

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Stage 3 Proposed District Plan Provisions

**Report and Recommendations of Independent Commissioners Regarding
Variation to Chapter 30 – Energy and Utilities**

Commissioners

Trevor Robinson (Chair)

Sarah Dawson

Greg Hill

Calum Macleod

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1. PRELIMINARY

1.1 Terminology in this Report

1. Throughout this Report, we use the following abbreviations:

Aurora	Aurora Energy Limited
Chapter 30 Variation	The variation to Chapter 30 of the PDP notified on 19 September 2019, including proposed related variations to Chapter 2 of the PDP.
Council	Queenstown Lakes District Council
ODP	The Operative District Plan for the Queenstown Lakes District as at the date of this Report.
Oil Companies	Z Energy Limited: BP Oil NZ Limited and Mobil Oil NZ Limited
ORC	Otago Regional Council
PDP	The series of Plan Changes to the ODP notified in stages commencing 26 August 2015 and in relation to Chapter 30, means the decisions version of Council dated 3 May 2018 unless otherwise stated.
QAC	Queenstown Airport Corporation
RMA	Resource Management Act 1991 as at 19 September 2019
RPS	The partially operative Regional Policy Statement for the Otago Region dated 14 January 2019 unless otherwise stated
Stage 3	The most recent set of Plan Changes (and Plan Variations) to the ODP notified on 19 September and 31 October 2019

1.2 Early Release of Recommendations

2. The Hearing Panel has generally approached the release of its recommendations to the Council on the basis that the inter-related nature of the provisions notified in Stage 3 and the zonings

applied to land arising from those provisions means that all of our recommendations should be provided to the Council at one time.

3. In the case of the variation to Chapter 30, however, the Council requested that we consider releasing our recommendations in advance of our recommendations on the balance of Stage 3 provisions in order to assist the recovery of the District from Covid related disruptions.
4. Having reviewed the submissions, we have identified that the Chapter 30 variation is relatively discrete, with a limited number of submitters seeking changes to the proposed text. To the extent that one submitter (Aurora¹) sought changes that were linked to its submissions on other parts of Stage 3, that submission was not pursued when the Aurora's representatives appeared before us.
5. Consistent with the constrained scope of our hearing on the Chapter 30 variations, the only evidence we heard supported the Council officer's recommendations and counsel for the Council advised us that the Council would not be replying on any issue related to Chapter 30.
6. On that basis, we have formed the view that the public interest will be better served by our releasing our recommendations on this aspect of Stage 3 at this stage.

1.3 Hearing Arrangements

7. The hearings on the variations to Chapter 30 were held as part of the broader Stage 3 hearings that commenced on 29 June 2020 (in Queenstown) and concluded on 13 August 2020 (in Wanaka).
8. The parties we heard from on the variations to Chapter 30 were as follows:

Queenstown-Lakes District Council

- Sarah Scott (Counsel)
- Craig Barr

ORC²

- Andrew Maclennan
- Dr Ben Mackey

9. In addition, QAC³ pre-circulated corporate evidence (of Melissa Brook) but made no arrangements for its witness to appear at the hearing. We have treated Ms Brook's evidence as 'tabled'. The weight we can therefore give it is somewhat reduced.
10. We record that Ben Farrell gave planning evidence for Wayfare Group Limited⁴, but that evidence did not address any of that submitter's points regarding the Chapter 30 Variation. Similarly, Ainsley MacLeod presented planning evidence on behalf of Transpower New Zealand

¹ Submission 3153

² Submission 3342

³ Submission 3316

⁴ Submission 3343

Limited⁵, accompanied by Andrew Renton, but that evidence did not address that submitter's submissions on the Chapter 30 Variation (that supported the text as notified). Lastly, while Aurora appeared represented by counsel (Simon Peirce) and by its planning witness, Joanne Dowd, Mr Peirce advised us that the submitter had refined its relief sought in relation to the Wāhi Tūpuna provisions of the PDP. It did not therefore pursue its alternative relief in respect of Chapter 30.

2. STATUTORY CONSIDERATIONS

11. The version of the RMA that we need to apply is that in place at the point of notification of the Chapter 30 Variation (19 September 2019). It therefore reflects the amendments to the RMA made by the Resource Legislation Amendment Act 2017.
12. Consistent with that position, as part of her opening legal submissions for the Council, Ms Scott provided us with an outline of the legal tests that we need to apply when arriving at our recommendations, based on the Environment Court's decision in *Colonial Vineyard Limited v Marlborough District Council*⁶. No party suggested a materially different approach and, accordingly, we adopt Ms Scott's submissions in this regard.
13. No party pointed out to us any National Policy Statement, National Environmental Standard or other regulation of relevance to the Chapter 30 Variation. However, the RPS provides higher order guidance (in Policy 4.3.2) as to what is "*regionally significant infrastructure*" in the Otago Region. This is relevant because one of the purposes of the Chapter 30 Variation is to incorporate in the definition of "*regionally significant infrastructure*" in Chapter 2 of the PDP a reference to "*municipal infrastructure*" as now provided for (following the resolution of appeals on the RPS) in that policy, together with an additional definition of what "*municipal infrastructure*" includes.
14. The RPS also provides both an objective (4.1) and a series of policies relating to natural hazard risk and its management. Giving evidence for the Council, Mr Barr highlighted to us Policies 4.1.1 Identifying Natural Hazards; 4.1.2 Natural Hazard Consequence; Policy 4.1.4 Assessing Activities for Natural Hazard Risk; Policy 4.1.5 Natural Hazard Risk; Policy 4.1.6 Minimising Increase in Natural Hazard Risk; and Policy 4.1.10 Mitigating Natural Hazards.
15. Consideration of the application of the tests identified by Ms Scott occurs in the context of the broader PDP process which the Council is engaged on. In summary, a series of plan changes to the ODP have been initiated, including substitution of a new Chapter 30 – Energy and Utilities. Relevantly, Chapter 30 was the subject of Council decisions on 3 September 2018, that were in turn the subject of a number of appeals to the Environment Court. Mr Barr advised us that Council had deliberately avoided any variation of a Chapter 30 provision that was the subject of appeal. The Environment Court was in the process of resolving the appeals on Chapter 30 in parallel with our hearing and we were provided with a Consent Memorandum dated 23 September 2019 that had been filed with the Environment Court. Our understanding is that the Court has not issued orders confirming changes to Chapter 30 in terms of that memorandum.

