  - (a) Rachel Tregidga, General Manager of Property for QAC;<sup>4</sup>
  - (b) Chris Day, Acoustic Engineer;<sup>5</sup>
  - (c) John Kyle, Planner.<sup>6</sup>
- 7. The evidence will be addressed as relevant throughout these submissions.
- 8. Notably, other than Mr Day’s evidence, no expert acoustic evidence has been lodged by any submitter addressing the issues raised in QAC’s submission, including aircraft noise in particular.
- 9. Dr Chiles has given evidence for the Council<sup>7</sup> in respect of the NZone Skydiving operation at Jacks Point (Submitter 715), however it does not expressly address QAC’s submission or the issues it raises, and nor has he prepared any rebuttal evidence in response to Mr Day’s evidence.

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<sup>2</sup> Dated 9 June 2017.

<sup>3</sup> All evidence in chief for QAC (**EIC**) is dated 9 June, and all rebuttal evidence is dated 7 July 2017.

<sup>4</sup> EIC only.

<sup>5</sup> EIC only.

<sup>6</sup> EIC and rebuttal evidence.

<sup>7</sup> Dated 24 May 2017

10. Dr Chiles' evidence in respect of submission 715 is generally consistent with the recommendations contained in NZS 6805 which is addressed in detail later in these submissions. His evidence is that it is preferable to avoid the establishment of noise sensitive activities, such as residential activity, near to existing airports<sup>8</sup>, but that houses could be built within areas exposed to noise levels of 55dB L<sub>dn</sub> if alternative equivalent locations are not available and provided they are subject to appropriate acoustic treatment controls<sup>9</sup>. He note that such controls do not address outdoor amenity however.<sup>10</sup>
11. Dr Chiles' evidence is generally consistent with Mr Day's evidence, in so far as it addresses, in general terms, the aircraft noise issue.
12. Accordingly, notwithstanding Dr Chiles' evidence, Mr Day's evidence is largely uncontroverted and should be given considerable weight by the Panel when considering and making decisions on the issues raised in the submissions that are the subject of this hearing stream.

## **QAC**

13. QAC is the Airport Authority responsible for operating Queenstown Airport.
14. 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 communities. The Airport is a fundamental part of the social and economic wellbeing of the District's community.
15. 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 and the fourth largest in New Zealand in terms of passenger numbers and revenue.
16. The Airport is one of Australasia's fastest growing airports and as the gateway to southern New Zealand, is a vital part of regional and national tourism industries. It provides an essential link for domestic and

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<sup>8</sup> Ibid, at paragraph 3.2.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid, at paragraph 3.3.

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

17. Queenstown Airport has been experiencing significant growth in aircraft operations over recent years, particularly in international and domestic passenger numbers, which have increased by 38% in the last three years alone.<sup>11</sup>
18. As stated in Ms Tregidga's evidence, for the 12 month period ending April 2017 the Airport recorded a total of 1.86 million passengers, an increase of 15% compared to the previous 12 months<sup>12</sup>. Since Ms Tregidga prepared her evidence, statistics for the 12 month period ending 30 June have become available, which indicate that passenger numbers reached 1.89 million over this period, up 15% compared to the previous 12 months.<sup>13</sup> This continues the trend of previous years' record breaking growth.
19. Significant growth has been sustained for a substantial number of years now and is expected to continue in the foreseeable future. Current demand forecasts predict that annual passenger numbers have the potential to increase from 1.8 million in 2017 to 3.2 million by 2025.<sup>14</sup>
20. The current annual economic benefit of the Airport to the region significant, with \$4.7 million in dividends paid to the local community (i.e. QLDC) in 2016.<sup>15</sup> Economic benefits to the region from Airport visitors' spending were estimated to be \$1.6 billion in 2015.
21. The Airport is a significant employer in the district, with currently over 600 staff working within the airport community.
22. QAC is currently undertaking master planning work for the Airport, which takes a 30 year planning horizon to 2045. QAC anticipates engaging with the community on draft masterplan options later this year. One of the

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<sup>11</sup> Rachel Tregidga's EIC, at paragraph 18.

<sup>12</sup> Ibid, paragraph 13.

<sup>13</sup> <http://www.queenstownairport.co.nz/assets/documents/ZQN-Passenger-Stats-June-2017.pdf>

<sup>14</sup> Ibid, paragraph 19.

<sup>15</sup> Rachel Tregidga's Evidence dated 18 November 2016, at paragraph 17.

important issues this work will consider is current and forecast growth in passenger numbers and aircraft operations, and how or to what extent this is to be accommodated at Queenstown Airport. QAC also will review its noise boundaries against predicted growth, and will progress changes to the noise planning framework, as may be required, in due course and in accordance with any relevant statutory processes.

### **QAC's Further Submission**

23. Of present relevance, QAC made a further submission on the PDP in which it, inter alia, opposed various rezoning requests that would enable activities sensitive to aircraft noise (**ASAN**)<sup>16</sup> in areas that are or are likely to be affected aircraft noise now or in the future.
24. QAC's further submission addresses land both within and beyond the Plan Change 35 (**PC35**) OCB. QAC's submission takes a long term view of growth at and around the Airport in this regard.
25. It is important to note that in opposing rezoning requests that would enable ASAN within these areas, QAC does not seek to restrict people from realising existing development potential under the Operative District Plan, or development potential under the notified PDP. Nor does it seek to "turn back the clock" and remove or limit existing development rights.
26. Rather, through its submission QAC seeks maintenance of the planning status quo, to the extent that ASAN are enabled within noise affected areas, so as to restrict the number of people exposed to the effects of aircraft noise now and in the future.
27. The reasons for its submission are twofold:
  - (a) To ensure that adverse amenity effects on persons working or residing in these areas are avoided; and
  - (b) To ensure that Queenstown Airport is protected against potential reverse sensitivity effects.
28. The reasons for QAC's further submission are addressed in detail shortly.

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<sup>16</sup> Including residential activities, visitor accommodation, community activities, daycare facilities and educational facilities, as per the Operative District Plan and PDP definitions.

## **Noise and Amenity under the RMA**

29. Under the RMA, territorial authorities must have a district plan for their districts,<sup>17</sup> and for the purpose of carrying out their functions, the plan must include rules. The functions of territorial authorities include the control of the emissions of noise and the mitigation of the effects of noise.<sup>18</sup>
30. A district plan has the function of assisting in achieving the purpose of the RMA in relation to the district.<sup>19</sup> The purpose of the RMA, as set out in section 5, is the promotion of sustainable management of natural and physical resources.<sup>20</sup>
31. In achieving the purpose of the RMA, councils must also recognise and provide for the matters in section 7, including the efficient use and development of resources, and the maintenance and enhancement of amenity values and the quality of the environment.<sup>21</sup>
32. Persons making decisions under the RMA must therefore carefully assess how best to allow for important activities to continue to operate and expand, such as regionally and nationally significant infrastructure, including airports, to meet the communities' needs, while also imposing suitable noise limits on them in order to protect neighbouring amenities.

## **Reverse Sensitivity**

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

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<sup>17</sup> RMA, section 73(1).

<sup>18</sup> RMA, section 31(1)(d).

<sup>19</sup> RMA, section 72.

<sup>20</sup> RMA, section 5(2).

<sup>21</sup> RMA, section 7(b), (c) and (f).

34. Reverse sensitivity has long been recognised as an environmental effect under the RMA<sup>22</sup> and is relevant to a territorial authorities' functions and duties in respect of plan formulation under sections 31 and 32, and to Part 2 of the RMA generally.

