

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

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of the Queenstown Lakes District Council
Proposed District Plan

AND

IN THE MATTER

of submissions and further submissions relating
to the Designations Chapter of the Proposed
District Plan

**Reply Legal Submissions on behalf of Queenstown Lakes District
Council
(as Requiring Authority)**

**Hearing Stream 07 -
Chapter 37 Designations**

2 November 2016

1. INTRODUCTION

- 1.1 These legal submissions filed on behalf of Queenstown Lakes District Council's capacity as a requiring authority (Council) in respect of Chapter 37 (Designations) of the Proposed District Plan (PDP).
- 1.2 The Council's involvement as requiring authority relates to:
- (a) The roll over of the Council's existing designations from the Operative District Plan (ODP) into the PDP, with or without modification.
 - (b) The inclusion of new Council designations in the PDP.
 - (c) The Council's response to submissions and further submissions received in relation to its existing or new designations in the PDP and the Section 42A Hearing Report (Hearing Report).

2. SUMMARY

- 2.1 These submissions address two questions that arose during the course of the Designation hearing on 21 October 2016:
- (a) Whether the infrastructure designations are all on Council owned land;
 - (b) Application of the existing environment/ permitted baseline in the context of the Glenorchy Airstrip;
 - (c) A proposed noise management plan condition in relation to the Glenorchy airstrip.

3. INFRASTRUCTURE DESIGNATIONS

- 3.1 Commissioner Rogers queried whether the Council's infrastructure designations are all located on land that is owned by the Council.
- 3.2 The Council notified a large number of designations (both new notices of requirement and rolled-over designations). Of those notified designations listed in Chapter 37 of the PDP, a number are located on private land. Wherever that was the case, the Council identified and

notified landowners whose land was affected by designations in August 2015 (as required by clause 5(1B) of the first schedule of the RMA).

- 3.3 All of the designations on private land relate to existing infrastructure and the purpose of the designations, as set out in the evidence of Ms Moogan is to enable the construction, operation and maintenance of the necessary engineering infrastructure required to service the community. They are also intended to ensure protection of the community's infrastructure asset from adverse land use activities being located on the land whether the infrastructure is located.
- 3.4 Given that these designations relate to infrastructure that currently exists, the Council's assessment of alternative sites was limited as there are no viable alternatives for the location of the infrastructure that could be considered. This is recorded in the notices of requirement for each new designation.

4. GLENORCHY AIRSTRIP – EXISTING ENVIRONMENT/PERMITTED BASELINE

- 4.1 In response to questions from Commissioner Rogers counsel for Wyuna Preserve Residents Association (WPRA) (Submitter #0744) filed supplementary legal submissions on 21 October 2016.
- 4.2 In those submissions counsel for WPRA refers to the decision of the High Court in *Save Kapiti Inc v New Zealand Transport Agency and ors*.¹ In that case, a new road designation was proposed by NZTA to replace an earlier designation obtained by the Kapiti Coast District Council (KCDC) for a similar road in much the same location.
- 4.3 The Court ultimately concluded that the KCDC designation would not form part of the existing environment for the reasons set out at paragraph 3.7 of counsel for WPRA's submissions. WPRA go on to state that the *Save Kapiti Inc* case is not dissimilar to the Glenorchy Airstrip where the proposed designation is to replace the previous one.
- 4.4 It is submitted that there is a significant distinction to be made between the *Save Kapiti Inc* decision and the Glenorchy Airstrip. In *Save Kapiti*

¹ *Save Kapiti Inc v New Zealand Transport Agency and ors* [2013] NZHC 2104

Inc, the Court was considering whether one designation, that was not likely to be implemented could form part of the existing environment when assessing the effects of an entirely separate new designation.

- 4.5 Here, the Council has sought to roll-over an existing designation from its Operative District Plan into the PDP. The current level of use at the airstrip, albeit yet to be determined, was lawfully established and must therefore inform the assessment of effects of the rolled over designation. It is submitted, that the question of whether controls should be imposed on the use of the airstrip must take into account the current authorised level of use and should not restrict that level of use.

5. GLENORCHY AIRSTRIP – NOISE MANAGEMENT PLAN

- 5.1 Wyuna Preserve (Submitter #0744) advanced a noise management plan condition in its evidence to be imposed on the Glenorchy Airstrip designation (#239).
- 5.2 It considers that the scope to impose such a condition derives from the general conditions that apply to all recreation reserves. Those conditions include a noise limit.
- 5.3 The general conditions that apply to recreation reserves only apply where they are specifically referenced in the table of designations. While Designation 239 was notified as a 'recreation reserve (aerodrome)', there was no reference to the recreation reserve conditions. Accordingly, there were no controls on Designation 239 in the Operative District Plan or as notified in the PDP.
- 5.4 To the extent that Wyuna Preserve does have scope through its submission to seek noise controls that manage the use of the airport at the current level, the Council does not agree with the condition proposed in the evidence of Mr Ferguson.
- 5.5 That condition requires a noise management plan be prepared within 6 months of the date of the designation being confirmed and details a list of matters that should be included. It includes a further opportunity for residents to become involved in the noise management plan and does not offer any certainty as to the outcomes. It also makes reference to

a noise limit which Mr Hunt in his evidence conceded might not be appropriate.

- 5.6 If a noise management plan condition is to be imposed on the designation, the Council prefers the wording recommended by the reporting officer and appended to the memorandum of counsel for the Council (in its regulatory capacity) dated 28 October 2016.

Alice Balme

2 November 2016