⁵ Submission 3080

⁶ [2014] NZEnvC 55

16. While relatively discrete, Chapter 30 does not sit in a vacuum. The structure of the Plan Changes making up the PDP to date is that some chapters (Chapters 3-6) have been inserted into the ODP that provide strategic direction on the entire range of district planning issues. Although, with one exception, appeals on those strategic chapters have not yet been finally resolved, the interim decisions of the Environment Court⁷ provide clear direction on the likely shape those provisions will take following final resolution of the appeals on them. Accordingly, Mr Barr was able to table a marked-up version of Chapter 3 that Ms Scott advised us is effectively beyond challenge (except where noted thereon).
17. We observe that the revised Chapter 3 provides clearer guidance than did the Council decisions version on the role of the strategic objectives and policies in Chapter 3 in relation to plan development; specifically that they provide direction for the development of the more detailed provisions elsewhere in the District Plan in relation to the Strategic Issues (which are identified in Chapter 3). Chapter 3 has a different role in relation to plan implementation, but since we are engaged in the plan development phase, we can pass over the differences.
18. We have approached our duties under Section 32AA of the RMA on the basis that, as per subsection 1, a further evaluation *“(a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed...”* and *“(c) must... be undertaken at a level of detail that corresponds to the scale and significance of the changes”*.
19. Section 32AA(1)(d) effectively gives us the option to prepare a separate evaluation report for any changes we recommend to the notified variations, or to embed our further evaluation in our report. We adopt the latter approach.

3. SPECIFIC PROVISIONS

20. Mr Barr adopted a thematic approach when reviewing submissions on the proposed variations. We do the same.
- #### 3.1 Purpose Statement
21. The notified variations included an additional paragraph to be added in the Purpose Statement in Chapter 30 describing the role of utilities in protecting the community from natural hazards.
 22. Wayfare Group Limited made a submission that references to *“the community”* include individual people and property. Mr Barr interpreted that submission as relating to the first sentence of the addition to the Purpose Statement. While Mr Barr concurred with the underlying thinking (that references to the community in this context, and elsewhere in Chapter 30, are not limited to the community as a whole) he was concerned that the amendments sought might suggest that an individual will necessarily be able to utilise the utility provisions. He did not recommend a change to the text in response to the submission.

⁷ *Darby Planning Limited Partnership and Others v QLDC* [2019] NZEnvC 133 and [2020] NZEnvC 40 in particular

23. As above, Wayfare Group Limited did not provide evidence in support of its submission.
24. We agree with Mr Barr's reasoning, essentially for the reasons set out in his Section 42A Report, and therefore do not recommend any further change.
- 3.2 Objectives and Policies
25. Proposed Objective 30.2.9 reads:
- "Natural hazard mitigation structures and works that are required to reduce risk to people, property, and the community are enabled in a manner that minimises adverse effects on the environment."*
26. Mr Barr identifies only submissions in support of this objective. We need therefore consider it no further.
27. Notified new Policies 30.2.9.1 and 30.2.9.2 are likewise only the subject of submissions in support, and so again, we need consider them no further.
28. Notified Policy 30.2.9.3 reads:
- "Minimise the displacement of natural hazard risk off-site".*
29. Mr Barr notes this policy has been the subject of two submissions. First the Oil Companies seek that the policy be amended so that it is specific to displacement of natural hazard risk *"that results from natural hazard mitigation structures and works"*.
30. Secondly, ORC generally supports the policy but seeks clarification as to whether it relates to undertaking natural hazard mitigation, or whether it relates to all activities. It suggests an amendment that would focus the policy clearly on the former.
31. Mr Barr agreed that there was merit in providing clarification and suggested a slightly different phrasing that in his view achieved the intent of both submissions, as follows:
- "Minimise the displacement of natural hazard risk off-site that may result from natural hazard mitigation structures and works."*
32. When Mr Maclennan gave evidence for ORC, he confirmed his agreement with Mr Barr's recommended rewording.
33. We agree with the thinking underlying Mr Barr's suggested amendment, that the policy should not assume that all natural hazard mitigation structures and works would involve displacement of risk off-site. We think that this intent might be further clarified (and consequently more appropriately give effect to the objective) with a minor additional amendment as follows:

“Minimise any displacement of natural hazard risk off-site that may result from natural hazard mitigation structures and works”.

34. Notified Policy 30.2.9.4 read:

“Encourage natural hazard mitigation structures and works that result in no or low residual risk from natural hazard.”

35. ORC sought that this policy be amended to provide more certainty as to the outcome sought. The submission was non-specific as to what aspect was considered unclear. However, in his evidence for ORC, Mr Maclennan suggested that reference to works resulting in no residual natural hazard risk be deleted since such an outcome is impossible to achieve in practice; in other words, there will always be a residual risk, however small.

36. In his rebuttal evidence Mr Barr agreed with the suggested wording, as do we, for essentially the same reasons.

37. It follows that we recommend Policy 30.2.9.4 be amended to read:

“Encourage natural hazard mitigation structures and works that result in low residual risk from natural hazards.”