35. Reverse sensitivity has been described as:

*"...the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The "sensitivity" is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity".*<sup>23</sup>

36. While it is incumbent under the RMA that adverse environmental effects of an activity be avoided, remedied or mitigated by the person carrying out the activity,<sup>24</sup> it has been observed that some key physical resources, such as airports, can not, in practical terms, internalise all adverse effects, and that the concept of reverse sensitivity recognises this:

*"While case law has discussed the concept of "internalisation" of adverse effects, requiring, at the most absolute, that users limit their adverse effects to within their own property boundaries, the reality of modern life has meant that a more robust view has to be taken for those activities that cannot reasonably contain their adverse effects. Noise is a good example of an adverse effect that is difficult, and sometimes impossible, to internalise, such as children at play in the outside area of a school, and transport noise. While some academics have seen the concept of reverse sensitivity as taking away common law property rights, the Environment Court has made it clear that it has no difficulty with private property rights being limited by the public benefit, "because that is authorised by the RMA if certain preconditions exist" [Gargiulo v CCC EnvC C 137/2000, at [42]]. The Courts have recognised that because key physical resources such as*

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<sup>22</sup> See for example: Nolan (ed), *Environmental and Resource Management Law* (5<sup>th</sup> ed, Lexis Nexis, Wellington, 2015) at [13.32], page 906 and the cases cited there in footnote 3.

<sup>23</sup> *Affco NZ Ltd v Napier CC* EnvC W082/2004, at [29]. See also *Auckland RC v Auckland CC* [1997] NZRMA 205, at 206: "The term 'reverse sensitivity' is used to refer to the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in carrying on of those other activities".

<sup>24</sup> Section 17 RMA.



*ports, airports and quarries can not internalise all their adverse effects, restraints on other properties will sometimes be necessary to address reverse sensitivity issues. This encompasses a wider view that requires proper management to minimise adverse effects while at the same time recognising that restraint on other properties will sometimes be necessary.*<sup>25</sup>

37. It is common for district plans to include rules to protect or enable the sustainable management of existing and lawfully established activities that are not able to internalise their adverse effects. Often, as is the case with Queenstown Airport, these activities are of significant local, regional or even national importance and contribute significantly to social and economic wellbeing.
38. Specifically, in relation to land use around airports, the Court has acknowledged that it is desirable to limit the right to carry out noise sensitive activities, and to require that any buildings housing such activities, if they are permitted, incorporate appropriate acoustic treatment to mitigate the effects of aircraft noise.<sup>26</sup>
39. Additionally, the Court has held that it is not appropriate in resource management terms simply to allow the market to determine where uses may or may not establish. Specifically, the Environment Court has rejected:

*“..submissions based on leaving promoters of enterprises to judge their own locations needs, not protecting them from their own folly, or failing to consider the position of those who come to a nuisance. We consider that those submissions do not respond to the functions of territorial authorities under the Resource Management Act. ...[T]o reject provisions of the kind proposed, on the basis of leaving promoters to judge their own needs, or*

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<sup>25</sup> Nolan at [13.32].

<sup>26</sup> *Christchurch International Airport Ltd v Christchurch City Council* [1997] NZRMA 145 (building code not limiting noise insulation conditions under plan or resource consent); *Independent New Auckland Ltd v Manukau City Council* (2003) 10 ELRNZ 16 (refusal of high density housing below flight-path); *Gargiulo v Christchurch City Council* NZEnvC Christchurch C 137/2000, 17 August 2000 (refusal of consent for subdivision with the 55 Ldn airport noise contour); *National Investment Trust v Christchurch City Council* NZEnvC Christchurch C 041/05, 30 March 2005 (subdivision under aircraft noise contour disallowed); *Dome Valley District Residents Society Inc v Rodney District Council* [2008] 3 NZLR 821 (helicopter base allowed); *Cammack v Kapiti Coast District Council* NZEnvC Wellington W 069/09, 3 September 2009 at [98]-[145].

*not protecting them from their own folly, and of failing to consider the effects of those who may come to the nuisance, would be to fail to perform the functions prescribed for territorial authorities. It would also fail to consider the effects on the safety and amenities of people who come to a premises and employees, customers, and other visitors.*<sup>27</sup>

40. The concept of reverse sensitivity includes, and indeed focuses on, potential and future effects.<sup>28</sup> The focus of the concept is to ensure that actual effects (e.g. alteration or curtailment of lawfully established, existing activities) are avoided via appropriate land use planning decisions.
41. As is evident from the word “vulnerability” in the case law cited above,<sup>29</sup> it is not necessary to demonstrate that a reverse sensitivity effect will arise/that the lawful existing activity will be curtailed in some way. Rather, it is sufficient to demonstrate an increased risk of complaint, as it will inevitably give rise to an increased potential for a reverse sensitivity effect.<sup>30</sup>
42. The concept is therefore forward looking; it is inherently dealing with a potential future scenario in that a reverse sensitivity effect has the potential to eventuate in the future if, over time, complaints lead to the curtailment of the existing activity’s operations.
43. This accords with the forward looking nature of the RMA which is reflected in the focus in section 5 of the RMA on providing for “future generations”, and the section 3 definition of “effect” which includes “future” and “potential” effects.
44. The concept also encapsulates an existing activity’s future operations, including future upgrades and development. By way of example, in its recent decision on the Christchurch Replacement District Plan the Independent Hearings Panel’s (IHP) noted that the central focus of its valuation was on “*striking an appropriate balance such that enablement of*

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<sup>27</sup> *Auckland RC v Auckland CC* [1997] NZRMA 205, at 214.

<sup>28</sup> Noting also that “potential” and “future” effects are encapsulated in the section 3 RMA definition of “effect”.

<sup>29</sup> *Affco NZ Ltd v Napier CC*.

<sup>30</sup> See for example *Independent News Auckland Ltd & AIAL v Manukau City Council* (2003) 10 ELRNZ 16 at [21] – [126], where the High Court found “*a clear relationship between the number of people exposed to high aircraft noise and the introduction of, or increase in strength or opposition to aircraft operations.*”

*intensification and other residential development would not jeopardise the Airport's efficient and effective provisions, operation, maintenance or upgrade*,<sup>31</sup> (emphasis added).

45. In *Ports of Auckland v Auckland City Council*<sup>32</sup> the High Court found that an inadequately insulated residential development near the Port could result in complaints which could restrain the Port's current operations but also "*inhibit the sensible development of the Port by opposing future planning applications*." (emphasis added).
46. The forward looking nature of the reverse sensitivity concept is reflected in use of no-complaints covenants that in some instances can be a means by which sensitive development can proceed without opposition from an existing "noxious" activity, or where it would otherwise be inappropriate because of the existing noxious activity. The purpose of such covenants is to avoid a reverse sensitivity effect from arising by preventing current and future landowners from complaining about the noxious effects of the existing activity. Covenants will often restrict complaints about not only current operations, but also future operations.
47. Noting the above, the reverse sensitivity concept clearly encapsulates an existing activity's ability to future proof its operations, and the inability to grow as planned because of public pressure arising from complaints can be considered a reverse sensitivity effect.<sup>33</sup>

## **NZS 6805**

48. New Zealand Standard NZS 6805:1992 "Airport Noise Management and Land Use Planning" (**NZS 6805** or **Standard**) is recognised as a key guiding document for managing aircraft noise at and around New Zealand airports. It recommends "*the implementation of practical land use planning controls and airport management techniques to promote and conserve the*

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<sup>31</sup> Residential (Part) - Stage 1, dated 10 December 2015, being a decision concerning, inter alia, the most appropriate land use planning regime around Christchurch International Airport post the Christchurch Earthquakes.