38. ORC also sought that both Policies 30.2.9.3 and 4 be relocated to Chapter 28. Mr Barr observed that at the point in time when these variations were prepared and notified, the entirety of Chapter 28 was before the Environment Court awaiting consent orders. Council did not wish to delay finalisation of Chapter 28 by notifying variations to it. Mr Barr also queried jurisdiction to shift policies into another chapter.

39. Since then, the Environment Court has issued consent orders on Chapter 28 and so Mr Barr’s first point of concern falls away. We agree with Mr Barr, however, that shifting these policies into Chapter 28 is potentially problematic, but for a different reason. Located in Chapter 30, these two policies assist in achieving the new objective and shifting them out of Chapter 30 would leave something of a hole in the policy response to that objective. It would also potentially broaden their effect, since they would apply to private works if located in Chapter 28, and we had no evidence as to their consistency with the existing objectives and policies in Chapter 28, if read in that way.

40. ORC did not pursue this particular submission in its evidence and, accordingly, we agree with Mr Barr’s recommendation that the two policies should remain in Chapter 30.

41. Mr Barr notes only a submission (from ORC) in support of Policy 30.2.9.5 and accordingly, we do not need to consider it further.

3.3 Other Chapter 30 Provisions and Rules

42. Mr Barr’s Section 42A Report grouped the variation to Rules 30.3.3.1, 30.3.3.3, 30.3.3.4 and 30.3.3.5. He noted Aurora as having submitted, in the alternative, that reference to Chapter 39 (Wāhi Tūpuna) be removed from Rule 30.3.3.3 if its submissions on Chapter 39 were not accepted.

43. The effect of deleting the suggested cross reference is that the rules in Chapter 30 would prevail over any rules in Chapter 39 unless specifically stated otherwise. Mr Barr considered that this was a matter more properly considered in the context of Chapter 39, as do we.
44. In the event, however, we did not have to consider Aurora's submission further because, when it appeared at the hearing, counsel for the submitter (Mr Peirce) advised that the submitter had refined its relief and as a consequence, Mr Peirce did not address this alternative submission further.
45. We observe that a number of submissions that will be considered by the Stream 16 Hearing Panel have sought that Chapter 39 be deleted. The Stream 16 Panel will consider those submissions and make recommendations to Council in due course. We do not consider that we need await finalisation of the Stream 16 recommendations as a result. If the Stream 16 Hearing Panel recommends, and Council accepts, that Chapter 39 should be deleted, Rule 30.3.3.3(g) would simply be deprived of practical effect, rather than having any unintended consequence.
46. QAC sought that Rule 30.3.3.5 be amended to include specific reference to "*airport related activities*", in addition to "*airport activities*" so that the Rule would state specifically that Chapter 30 does not apply to either set of activities. As Mr Barr notes, both "*airport activity*" and "*airport related activity*" are defined terms. Unsurprisingly, airport related activities encompass a wider range of activities and services that provide "*support*" to an airport. Ms Brook's tabled evidence for QAC explains that the intention underlying the submission is to address the potential duplication of controls related to airport related activities, which form part of the wider ambit of the airport network utility operation, and are therefore also (she suggests) utilities. She records QACs view that it is neither inefficient nor an effective means to achieve the purpose of the Act if such activities are controlled under both chapters of the PDP.
47. By contrast, Mr Barr was of the view that "*airport related activities*" as defined are not utilities, and therefore should not engage with Chapter 30. Mr Barr also noted that some of the specific items identified in the definition of "*airport related activity*" could be read either narrowly or broadly, with the result that they may or may not fall within the scope of the definition of "*airport*".
48. The practical consequence of excluding "*airport related activities*" is that within the Queenstown Airport Zone, such activities are permitted subject only to performance standards related to the buildings within which they occur, landscaping and glare. There is a more extensive range of controls on airport related activities within the Wanaka Airport Zone.
49. In our view, the definition of "*airport related activity*" is very broad. We agree with Mr Barr that some specific aspects of the definition would or could fall outside the PDP definition of "*utility*". To the extent that airport related activities are utilities, they are also not necessarily undertaken by the Airport Authority so as to suggest they should fall outside the scope of Chapter 30.

50. In summary, while we consider that Ms Brook has a point, we think that to entirely exempt airport related activities from the ambit of Chapter 30, as QAC suggests, would have potentially unforeseen outcomes and that while involving some potential inefficiencies, a greater level of control is a more appropriate way in which to give effect to Objective 30.2.9.
51. Mr Barr notes that QAC's submission also seeks deletion of the first sentence of Rule 30.3.3.5 ("*airports and approach controlled services are defined as utilities*"). As he notes, QAC's submission does not explain why it seeks this relief. Ms Brook likewise, does not address it in her tabled evidence. On the face of the matter, this sentence serves as an introduction to the operative provisions that follow, rather than having substantive effect in its own right. In the absence of a clear rationale, we see no reason to recommend that it be deleted.
52. In summary, therefore, we do not recommend any amendments to the notified versions of Rules 30.3.3.1, 30.3.3.3-30.3.3.5 other than renumbering to better fit within the existing numbering system of Chapter 30.

3.4 Utility Rules

53. The variation proposed seven new permitted activity rules (30.5.1.3-9 inclusive), a new controlled activity rule (30.5.1.10), a new restricted discretionary rule (30.5.1.12) and a new full discretionary rule (30.5.1.13) collectively providing for a range of general utility activities.
54. Mr Barr noted an internal numbering problem in that notified Rule 30.5.1.13 cross refers Rule 30.5.1(e), which does not exist. He identified the resulting confusion as a possible reason for ORC's submission seeking that natural hazard mitigation works be a permitted activity. This raises a broader numbering issue that we will return to. However, we agree that clearly the mismatch in numbering needs to be addressed. Mr Maclennan confirmed for ORC that that would address ORC's submission point.
55. More substantively, Wayfare Group Limited submitted that it was unclear whether underground cabling for transmission and distribution of telecommunications is permitted and that that should be made clear.
56. Mr Barr explained his reasoning as to why underground telecommunication lines related to natural hazard monitoring or natural hazard mitigation is provided for already in the notified rules. We agree with that analysis. To the extent that Wayfare Group Limited's submission relates to telecommunication lines more generally, we think that there are jurisdictional issues expanding the scope of the rules in the manner suggested. We also consider that there is an overlap with the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016, that provides for underground telecommunication lines as a permitted activity⁸, subject to specified standards⁹. In the absence of evidence from Wayfare Group Limited explaining the inter-relationship between the rule it proposes and the regulations, we do not recommend additional rules related to underground telecommunication lines.