<sup>32</sup> [1998] NZRMA 481

<sup>33</sup> See *Robinsons Bay Trust v Christchurch City Council* C60/2004 at [49] where the benefit of future proofing Christchurch International Airport by limiting the number of people exposed to aircraft noise was recognised.

*health of people living and working near airports, without unduly restricting the operation of airport.*<sup>34</sup>

49. NZS 6805 sets out that a balance needs to be achieved between accommodating the needs of an airport on an on-going basis and providing for the health and amenity values enjoyed by those occupying land around an airport.
50. NZS 6805 was promulgated with a view to getting greater consistency in noise planning around New Zealand airports, and has been in use by almost all territorial authorities since 1992.<sup>35</sup> It was one of only a few New Zealand Standards that has not been put up for revision since that time.<sup>36</sup>
51. NZS 6805 is a guide rather than a mandatory requirement and contains non binding recommendations for territorial authorities. As a matter of practice however the New Zealand Standards are commonly incorporated into plans or consent conditions that do have statutory force. Local authorities and consent agencies will usually have regard to the recommendations of the New Zealand Standards and treat them as a guide to the most appropriate approach to take in a particular circumstance.<sup>37</sup>
52. NZS 6805 has been applied and used as guidance in the relevant district plans for all of New Zealand's international airports, as well as those regional airports with regular scheduled commercial passenger operations.<sup>38</sup>
53. NZS 6805 has two objectives:
  - (a) To control the long term emission of noise from airport operations; and
  - (b) To provide guidelines to establish appropriate land use controls for areas surrounding airports.<sup>39</sup>

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<sup>34</sup> NZS 6805, section 1.1.3, page 5

<sup>35</sup> Nolan. See also Chris Day's EIC, at paragraph 21.

<sup>36</sup> Ibid.

<sup>37</sup> Nolan, [13.13], and the cases cited there in footnote 2.

<sup>38</sup> Nolan, [13.17].

<sup>39</sup> Nolan, [13.17].

54. To achieve these objectives, NZS 6805 uses a “noise boundary” concept to both establish compatible land use planning around an airport and set noise limits for the management of aircraft noise at airports.<sup>40</sup>
55. This involves fixing an Airnoise boundary (**ANB**), which is located by predicting the 65 dB L<sub>dn</sub> contour at some future level of aircraft operations, and commonly also an Outer Control Boundary (**OCB**), which is generally based on the 55 dB L<sub>dn</sub> future noise contour.<sup>41</sup>
56. NZS 6805 recommends that within the ANB, new residential activities, schools, hospitals or other noise sensitive uses (i.e. ASAN) are prohibited. It recommends that, within the OCB, any new ASAN should be prohibited unless the relevant district plan permits such use, in which case it should be subject to requirement to incorporate appropriate acoustic insulation to ensure a satisfactory internal noise environment.<sup>42</sup>
57. Mr Day’s evidence is that the clear preference of NZS 6805 is the avoidance of the establishment of ASAN activity within an airport’s noise boundaries, with provision of acoustic insulation being a less preferred and inferior option.<sup>43</sup>
58. NZS 6805 allows for discretion to be exercised by local authorities in positioning the noise boundaries further from, or closer to the airport – that is, to take a more or less restrictive approach - if that is considered more reasonable in the circumstances of the case.
59. For example, at Christchurch International Airport, the OCB is based on a 50 dB L<sub>dn</sub> future noise contour, which approach was recently endorsed by the IHP after hearing submissions on the Christchurch District Replacement Plan.<sup>44</sup>
60. Similarly, although in a resource consent context, the Environment Court in *Re Skyline Queenstown Limited*<sup>45</sup> considered that while compliance with NZS6805 is a bottom line for consent, because of the wording used within

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<sup>40</sup> NZS6805, Clause 1.1.2

<sup>41</sup> Chris Day, EIC

<sup>42</sup> NZS6805, Tables 1 and 2

<sup>43</sup> Chris Day, EIC, at paragraph 68 and 69.

<sup>44</sup> Refer footnote 31 above for decision citation.

<sup>45</sup> [2014] NZ EnvC 108.

the Standard, stricter noise controls may be justified in some circumstances:

*“The wording in paragraph 1.1.4 of the standard reinforces that compliance with it is a bottom line for consent. As Mr Day acknowledged in cross-examination the standard does not impose “... a reasonable level but a minimum requirement”. In certain contexts there may be other factors relating to noise which should be weighed by the local authority (here the court) and stricter noise controls then imposed. A key issue in this case is whether the minimum is adequate in the circumstances.”<sup>46</sup>*

61. The  $L_{dn}$  parameter adopted in NZS 6805 is based on average noise levels over a 24 hour period, (with a 10 dB penalty applied to noise between 10pm and 7am).<sup>47</sup> The Environment Court has found that in some instances use of the  $L_{dn}$  parameter may not directly recognise loud noise events. For example, where there is a limited number of loud “single” noise events, (say four of five a day) these may not materially alter the daily average/ $L_{dn}$  noise level. For this reason the Court has stated that while the  $L_{dn}$  parameter is a useful gauge for measuring annoyance at moderate to high noise levels (noise between 55 – 65 dB  $L_{dn}$ ), it is a less reliable indicator at lower noise levels (noise below 55 dB  $L_{dn}$ ), and that for the purpose of assessing the potential for adverse amenity and reverse sensitivity effects, lower  $L_{dn}$  noise levels (i.e. noise levels lower than 55 dB  $L_{dn}$ ) must be treated with some caution<sup>48</sup> (because people may still be highly annoyed/suffer an adverse amenity effect from loud but infrequent single event noise).
62. Finally, it is relevant to note that NZS 6805 does not address the degree of effect people experience at various levels of noise exposure, nor does it analyse the risk of reverse sensitivity effects.

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<sup>46</sup> Ibid at [80].

<sup>47</sup> Chris Day’s EIC, at 28.

<sup>48</sup> *Robinsons Bay Trust* at [23], [28] – [32].

## Community Response to Aircraft Noise

63. While response to noise is subjective and may vary between individuals, widely accepted research indicates that people are generally more annoyed by aircraft noise than other transport noise sources.<sup>49</sup>
64. The research indicates that for people living within areas that are exposed to aircraft noise levels of 50 – 55 dB L<sub>dn</sub>, 3 to 12% of the population will be “highly annoyed”; that is, suffer an adverse amenity effect.<sup>50</sup> For those living in areas exposed to aircraft noise levels of 55 – 65 dB L<sub>dn</sub> 12 to 28 % of the population will be “highly annoyed”. These figures are based on international research.<sup>51</sup>
65. Christchurch research suggests that New Zealanders are more annoyed by aircraft noise, particularly at lower levels, with 10 to 15% of the population “highly annoyed” by aircraft noise levels of 50 – 55 dB L<sub>dn</sub>, and 15 to 32% of the population “highly annoyed” by aircraft noise levels of between 55 – 65 dB L<sub>dn</sub>.<sup>52</sup>
66. Put another way, according to this research there is a 10 – 15% chance that a person living within the 50 – 55 dB L<sub>dn</sub> noise area will be highly annoyed by aircraft noise, or alternatively, that 1 to 2 persons out of 10 will be highly annoyed in this area, and that 3 out of 10 persons will be highly annoyed by noise levels of between 55 – 65 dB L<sub>dn</sub>.
67. By way of general comparison, the PDP indicates that in the Queenstown context, noise levels that equate to 50 dB L<sub>dn</sub> are appropriate for residential activity.<sup>53</sup> The Court has held that this can be treated as indicative of the expectation in respect of noise amenity generally.<sup>54</sup>

## Rezoning Requests within the PC35 Aircraft Noise Boundaries

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<sup>49</sup> Chris Day’s EIC, at paragraph 17.