⁸ Regulation 43

⁹ Regulations 44-51

57. Mr Barr noted that Wayfare Group Limited's submission also seeks that structures, facilities, plant, equipment and associated works including earthworks for the protection of the community from natural hazards are permitted and that Rule 30.5.1.3 is amended from full discretionary activity status to controlled or restricted discretionary status. ORC makes a similar submission that Rule 30.5.1.13 should be a restricted discretionary activity. ORC's submission suggests matters of discretion that would fit within such a rule.
58. Mr Barr notes that proposed Rule 30.5.1.7 already permits maintenance, repair or replacement of existing structures etc for natural hazard mitigation whereas new works fall within Rule 30.5.1.13. We agree with Mr Barr's analysis, suggesting that either permitted or controlled activity status would be inappropriate for new natural hazard mitigation works because of the policy direction qualifying the extent to which such works are enabled.
59. As regards the potential that new works might be restricted discretionary activities, the Wayfare Group Limited submission did not suggest what matters of discretion would apply to such a rule. While ORC did provide more detail with its submission, Mr Barr considered that the suggested matters would not cover the range of issues and matters that would likely need to be addressed and Mr Maclennan, giving evidence for ORC both agreed with that view and supported Mr Barr's recommendation that the activity status remain discretionary.
60. We observe also that restricted discretionary status on the basis set out in ORC's submission might be considered inconsistent with RPS Policy 4.1.10 that provides for hard protection structures only when a list of specified criteria apply.
61. In the absence of evidence from Wayfare Group Limited to support its submission, we agree with Mr Barr's recommendation and do not recommend any substantive change to Rule 30.5.1.13.
62. QAC's submission expressed concern about the potential for establishment of artificial water bodies in the vicinity of Queenstown or Wanaka Airports to attract birds which may, in turn, pose a potential safety risk to Airport operations. It sought that notified permitted activity Rule 30.5.1.5 be amended and a new restricted discretionary rule be added governing "*water and irrigation races, drains and channels beneath the Aircraft Approach and Land Use Controls Designation at the Queenstown or Wanaka Airports*". The submission proposed that the sole matter of discretion would be adverse effects on aircraft operations.
63. QAC also sought that Rule 30.5.1.10 (providing for stormwater detention/retention ponds or stormwater wetlands) be amended to be a restricted discretionary activity, rather than controlled and that adverse effects on aircraft operations at Queenstown or Wanaka Airport be added to the matters of discretion.
64. Mr Barr considered QAC had identified a valid issue, but drew our attention to the fact that the requested relief in relation to Rule 30.5.1.10 would make every stormwater detention and retention pond or stormwater wetland a restricted discretionary activity throughout the district, when the rationale for the activity having that status relates to potential effects on aircraft operations at Queenstown and Wanaka Airports; by definition, quite a small subset of the district. Put in Section 32 terms, the increased transaction costs are not justified. Mr Barr also noted that in the context of urban areas where these facilities are likely to be established in conjunction with subdivision use and development, a restricted discretionary activity status

may be too onerous, particularly where the associated subdivision is being undertaken in compliance with a structure plan as a controlled activity.

65. We agree with Mr Barr's concerns in this regard.
66. Mr Barr suggested that his concern might be overcome if the same approach were taken to stormwater detention/retention ponds and stormwater wetlands as to the activities covered by Rule 30.5.1.5, namely that within a limited area around each Airport the activities might have restricted discretionary activity status.
67. That then raises the question about how the relevant area might be identified. QAC's submission refers to the "*Aircraft Approach and Land Use Controls Designation*". There are two relevant designations and as Mr Barr noted, each designation is accompanied by two maps applying over different areas. Taking Queenstown as the example, Figure 1 relates to the Airport Approach and Protection Measure Area. Figure 2 provides for a larger area identified as the Airport Protection Inner Horizontal and Conical Surfaces Area. Figures 3 and 4 provide comparable maps for Wanaka Airport and environs. Mr Barr made it clear that he was not expressing any expertise with regard to Airport Aircraft Approach and Protection Measures associated with bird strike. Understandably, therefore, he recommended that Figures 1 and 3, as above, be used, effectively inviting QAC to justify its position, if it sought that the areal scope of a restricted discretionary rule be a larger area.
68. Lastly, Mr Barr recommended that rather than cross referencing the figures in the QAC Designations, the actual figures should be inserted into the chapter, to guard against the effect of the rule being changed, should the designations be altered in the future.
69. In the event, Ms Brook's evidence for QAC did no more than submit that Figures 2 and 4 in the relevant designations be utilised, without further explanation. Although Ms Brook is a qualified planner, she did not purport to give expert planning evidence and, even if she had, that would have put her in no better position to advise us in relation to the appropriate area to control for this purpose than Mr Barr.
70. Mr Barr expressed to us some surprise that QAC had not responded rather more constructively to his open invitation to provide more information. We share that surprise. Given that Ms Brook did not appear for us to discuss the matter with her, we find that we can put little weight on her evidence in this regard.
71. Having said that, Ms Brook's evidence is helpful in at least one respect; it confirms QAC's agreement that a district-wide amendment to Rule 30.5.1.10 is not justified.
72. In summary, we agree with Mr Barr's recommendation that a new restricted discretionary rule be inserted governing the activities otherwise authorised by Rules 30.5.1.5 and 30.5.1.10 referenced to Figures 1 and 3 extracted from Designations 4 and 65 respectively, and with discretion restricted to bird strike effects on aircraft operations at one or other of Queenstown or Wanaka Airport.

73. In our recommended version of the Chapter 30 Variation attached, we have amended Mr Barr's wording slightly to reflect the fact that we have inserted the actual figures in Chapter 30.
74. Mr Barr did not consider an internal cross reference is required between the various rules to make it clear that the more restrictive rule applies, when applicable, as QAC had sought. While we tend to agree that the intention is clear (and section 30.3.3.3 states that is the case for permitted activities), other rules in Chapter 30 have such internal cross references. Accordingly, we have inserted consequential amendments to put the matter beyond doubt.
- 3.5 Definitions**
75. As above, the relevant variation is to insert a new item of regionally significant infrastructure into the definition of that term (municipal infrastructure) along with a further definition of "municipal *infrastructure*".
76. Mr Barr notes a submission of the Oil Companies requesting that the definition of "regionally significant *infrastructure*" be amended so that it is consistent with the de-facto definition provided in Policy 4.3.2 of the RPS. Given that RPS Policy 4.3.2 identifies "municipal *infrastructure*" as being of national and regional significance we agree with Mr Barr that it is at least questionable whether there is jurisdiction to add any additional matters to the existing definition in Chapter 2: refer the leading authority in the High Court in *Palmerston North City Council v Motor Machinists Limited*¹⁰.
77. In any event, we do not understand what benefit reproducing Policy 4.3.2 of the RPS would serve. As Mr Barr observed, revision of that definition is already proposed as part of resolution of appeals on Stage 1 of the PDP to incorporate reference to electricity sub-transmission infrastructure and significant electricity distribution infrastructure.
78. The only other areas in which the PDP definition differs materially from that in Policy 4.3.2 of the RPS is that the latter refers to ports, defence facilities and rail infrastructure. As far as we are aware, there are no ports or defence facilities within the district. The only rail infrastructure is that related the currently mothballed Kingston Flyer tourist venture.
79. Lastly, particularising reference to Queenstown and Wanaka Airport has the effect of excluding Glenorchy Aerodrome, but we concur with the Stage 1 Hearing Panel, who recommended that particularisation. As Mr Barr observes, that particular aspect of the Stage 1 recommendations was not appealed.
80. We therefore agree with Mr Barr that the notified definitions need not be changed.
- 3.6 Other Matters**
81. Wayfare Group Limited made a general submission seeking that an additional matter of discretion be inserted for restricted discretionary activities to ensure "*positive effects*" of the activity are to be considered.

¹⁰ [2013] NZHC 1290

82. Mr Barr considered that this amendment was not necessary and Wayfare Group Limited did not call evidence that would call that view into question.
83. Accordingly, we accept Mr Barr's recommendation that this submission be declined.
84. As above, the new Utility Rules proposed were numbered 30.5.1.3-10 inclusive, 30.5.1.12 and 30.5.1.13. So numbered, they duplicate rule numbers in PDP Chapter 30. There is already, for instance, a controlled activity rule numbered 30.5.1.3. We do not apprehend the intention of the Variation to replace that rule (which relates to buildings associated with a utility) with notified Rule 30.5.1.3 (which relates to underground pipes and incidental structures and equipment for transmitting and distributing gas).
85. Our recommended Chapter 30 Variation attached, therefore, utilises a numbering system that would fit into PDP Chapter 30 seamlessly.
86. Alternatively, the Council may prefer to utilise its powers under Clause 16(2) of the First Schedule to amend the numbering of PDP to make room for the new rules the subject of the Variation.
87. Either way, as noted above, the internal cross reference in notified Rule 30.5.1.13 needs to reflect the end result.
4. **OVERALL RECOMMENDATION**
88. Having considered the evidence before us, we have formed the view that save as identified above, the notified provisions of the Chapter 30 Variation are the most appropriate way to give effect to the stated objective. That objective is not the subject of submission and we have no basis on which to reconsider it.
89. To the extent that we have recommended amendments to the notified provisions, our reasons are as set out above.
90. Accordingly, we recommend that the Chapter 30 Variation be adopted by Council in the form attached.
91. We also attach as an appendix to our Report, a summary table setting out our recommendation in relation to each primary submission. We have not listed further submissions as the result in respect of any further submission necessarily follows the recommendation on the primary submission, whether that be supported or opposed.

Dated: 12 September 2020

A handwritten signature in black ink, appearing to read 'TR', with a large, stylized flourish extending downwards and to the right.

Trevor Robinson
Chair

Attachments

Appendix 1- Recommended Revised Proposed Plan Provisions

Appendix 2- Table of Submitter Recommendations

30 Energy and Utilities

Purpose

30.1.1. Energy *[Not subject to this variation]*

39.1.2 Utilities

[Add the following text after the third paragraph]

Utilities are also required for the purpose of the protection of the community from natural hazards. The provisions in this Chapter address structures and works required for the purpose of natural hazard mitigation, while Chapter 28 (Natural Hazards) focuses on the consequences of subdivision, use and development on, and the natural hazard risk to, those activities.

30.2 Objectives and Policies

Utilities

[Add the following objective and five policies]

30.2.9 Objective – Natural hazard mitigation structures and works that are required to reduce risk to people, property, and the community are enabled in a manner that minimises adverse effects on the environment.

Policies

30.2.9.1 Enable the repair and maintenance of natural hazard mitigation structures, facilities, and plant required for the protection of the community.