<sup>50</sup> Refer *Robinsons Bay Trust* at [24] and [59], which is discussed in some detail later in these submissions.

<sup>51</sup> Refer Chris Day’s EIC, Figure 2 and related paragraphs.

<sup>52</sup> Ibid, noting these percentage figures have been extrapolated from Mr Day’s Figure 2.

<sup>53</sup> See PDP Rule 7.5.6.3 vii (chapter 7), and Chris Days’ EIC, at paragraphs 45 – 48.

<sup>54</sup> *Robinsons Bay Trust*, at paragraph [63], where the comment was made in the context of the Christchurch City Plan, but the principle can be considered of general application.

68. As noted earlier, QAC's further submission on the PDP opposes rezoning requests that would enable ASAN to be established within the ANB or OCB for Queenstown Airport.
69. QAC's further submission is wholly consistent with Plan Change 35 (**PC35**).
70. PC35 has been traversed at length in evidence and legal submissions presented for QAC at previous PDP hearings, however because this Panel is differently comprised, it is again now summarised.

#### *Background to PC35*

71. 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)<sup>55</sup>, PC35 sought to rationalise and update the noise management regime that applies to Queenstown Airport, while providing for the then predicted ongoing growth in aircraft operations and protecting it from reverse sensitivity effects (to the extent possible given existing development around the Airport), and also avoid adverse amenity effects on people residing around the Airport.
72. Accordingly, PC35 updated the Airport's noise boundaries (ANB and 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, including changes to various objectives, policies, rules, statements, implementation methods, definitions and planning maps, relating to land within the updated noise boundaries likely to be affected by increased aircraft noise.
73. Specifically, in general accordance with NZS 6805 (on which PC35 was predicated), for land where there was no existing expectation or right of ASAN development (e.g. within the Rural zone), PC35 sought to prohibit

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<sup>55</sup> 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 noise monitoring and mitigation obligations it contains have and continue to be given effect to (as has been explained QAC's previous evidence), and QAC seeks the obligations be rolled over in the Proposed Plan.



such development. For land subject to an existing development right or expectation (e.g. residential zones) PC35 sought to permit new ASAN development (including alterations or additions to existing ASAN) only where appropriately insulated from aircraft noise so as to achieve an acceptable internal noise environment (being 40 dB L<sub>dn</sub>).

74. This “moderated”<sup>56</sup> approach recognised and sought to grandfather historical/existing development and associated zoning for residential purposes that has occurred in close proximity to the Airport, but to preclude new ASAN development from establishing in these areas where there was no previous right or expectation of such development.
75. 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.
76. The Court issued three interim decisions that together, confirmed PC35, as agreed by the parties: *Air New Zealand Ltd v Queenstown Lakes District Council* [2013] NZEnvC 28, [2012] NZEnvC 195, [2013] NZEnvC 93.
77. The Court’s decisions were framed as “interim” because it 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, a final decision on the location of these noise boundaries in the vicinity of Lot 6 (i.e. within the Remarkables Park Zone (**RPZ**)).
78. Part of Lot 6 is subject to an NOR by QAC for Aerodrome Purposes, which is opposed the Lot 6 landowner, Remarkables Park Limited (**RPL**), and is currently before the High Court (for a second time). The outcome of the Lot 6 NOR proceeding will affect the location of the updated (i.e. PC35) ANB and OCB, but only in the vicinity of Lot 6/the RPZ. The extent of the effect is limited and is known to the Court and to the parties to the PC35 proceedings (including QLDC).
79. Excepting a decision on the noise boundaries to be shown on the planning maps in so far as they relates to Lot 6/the RPZ, the PC35 appeals have

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<sup>56</sup> As compared with the clear preference in NZS 6805 that all new ASAN development within an airport’s noise boundaries be avoided. Refer Mr Day’s EIC, at paragraph 68.

been finally resolved. There is no opportunity for any further debate as to the content of the District Plan provisions or the location of the noise boundaries and the Court is *functus officio* in this respect.

80. Accordingly, the PC35 provisions and noise boundaries (except in so far as the latter affect Lot 6/the RPZ) can be treated as operative under section 86F. It is understood this is not disputed by the Council.
81. QAC's submission and further submission on the PDP seek that the PC35 provisions and rationale underpinning them be adopted in the PDP.
82. Specifically, through its submission QAC seeks that the PC35 provisions be incorporated into the Proposed Plan without substantive amendment, and through its further submission, that the rationale of PC35 is not eroded by the rezoning of land that enables new ASAN to establish within the noise boundaries where no ASAN development right or expectation currently exists.
83. The reasons for its submission and further submission are consistent with PC35 and are twofold (both of which have been previously addressed to an extent in these submissions):
  - (a) To protect people's amenity; and
  - (b) To protect Queenstown Airport from reverse sensitivity effects.
84. QAC considers it entirely appropriate that the PC35 rationale is recognised and adopted in the PDP because:
  - (a) PC35 has been the subject of considerable and detailed scrutiny, including two public hearing processes (Council and Environment Court);
  - (b) The Environment Court has scrutinised the Plan Change, including evaluating it under section 32 of the RMA;
  - (c) This detailed scrutiny has been undertaken recently: the Environment Court's final (interim) decision was only issued in May 2013.

- (d) Section 32 has been amended since the Court's interim decisions, but not in a material way;
  - (e) There has been no material change in the relevant facts or circumstances, specifically in terms of a need to enable ASAN development within areas affected by aircraft noise, so as to necessitate a revisiting of the PC35 approach.
85. Factors (a) – (c) above are self evident and require no further explanation. Factors (d) and (e) do warrant some further discussion however, as below.

### *Section 32*

86. It is not QAC's submission that the Environment Court's section 32 evaluation of PC35 can substitute the evaluation that the Panel is required to undertake for the PDP. QAC acknowledges that the Panel must undertake its own section 32 evaluation, in light of the evidence it receives and the present facts and circumstances.
87. QAC also acknowledges that section 32 has been amended since the Environment Court assessed and made its decisions on PC35. However, the amendments do not change the overall purpose of the section, which is to ensure rigour in plan decision making through requiring a critical evaluation of the objectives, policies and methods of proposals.
88. The Court's section 32 evaluation of PC35 is therefore of some relevance presently, provided there has been no material change in the facts or circumstances relevant to the planning issues facing the District.

### *No Material Change in Facts or Circumstances*

89. QAC acknowledges that if the PDP adopts a materially different planning approach to that adopted in PC35, or if the District is confronted with new or substantially different planning issues to those faced when PC35 was decided, these changes may be of some relevance to the continuation of the PC35 approach and would need to be appropriately evaluated and accounted for in any decision on the PDP, for the purposes of section 32.
90. However, in this instance there are no materially different facts or circumstances at the present time compared with when the Environment Court reached its conclusions on the merits of PC35.

91. At that time, the Airport was experiencing significant growth in aircraft operations and passenger numbers. This growth has since continued on a sustained basis. Indeed, this growth, coupled with the significant contribution Queenstown Airport makes to the District's economy, serves to highlight the importance of ensuring that the Airport is adequately protected against reverse sensitivity effects, and that a reasonable level of amenity for the community around the Airport is maintained.
92. When PC35 was decided the Airport contributed very significantly to the District's economy, and to economic and social well being. It also does now, possibly more so.
93. Perhaps the most important factor to consider in respect of this issue is whether there has been any change in the demand or need for ASAN development within areas affected by aircraft noise since PC35 was decided. This issue is presently very topical for the District and conceivably could be a valid reason to revisit the PC35 approach, particularly if there is a demonstrated shortage of land outside the Airport's noise boundaries that is suitable for ASAN development which did not exist when PC35 was decided.
94. The Council's evidence on this potentially significant issue is that there is currently sufficient feasible and realisable capacity within the Queenstown area to provide for predicted population growth in the short, medium and long term so as to satisfy the requirements of the National Policy Statement on Urban Development Capacity (**NPS - UDC**), and that the further zoning of rural land to an urban type zone, or the upzoning of land so as to enable more intense urban development, is not necessary.<sup>57</sup>
95. Additionally, Mr Kyle's evidence is that, notwithstanding any pressures on the Council to enable new or intensified ASAN development in areas affected by aircraft noise, such as Frankton for example, any decision that brings additional people to the impact of aircraft noise promotes a very poor outcome that is not the most appropriate way to provide for the needs of future generations.

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<sup>57</sup> See for example, Kim Bank's evidence dated 19 June 2017, Executive Summary at paragraphs 3.1 – 3.3.

96. No submitter has seriously challenged the Council's or Mr Kyle's evidence or provided any cogent reasons to depart from the PC35 approach.
97. There is, therefore, no demonstrated need to zone land for additional ASAN development within Queenstown Airport's noise boundaries, or to justify the adoption of a rationale to land use planning around the Airport that is materially different to (i.e. less restrictive than) that which underpinned PC35.

#### *Section 42A Recommendations*

98. The section 42A reporting officers for this hearing stream recommend that the PC35 approach be adopted in the PDP, and that rezoning requests that seek the enablement of ASAN within the Airport's ANB or OCB generally be rejected. These recommendations are appropriate for the reasons set out above and previously, and are supported by QAC.
99. There is one exception in the section 42A recommendations however, being QLDC's submission in respect of Boyes Crescent (Submission 790). Through this submission QLDC seeks to rezone its land, which is located within the OCB, from Rural to Low Density Residential. The section 42A reporting officer recommends that this submission be accepted.
100. QAC does not agree. As Mr Kyle explains, while this is the only land along Boyes Crescent that is subject to a Rural zoning, this zoning is appropriate because the land is located within the OCB and it is designated reserve, the latter which presents a number of other barriers to the land's suitability for residential activity in any event.<sup>58</sup>
101. In recommending that that the submission be accepted, the section 42A reporting officer does not address the issue of the noise boundaries.<sup>59</sup> Nor does Ms Holden's evidence for QLDC<sup>60</sup> (as submitter).
102. As Mr Kyle explains, allowing this rezoning request could set a precedent for other ASAN development within the noise boundaries, and be used as

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<sup>58</sup> John Kyle's EIC at paragraph 5.16 and 5.17.

<sup>59</sup> Kim Banks, Section 42A Report for Group 1A dated 24 May 2017, at pages 113 – 116.

<sup>60</sup> Dated 9 June 2017.

justification to enable “just one more” dwelling within this noise affected area.<sup>61</sup> This is inconsistent with and undermines the rationale of PC35.

103. Given QLDC has not provided, via evidence or its section 42A report, any reasons why it is appropriate, in this instance, to deviate from the PC35 approach, which it otherwise fully supports, submission 790 should be rejected.

### **Rezoning Requests Beyond the OCB**

104. QAC’s submission opposes rezoning requests that would enable new ASAN on land located beyond the OCB in areas that may be affected by “moderately high”<sup>62</sup> levels of aircraft noise in the future. The areas with which QAC is concerned are generally shown in Appendix D of Mr Day’s evidence, which is **attached** to these submissions for the Panel’s convenience.
105. QAC’s submission is forward looking in this respect and takes account of the sustained growth in aircraft operations and passenger numbers that the Airport has continued to experience since PC35 was promulgated.
106. Specifically, based on the passenger forecasts described by Ms Tregidga,<sup>63</sup> and the observed growth rates and compliance monitoring results described by Mr Day,<sup>64</sup> current indications are that aircraft noise at Queenstown Airport will likely reach the PC35 noise boundaries much earlier than originally predicted.<sup>65</sup>
107. QAC is presently undertaking detailed work to ascertain how future growth might “look” and be accommodated at Queenstown Airport, and any wider impacts it might have.<sup>66</sup> Although this work is still in its formative stages, current forecasts see the most significant growth in scheduled aircraft operations (e.g. passenger jets) using the main runway, whereas growth in

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<sup>61</sup> John Kyle’s EIC at para 5.17.

<sup>62</sup> Refer Chris Day’s EIC at paragraph 50.

<sup>63</sup> Current growth predictions are for 3.2 million passengers by 2025: See Rachel Tregidga’s evidence dated 9 June 2017 at paragraphs 13 – 19.

<sup>64</sup> Chris Day’s evidence stated 9 June 2017, at paragraphs 76, 78 and 80.

<sup>65</sup> See also John Kyle’s EIC, at paragraph 5.6, and noting again that the PC35 noise boundaries were based on predicted aircraft operations in 2037, with those predictions being made in 2008, formulated.

<sup>66</sup> Refer paragraph 22 above for details regarding the master planning work and Ms Tregidga’s EIC at paragraphs 37 – 39.

the general aviation aircraft operations on the cross wind runway is much less pronounced.<sup>67</sup>

108. These growth predictions have informed QAC's submission on the various rezoning requests, and Mr Kyle's and Mr Day's expert opinions as expressed in their evidence.
109. On this basis, QAC does not oppose rezoning requests that would enable ASAN within the "blue" areas of Mr Day's Appendix D that are outside the OCB where those areas are affected primarily by noise from general aviation aircraft using the cross wind runway. That is because the PC35 noise boundaries likely make adequate provision for future growth in these activities.
110. QAC does oppose rezoning requests that would enable ASAN development outside the OCB in areas that will likely be affected by future noise from scheduled aircraft using the main runway, because current predictions are that growth in scheduled and jet operations will exceed the PC35 forecasts.

*Council's Evidence/Section 42A Report*

111. The Council's evidence is that noise boundaries are the primary mechanism for the formulation of land use controls around an airport (as per NZS 6805), and that because there is currently no proposal by QAC to revisit or extend the existing (PC35) noise boundaries, (and notwithstanding Mr Kyle's and Mr Day's evidence that the noise boundaries may be reached before 2037), QAC's submission, to the extent that it relates to and opposes rezoning requests beyond the PC35 noise boundaries, should be rejected.<sup>68</sup>
112. QAC considers that the Council's evidence on this issue is inappropriately short-sighted, and pays insufficient regard to the Airport's current growth forecasts, as described earlier. In contrast, QAC has (quite properly) approached its submission on the basis of a long term view of growth and development at and around Queenstown Airport.

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<sup>67</sup> Refer for example, John Kyle's Rebuttal Evidence in respect of Submitter 717 (the Jandel Trust, Jaron Lyell McMillan), at paragraph 2.12.

<sup>68</sup> See for example, Kim Bank's rebuttal evidence dated 7 July 2017, at paragraphs 4.9 and 4.10.

113. Additionally, the Council's evidence pays insufficient regard to Mr Day's uncontroverted expert opinion on the issues relevant to QAC's submission.
114. Consequently, it too readily discounts QAC's submission to the extent it addresses land beyond the existing OCB, and fails to properly evaluate the relief sought by QAC in accordance section 32 and Part 2 of the RMA.
115. The issues are addressed in further detail below.