30.2.9.2 Provide for natural hazard mitigation structures and works that are required to reduce risk to people, property, and the community while:

a. seeking to avoid significant adverse effects;

b. where there is no reasonable alternative and avoidance of significant adverse effects is not practicable, remedying or mitigating adverse effects; and

c. minimising other adverse effects.

30.2.9.3 Minimise any displacement of natural hazard risk off-site that may result from natural hazard mitigation structures and works.

30.2.9.4 Encourage natural hazard mitigation structures and works that result in low residual risk from natural hazards.

30.2.9.5 Recognise that natural hazard mitigation structures and works may have a functional need to locate within sensitive areas, with the potential for adverse effects on the values of those sensitive areas, including:

- a. Significant Natural Areas, including other areas that meet the criteria for significance in Policy 33.2.1.8;
- b. heritage features, heritage precincts, heritage overlay areas and protected trees;
- c. overlays and zones with special character areas including the Queenstown, Wānaka and Arrowtown town centres and the Arrowtown Residential Historic Management Zone;
- d. Outstanding Natural Landscapes and Outstanding Natural Features;
- e. Rural Character Landscapes and other amenity landscapes;
- f. lakes, rivers and their margins;
- g. Wāhi tūpuna; and
- h. Open Space and Recreation Zones.

30.3 Other Provisions and Rules

30.3.1 *[Not subject to this variation]*

30.3.2 *[Not subject to this variation]*

30.3.3 Interpreting and Applying the Rules

30.3.3.1 A permitted activity must comply with all the rules listed in the Activity and Standards tables, and any relevant district wide rules unless any of the exceptions set out in Rule 30.3.3.3 apply.

30.3.3.2 *[Not subject to this variation]*

30.3.3.3 The rules contained in this Chapter ~~prevail take precedence~~ over any other rules that may apply to energy and utilities in the District Plan, unless specifically stated to the contrary and with the exception of:

- a. 25 Earthworks;
- b. 26 Historic Heritage.
- c. Protected Trees.
- d. Indigenous Vegetation and Biodiversity.
- e. 35 Temporary Activities and Relocated Buildings;
- f. 36 Noise
- g. 39 Wāhi Tūpuna.

30.3.3.3a Roads are defined as a utility, however the rules in this Chapter do not apply to the construction, management, upgrading or use of Roads or the Transport Network. These activities are managed by Chapter 27 Subdivision and Development and Chapter 29 Transport.

30.3.3.3b Airports and approach control services are defined as utilities. However the rules in this Chapter do not apply to Airport Activities within the Airport Zone (Chapter 17). Airport Activities within the Airport Zone are managed in Chapter 17.

30.4 Energy Rules *[Not subject to this variation]*

30.5 Utility Rules

30.5.1	General Utility Activities	Activity Status
<u>30.5.1.2a</u>	<u>Underground pipes and incidental structures and equipment for transmitting and distributing gas.</u>	P
<u>30.5.1.2b</u>	<u>Underground pipes and incidental structures and equipment for the supply and drainage of water or wastewater.</u>	P
<u>30.5.1.2c</u>	<u>Water and irrigation races, drains, channels and underground pipes for water and irrigation, other than those activities restricted by Rule 30.5.1.3b.</u>	P
<u>30.5.1.2d</u>	<u>Structures, facilities, plant, equipment and associated works for monitoring and observation of natural hazards.</u>	P
<u>30.5.1.2e</u>	<u>Maintenance, repair or replacement of existing structures, facilities, plant, equipment and associated works for natural hazard mitigation.</u>	P
<u>30.5.1.2f</u>	<u>Underground pipes and incidental structures and equipment for the conveyance of stormwater.</u>	P
<u>30.5.1.2g</u>	<u>Water, wastewater and stormwater pump stations.</u>	P
<u>30.5.1.2h</u>	<u>Stormwater detention/retention ponds or stormwater wetlands, other than those activities restricted by Rule 30.5.1.3b.</u> <u>Control is reserved to:</u> <u>a. effects on the use of open space;</u> <u>b. provision of safe access for maintenance;</u> <u>c. effects on health and safety;</u> <u>d. landscaping.</u>	C
<u>30.5.1.3a</u>	<u>Aboveground pipelines and attached ancillary structures for the conveyance of water, wastewater, stormwater and gas.</u> <u>Discretion is restricted to:</u> <u>a. functional needs of the utility;</u> <u>b. visual effects;</u> <u>c. Location, limited to the operation and function of the site, existing activities and effects on amenity values;</u> <u>d. odour effects.</u>	RD

30.5.1	General Utility Activities	Activity Status
<u>30.5.1.3b</u>	<p><u>Water and irrigation races, drains, channels, stormwater detention/retention ponds or stormwater wetlands within the Airport Approach and Protection Measures at Queenstown and Wanaka Airports, as identified in Figures 1 and Figures 3 in Section 30.7 below.</u></p> <p><u>Discretion is restricted to:</u></p> <p>a. <u>Bird strike effects on aircraft operations at Queenstown or Wanaka Airports;</u></p>	<u>RD</u>
<u>30.5.1.3c</u>	<p><u>Structures, facilities, plant, equipment and associated works including earthworks for the protection of the community from natural hazards not otherwise provided for in Rule 30.5.2.e.</u></p>	<u>D</u>

30.6 Rules - Non-Notification of Applications

[Not subject to this variation]