*Council's Evidence is Short-sighted*

116. QAC accepts that in order to accommodate growth in aircraft operations above what is provided for by the current (PC35) noise boundaries and its designation it will need to embark on a further planning process, and it acknowledges that there is currently no proposal before the Council or any other planning authority in this respect.
117. However, as intimated by Ms Tregidga, it would be remiss of QAC if it did not advance its submission in respect of rezoning requests beyond the OCB in a manner that takes account of current growth forecasts, particularly when it is likely that the land the subject of these requests will be exposed to moderately high levels of aircraft noise in the future if these forecasts materialise<sup>69</sup>, and when it is generally accepted (as evidenced by the adoption of the PC35 approach in the PDP) that aircraft noise and ASAN development do not complement each other.
118. Additionally, as stated earlier in these submissions,<sup>70</sup> the concept of reverse sensitivity is forward looking and can encapsulate the growth and development of an existing activity that might be enabled via a future planning application, which means that QAC's submission should not be discounted simply because it seeks to address a possible future proposal that is yet to formally commence any RMA or related process.
119. Consistent with the premise of QAC's further submission, plan formulation necessarily involves long term, forward looking decisions about future land use. Policy decisions that preclude development in certain areas, such those sought by QAC via its further submission, do so in only a temporary

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<sup>69</sup> Chris Day's EIC, at paragraph 85.

<sup>70</sup> At paragraphs 40-47.



sense. That is because policies can be changed in the future to realise the potential for any appropriate development, including if circumstances change so as to warrant a different planning approach (e.g. if predicted growth in aircraft operations is not realised).<sup>71</sup> Conversely, once a planning decision is made to enable development, it is largely irreversible, especially once development is implemented.

120. The Environment Court has recognised this and has stated (when considering the most appropriate approach to land use around Christchurch Airport) that policy decisions which preclude development do not foreclose future options, and are in fact enabling in the sense that they conserve development options for the future, and for future generations.<sup>72</sup>
121. In the present case, a “policy” decision for the PDP that rejects submissions seeking the enablement of new ASAN development in areas that will in the likely future be affected by moderately high levels of aircraft noise does not impose any additional restrictions on land or costs on landowners, because the land has not historically been available for ASAN development of the nature or density sought in the submission, and is still available for a range of permitted uses.<sup>73</sup> At this juncture it is relevant to restate that QAC does not seek to remove existing ASAN development rights, but rather to preserve the status quo in terms of such development rights.
122. Additionally, it is of some relevance that for the majority of land which QAC opposes the rezoning of, aircraft noise is by no means the only constraint to ASAN development, and in most cases there are other significant constraints (e.g. geotechnical, traffic, access and/or infrastructure servicing) that would need to be overcome before such development could proceed. A decision to accept QAC’s submission is not, therefore, disenabling for this land.

*Insufficient Regard Had to Mr Day’s Uncontroverted Expert Opinion*

123. The key points of Mr Day’s uncontroverted evidence can be summarised as follows:

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<sup>71</sup> See *Robinsons Bay Trust*, at [64].

<sup>72</sup> *Robinsons Bay Trust* at [64].

<sup>73</sup> See *Robinsons Bay Trust*, at [50], where the same point was made.

- (a) Noise does not cease at the OCB. There is no perceptible difference between aircraft noise experienced on land located 100 metres outside the OCB and the noise environment on land located 100 metres within the OCB.<sup>74</sup>
- (b) International and local research has shown that conservatively between 3 – 12% but potentially 10 – 15% of the population will be highly annoyed by aircraft noise levels between 50 – 55 dB L<sub>dn</sub>, and that conservatively 12 – 28% but potentially 15 – 32% will be highly annoyed by aircraft noise levels between 55 – 65 dB L<sub>dn</sub>.<sup>75</sup>
- (c) The PDP indicates that noise levels of above 50 dB L<sub>dn</sub> are generally inappropriate for residential areas,<sup>76</sup> noting that the Environment Court has commented that while this may not be a critical noise level, it can be considered as “*indicative as to the expectation in respect of noise amenity generally*”<sup>77</sup>;
- (d) The current level of annual growth at Queenstown Airport is significantly greater than the 3% annual growth rate used for the PC35 related forecasts produced in 2008. This current growth suggests that the PC35 noise boundaries will be reached well ahead of 2037, and it is likely they will need to be expanded sometime in the future.<sup>78</sup>
- (e) If this growth continues, the properties just beyond the current OCB will be exposed to moderately high levels of aircraft noise in the future.<sup>79</sup> These areas are therefore “marginal” for ASAN development.<sup>80</sup>
- (f) Aircraft technology and flight management will not alone be sufficient to eliminate or adequately abate aircraft noise, and

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<sup>74</sup> Chris Day, EIC, at paragraph 81.

<sup>75</sup> Ibid, Figure 2, which has been extrapolated.

<sup>76</sup> Ibid, paragraphs 45 – 48.

<sup>77</sup> *Robinsons Bay Trust*, at [63], where the Court was considering the relevance of a noise rule in the Christchurch City Plan, but where the principle stated is of relevance presently.

<sup>78</sup> Chris Day’s EIC, at paragraphs 10, 78 and 80.

<sup>79</sup> Ibid, at paragraph 85.

<sup>80</sup> Ibid, at paragraph 92.

reductions in the noise output of new aircraft has plateaued in recent years.<sup>81</sup>

- (g) Even with the significant technology related reductions in noise from aircraft that has been achieved over the past 40 years, during this time there has been a significant increase in noise related restrictions placed on airports.<sup>82</sup> Reductions in aircraft noise will therefore not solve the land use incompatibility issue, and other measures, such as restricting the establishment of new ASAN development around airports, are required.<sup>83</sup>
- (h) Land use planning is an important and effective way to reduce the population exposure to aircraft noise.<sup>84</sup>
- (i) Minimising the number of people exposed to aircraft noise by restricting residential development from establishing in areas affected by aircraft noise is an effective form of mitigation.<sup>85</sup>
- (j) In light of the above, a precautionary approach should be adopted to rezoning land for ASAN development in areas affected by aircraft noise beyond the OCB.<sup>86</sup>

124. Mr Day's opinions are consistent with the findings of the Environment Court *Robinsons Bay Trust v Christchurch City Council*. This decision concerned the formulation of the Christchurch City Plan, and in particular the location of the OCB for Christchurch International Airport, and whether it should be located on the basis of the 50 or 55 dB L<sub>dn</sub> noise contour. There was no disagreement between the parties that NZS 6805 was relevant and applicable, and the issue rather was whether the OCB should be based on a noise level lower than 55 dB L<sub>dn</sub>

125. The Court recorded that:<sup>87</sup>

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<sup>81</sup> Ibid, at paragraph 72.

<sup>82</sup> Ibid, at paragraph 73.

<sup>83</sup> Ibid, at paragraph 74.

<sup>84</sup> Ibid, at paragraph 30.

<sup>85</sup> Ibid, at paragraph 67.

<sup>86</sup> Ibid, at paragraph 92. See also Appendix D for the areas affected by aircraft noise.

<sup>87</sup> At [23].