30.7 Queenstown Airport and Wanaka Airport Figures

Figure 1 Queenstown Airport: Airport Approach and Protection Measures

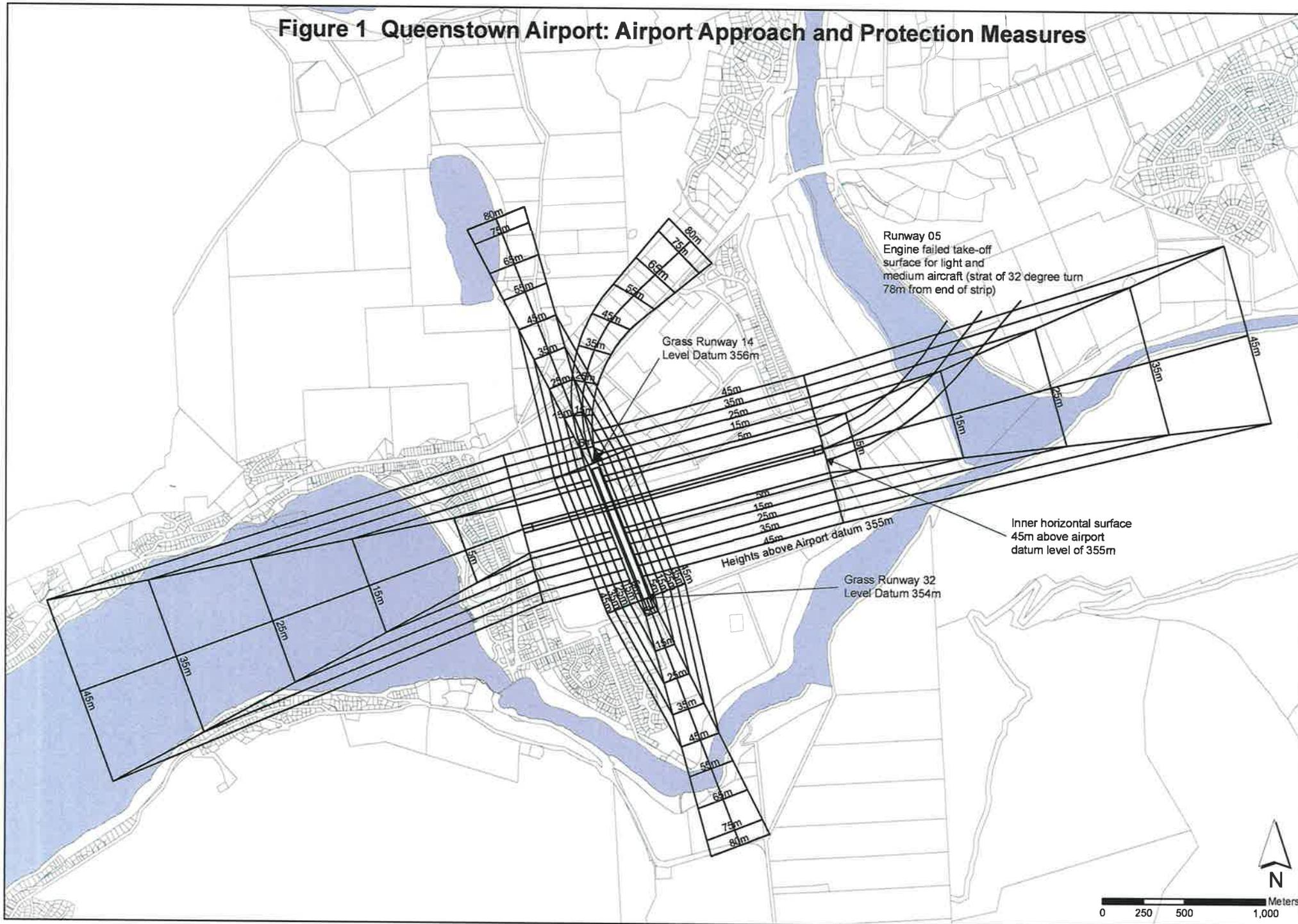
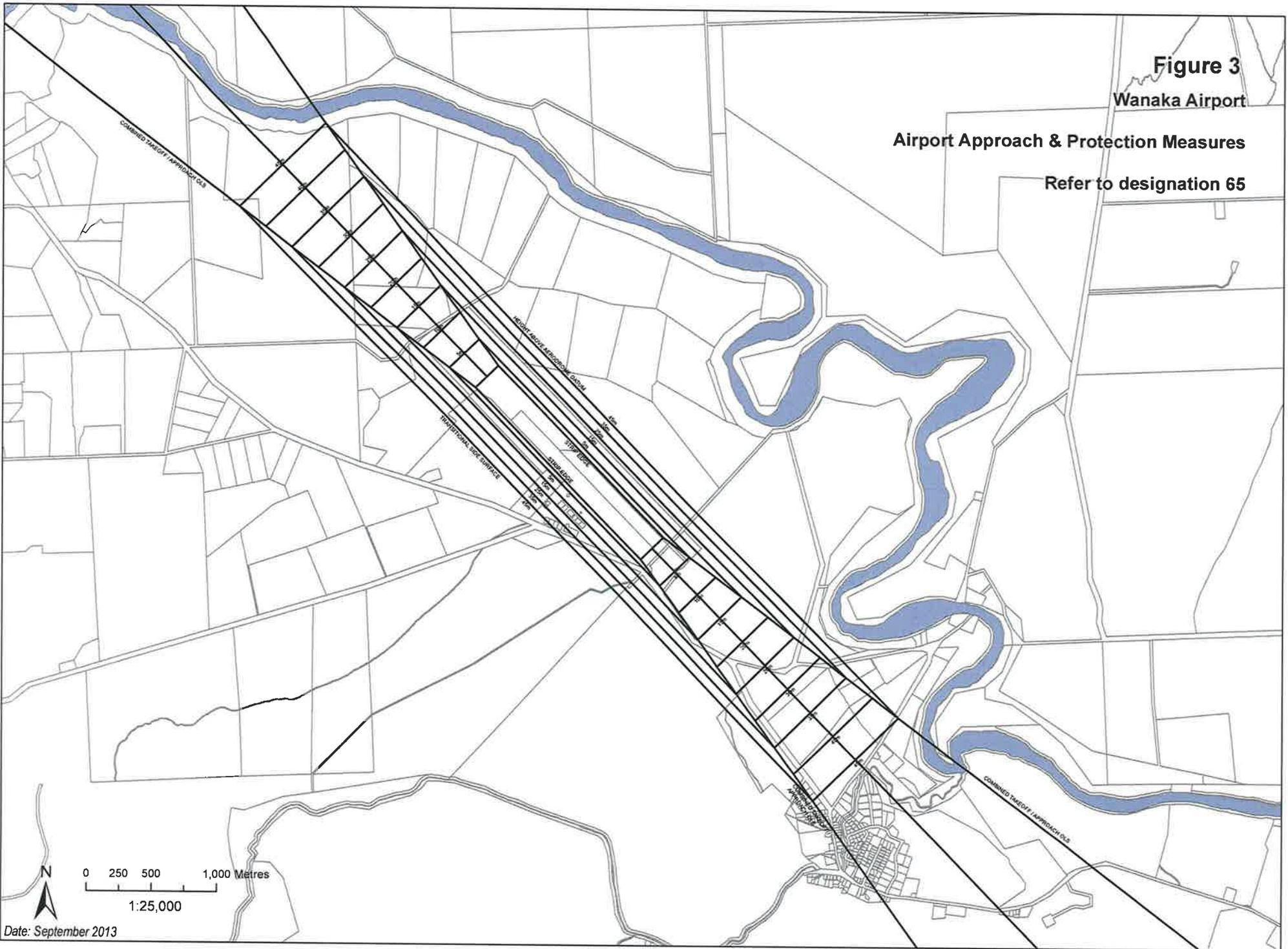