- (a) Noise above 65 dB  $L_{dn}$  is of concern and can be described as a noisy environment;
  - (b) Noise between 55 and 65 dB  $L_{dn}$  has potential health effects and can be described as a moderately noisy environment;
  - (c) Noise below 55 dB  $L_{dn}$  can be considered a low noise environment and has limited health effects.
126. Notwithstanding its findings in respect of noise below 55 dB  $L_{dn}$  as cited above, the Court determined that the OCB for Christchurch Airport was most appropriately located at a position based on the 50 dB  $L_{dn}$  contour.
127. Its primary reason for reaching this decision was its finding that the major effect of noise levels between 50 – 55 dB  $L_{dn}$  is annoyance, which it found is an amenity effect that should properly be taken into account under the RMA, particularly under section 5 of the Act<sup>88</sup>, (noting, that as is the case presently, the context of the decision was plan formulation).
128. The Court found that these amenity effects are also environmental costs which can not reasonably be internalised to the airport and its land, and are therefore shifted to the landowners under flight paths. These are a cost that is not borne by persons residing outside of these areas.<sup>89</sup>
129. Noting again that no expert acoustic evidence has been lodged by a submitter or the Council that contests Mr Day's evidence, Mr Day's should be given considerable weight by the Panel.
130. Mr Day's evidence is that rezoning the areas shown in blue in his Appendix D would allow the establishment of ASAN development, largely irreversibly, in locations that may in the long term be exposed to moderately high levels of aircraft noise, which is inappropriate.<sup>90</sup>

*Environmental Costs of Allowing Rezoning Requests and Benefits of Allowing QAC's Relief*

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<sup>88</sup> At [59].

<sup>89</sup> At [59]

<sup>90</sup> Chris Day's EIC, at paragraph 85 – 86.

131. Amenity effects, such as those recognised by the Court in *Robinsons Bay Trust*, and potential reverse sensitivity effects, the risk of which inevitably increases when a greater number of people are exposed to aircraft noise and suffer an amenity effect, are environmental costs. Amenity effects are costs borne by landowners under flight paths. A reverse sensitivity effect is a cost borne by the Airport, and also the wider community.<sup>91</sup>
132. These costs can not be ignored and must be weighed in the section 32 evaluation of the PDP and submissions on it, and are highly relevant to the assessment under Part 2 of the RMA.
133. The costs exist even if current growth forecasts do not materialise.<sup>92</sup>
134. They have not been assessed in the Council's evidence, which is a significant omission.
135. In contrast, the relief sought by QAC recognises and addresses these costs, by avoiding them. Avoidance is the appropriate option because there is no alternative means by which these costs can be addressed. As explained by Mr Day, potentially 10 – 15% of the population will be highly annoyed by aircraft noise in this location (or a greater percentage if forecast growth materialises and noise levels are higher), yet acoustic treatment of ASAN serves little purpose<sup>93</sup> and does not address outdoor amenity, which can be a source of complaint.
136. Furthermore, as already stated, the relief sought by QAC will not result in any additional costs for landowners, because the land in the locations QAC opposes has not historically been available for ASAN development of the nature or density requested by submitters in any case.
137. The relief sought by QAC is clearly the most appropriate, particularly given that no evidence has been presented of a pressing need to enable ASAN

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<sup>91</sup> Because if aircraft operations are curtailed there will be flow on effects to the community in terms of economic and social wellbeing. This is addressed further shortly.

<sup>92</sup> Because if current growth predictions do not materialise the land the subject of QAC's submission will still be exposed to aircraft noise levels above 50 dB L<sub>dn</sub>, which noting the *Robinsons Bay Trust* decision, means that the land owner will suffer and bear the cost of an adverse amenity effect. The more persons that suffer these effects/costs, the greater the risk of complaint about aircraft noise, and thus the greater risk of a reverse sensitivity effect.

<sup>93</sup> Because a new build of standard construction will achieve and appropriate indoor noise level, with no additional treatment required. See Chris Day's EIC, at paragraph 63.

development in this noise area, nor any evidence presented as to a shortage of residential land within the District generally.

138. Additionally, the relief sought by QAC carries with it the significant benefit of future proofing the regionally significant infrastructure and physical resource that is Queenstown Airport. These benefits have local, regional and national significance.
139. The continued growth and development of the Airport enables the wider community to provide for its social and economic wellbeing in particular, and for its health and amenity.
140. In contrast, the risks or costs of not accepting QAC's submission are that the growth and development of Queenstown Airport is unduly constrained, with significant flow on effects for the wider community's economic and social wellbeing, in addition to the adverse amenity effects experienced by persons residing under the Airport's flight paths.

#### **Submitters' Evidence**

141. Mr Kyle's rebuttal evidence addresses the submitter evidence, as relevant to QAC's further submission, in detail. The paragraphs below address any legal issues arising from the evidence.

#### *Mount Chrystal Limited (Submitter 150)*

142. Planning evidence of Sean Dent has been filed in support of Mount Chrystal Limited's (Submitter 150) submission to rezone land on the northern side of Frankton Road adjacent to Goldridge Resort from Low Density Residential (**LDRZ**) to either part Medium Density Residential (**MDRZ**) or part High Density Residential (**HDRZ**). Mr Dent's evidence is that while not sought by the submitter, an HDRZ for the entire site is more appropriate than the relief sought in the submission and the notified zoning.
143. Mr Dent considers that the Panel has scope to accept this changed relief because the nature and scale of the resulting development would not, in his opinion, be significantly different to what was originally sought, and because QAC, who Mr Dent says would likely oppose the increased density, has already opposed the original submission so will not be prejudiced by the change. Mr Dent's opinion is that the general public

would also not be prejudiced because the changed relief is not much different to that sought in the original submission.<sup>94</sup> QAC does not agree.

144. QAC opposes an HDR zoning of the entire site, because any decision to bring more people to the effects of aircraft noise, as would occur under and the higher density zoning, carries with it an increased risk of adverse amenity effects on those people and therefore and increased risk of reverse sensitivity effects on the Airport.
145. While arguably QAC is not prejudiced by the changed relief (because it is already a submitter) the same can not be assumed with any certainty for the general public. Conceivably there may be members of the general public who will be affected by and/or would have submitted on a proposal to rezone the entire site HDRZ. QAC considers that Mr Dent's assumption to the contrary is without foundation and should not be given any weight, and that the changed relief is not within the scope of the original submission and therefore can not be entertained by the Panel.
146. Mr Dent asserts that it is contradictory for QAC to oppose infill development, which he purports is an objective of the PDP, when QLDC is the major shareholder of QAC.
147. Mr Dent's assertion overlooks or ignores the fact that it is also a strategic objective of the PDP to maintain and promote the efficient operation of the District's infrastructure, including its designated airports<sup>95</sup>, which is the very purpose of QAC's submission.
148. Additionally, his assertion ignores the fact that QAC and QLDC have very different statutory functions and duties under which they each must operate. It is therefore neither surprising nor inappropriate that they do not agree on all aspects of the PDP.
149. QLDC's shareholding in QAC is simply not a relevant matter to the PDP or any submission on it.

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<sup>94</sup> Refer Sean Dent's evidence dated 9 June 2017 at paragraphs 21 – 25.

<sup>95</sup> PDP, notified Objective 3.2.1.5. See also Objective 4.2.6 and Policy 4.2.6.1 of the Council's Right of Reply version of Chapter 4, dated 7 April 2017, which respectively seek to "*Mange urban growth issues on land in proximity to Queenstown Airport to ensure that the operational capacity and integrity of the Airport is not significantly compromised*", and "*To protect the airport from reverse sensitivity effects of ASAN via a range of zoning methods, including where appropriate the use of prohibited activity status*".

*Otago Foundation Trust Board (Submitter 408)*

150. Planning evidence of Ms Hutton has been filed in support the submission by the Otago Foundation Trust Board to rezone all of its land on State Highway 6 MDRZ, including that part located within the OCB.
151. Ms Hutton's evidence is that the submitter's proposal for the land (as opposed to the zoning it seeks) recognises the OCB, and that "*there is no jurisdiction for control of any activities outside of the line by QAC*".<sup>96</sup>
152. As a matter of law, this statement is incorrect.
153. Firstly, QAC does not "control" any activities on land it does not own. That is a function of the Council, through its District Plan.
154. Secondly, there is no jurisdictional hurdle to the Council imposing controls on land use beyond the OCB for aircraft noise related reasons, provided the Council is satisfied that the controls are appropriate in terms of the its functions and section 32, and they achieve the purpose of the Act.

**Location of PDP Noise Boundaries**

155. QAC's submission on the PDP addresses the location of the noise boundaries and seeks that their location be amended in the vicinity of Frankton and Lot 6.
156. In respect of the change sought to the location of the noise boundaries in the Frankton area, this is necessary to correct a "transmission error"<sup>97</sup> which inadvertently occurred when Marshall Day Acoustics provided the PC35 noise boundaries to QLDC for inclusion in the PDP, prior to its notification. The error only became apparent after the PDP was notified. Its effect is that the notified noise boundaries do not accurately depict the PC35 noise boundaries in a discrete Frankton location. QAC's submission therefore seeks the inclusion of a revised set of noise boundaries in the PDP (to be shown on planning maps 31a, 33 and 37) with this error corrected.<sup>98</sup> It is understood there is no contest over this aspect of QAC's submission.

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<sup>96</sup> Alyson Hutton's evidence dated 9 June 2017, at paragraph 6.1.

<sup>97</sup> Chris Day's EIC, at paragraph 97 - 90.

<sup>98</sup> Refer Annexure B of QAC's submission dated 23 October 2015.



157. In respect of the change sought to the location of noise boundaries in the vicinity of Lot 6, the nature of and reasons for the change are addressed in paragraphs 4.29 – 4.42 and Annexure B of QAC’s submission.<sup>99</sup>
158. Since QAC lodged its submission and appeared at previous PDP hearings, the Panel has expressed a concern that the notification of planning maps as part of Stage One of the PDP which affect land that is not otherwise addressed by Stage One may deprive people of the right to be heard on the planning maps, as they may not have appreciated that they could or should make a submission on them from the wording of the public notice.<sup>100</sup>
159. Of relevance presently, the Panel’s view is that there was nothing in the public notice of Stage One to suggest that the ANB or OCB would affect land (i.e. zones) not otherwise addressed by Stage One.<sup>101</sup>
160. Accordingly, the Panel has stated that it will not hear submissions or evidence from the Council or submitters in relation to notations on the maps, including the noise boundary notations, in respect of zones that have not yet been addressed by Stage One or will not be addressed by any Stage of the PDP.<sup>102</sup>
161. By way of memorandum dated 30 June 2107 the Council has indicated that, in the interests of efficiency, it will accept the Panel’s concerns and proceed with the PDP in the manner the Panel has expressed it considers is appropriate.<sup>103</sup>
162. Relevantly, this means that the Council will not advance evidence, and nor will the Panel consider any submissions or evidence in respect of the Airport’s noise boundaries in so far as they address or relate to the RPZ, the Frankton Flats Zone or the Industrial Zone,<sup>104</sup> because these zones have not yet been or will not be addressed by the PDP.<sup>105</sup>

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<sup>99</sup> Dated 23 October 2015. They have also been addressed at length in previous legal submissions.

<sup>100</sup> Refer minute of the Hearings Panel dated 12 June 2017 at paragraph 4 (paraphrased).

<sup>101</sup> Ibid, at paragraph 7

<sup>102</sup> Ibid, paragraph 25.

<sup>103</sup> Memorandum of Counsel for QLDC dated 30 June 2017 at paragraph 5.

<sup>104</sup> Ibid, paragraph 8.

<sup>105</sup> The Panel has subsequently issued a further minute, dated 21 July 2017, in which it confirms the Council’s approach as stated in its 30 June 2017 memorandum and advises

163. While this approach may require QAC to make submissions on later stages of the PDP in respect of issues it has already addressed in its submission on Stage One, it accepts it is the most appropriate approach in all the circumstances.
164. It also means that QAC's submission in respect of the location of the noise boundaries in the vicinity of Lot 6 need not be advanced any further at this hearing, which is appropriate so as not to pre-empt the Environment Court's final PC35 decision on this issue.<sup>106</sup>

### **Conclusion**

165. Queenstown Airport is regionally significant strategic infrastructure and is recognised as such in the PDP and the Otago Regional Policy Statement (Operative and Proposed).
166. The Airport is a very significant contributor to the District's economy: both directly, as a place of employment for over 600 people and in terms of the \$4.7m in dividends paid to its primary shareholder QLDC, and indirectly, as a facilitator of tourism and other business activity in the District, with economic benefits to the region from Airport visitors' spending were estimated to be over \$1.6 billion.
167. It is also a primary and important access point to and from the District for local, domestic and international travellers.
168. As such, the Airport is of significant importance to and influence on the District's economy and its community's social and economic wellbeing.
169. Through its submission and further submission on the PDP QAC seeks, inter alia, that the significance and importance of Queenstown Airport is appropriately recognised and provided for. This includes its ability to continue to operate, grow and develop in an efficient, effective and sustainable manner.
170. Accordingly, via its submission QAC seeks the avoidance of the potential for and therefore actual occurrence of reverse sensitivity effects on the Airport, noting that if such effects transpire, they affect not only QAC's

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that amendments sought to zones not included in Stage 1 of the PDP will be treated as "out of scope".

<sup>106</sup> Refer paragraphs 71-80, above.

ability to operate efficiently and effectively, but also the District community's social and economic wellbeing.

171. Additionally, QAC seeks to protect the amenity of the District's community by avoiding unnecessary ASAN development under the Airport's flight paths in areas that are or will in the likely future be affected by moderately high levels of aircraft noise.
172. QAC's submission is premised on the logical inference that as an ASAN development increases in number or intensifies in areas affected by aircraft noise, so do the environmental costs in terms of the number of people exposed to the risk of suffering adverse amenity effects, and the consequential risks of complaints about aircraft noise and therefore reverse sensitivity effects on the Airport.
173. QAC's submission takes account of current and forecasted growth at the Airport, which is a responsible and appropriate basis for a submission given the long term nature of the PDP and the zoning decisions it requires.
174. Sustaining the Airport as an important physical resource and providing for the community's economic and social wellbeing, while maintaining its amenity, requires that QAC's submission be accepted.
175. Specifically, it requires that the PC35 rationale be adopted in the PDP and zoning requests that would enable new or intensified ASAN development within the existing (PC35) noise boundaries be declined.
176. Additionally, it requires the likely future growth in aircraft operations at Queenstown Airport to be taken into account when considering requests to rezone or upzone land beyond the OCB that in the future may be exposed to moderately high levels of aircraft noise, and that these requests be declined. This decision is necessary to protect people's amenity, over the long term, who would otherwise reside in these areas, and to ensure that the Airport is protected from reverse sensitivity effects which would potentially arise if aircraft operations continue to grow as predicted.
177. The decisions sought by QAC are necessary to ensure the ongoing operation and sensible future development of the important existing physical resource that is Queenstown Airport and its ability to provide for current and future generations is sustained, while the adverse amenity

effects of aircraft noise on the community, which reasonably cannot be internalised to the Airport, are avoided.

178. Ultimately, the Panel must determine whether the purpose of the Act, including sections 5 and 7, is better achieved by enabling new or intensified ASAN development in areas that are currently or in likely future will be affected by moderately high levels of aircraft noise, with the attendant amenity and potential reverse sensitivity “costs”, or by not enabling ASAN within these areas.
179. The relief sought by QAC is clearly the most appropriate, as any alternative decision comes with environmental costs in terms of amenity and potential reverse sensitivity effects which cannot be avoided or otherwise addressed.

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

### Appendix D - Location of Rezoning Submissions