Figure 3
Wanaka Airport

Airport Approach & Protection Measures

Refer to designation 65



Variation to Chapter 2 Definitions:

<p>Regionally Significant Infrastructure</p>	<p>Means:</p> <p>a. <i>[existing text not subject to this variation]</i></p> <p>...</p> <p>g. ...; and</p> <p>h. <u>municipal infrastructure.</u></p>
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<p><u>Municipal infrastructure</u></p>	<p>Means <u>infrastructure owned and operated by the Council for:</u></p> <p>a) <u>Conveyance of untreated water from source to, and including, the point of its treatment to potable standard for an urban environment (see below), but excluding its distribution within that urban environment;</u></p> <p>b) <u>Treatment of wastewater from a reticulated system in an urban environment (see below) and conveyance for its disposal, but excluding its pre-treatment collection within that urban environment;</u></p> <p>c) <u>Treatment of stormwater from a reticulated system in an urban environment (see below) and conveyance for its disposal, but excluding its pre-treatment collection within that urban environment.</u></p> <p><u>For the purposes of the definition of Municipal infrastructure, urban environment means:</u></p> <ol style="list-style-type: none"> I. <u>All land zoned within Part Three – Urban Environment, comprising Chapters 7 to 17 inclusive and Chapter 44 (Coneburn Industrial Zone).</u> II. <u>Any Open Space and Recreation Zone located within an Urban Growth Boundary identified on the Plan maps.</u> III. <u>Jacks Point Zone Chapter 41.</u>
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Appendix 2- Table of Submitter Recommendations

Submission No	Submitter	Submission Summary	Recommendation	Section where addressed
3080	Transpower New Zealand Limited	That the provisions of Chapter 30 be retained as notified, or in a manner that does not impact State 1 appeals.	Accept	General
3080	Transpower New Zealand Limited	That 30.3.3 is retained as notified,	Accept	3.3
3153	Aurora Energy Limited	That, if the relief in submission point 3153.23 is accepted, Rule 30.3.3.1 be retained as notified. If the relief in submission point 3153.22 is not accepted, amend Rule 30.3.3.1 by rejecting the notified additional text ("unless any of the exceptions set out in Rule 30.3.3.3 apply").	Not pursued so not considered further. Underlying point to be addressed in Stream 16 report.	3.3
3316	Queenstown Airport Corporation	That Rule 30.3.3.1 is retained as notified	Accept	3.3
3316	Queenstown Airport Corporation	That Rule 30.3.3.5 is amended to read: "The rules in this Chapter do not apply to Airport Activities and Airport Related Activities within the Airport Zone (Chapter 17). Airport Activities and Airport Related Activities within the Airport Zone are Managed by Chapter 17."	Reject	3.3
3316	Queenstown Airport Corporation	That the words "Except where captured by Rule 30.5.1.1," are inserted at the start of Rule 30.5.1.5.	Accept in part	3.4
3316	Queenstown Airport Corporation	That a new Rule 30.5.1.11 be inserted as follows: "Water and irrigation races, drains and channels beneath the Aircraft Approach and Land Use Controls Designation at the Queenstown or Wanaka Airports" with a Restricted Discretionary Activity Status, where discretion is restricted to: a. Adverse effects on aircraft operations at Queenstown or Wanaka Airports.	Accept in part	3.4
3316	Queenstown Airport Corporation	That Rule 30.5.1.10 is amended from a Controlled to a Restricted Discretionary Activity with the matters of discretion as follows: Discretion is restricted to: a. Effects on the use of open space; b. Provision of safe access for maintenance; c. Effects on health and safety d. Landscaping.; e. Adverse effects on aircraft operations at Queenstown or Wanaka Airports.	Accept in part	3.4
3342	Otago Regional Council	That Objective 30.2.9 be retained as notified.	Accept	3.2
3342	Otago Regional Council	That Policy 30.2.9.1 be retained as notified.	Accept	3.2
3342	Otago Regional Council	That Policy 30.2.9.2 be retained as notified.	Accept	3.2
3342	Otago Regional Council	That Policy 30.2.9.3 be amended to read as follows: When designing and establishing natural hazard mitigation structures and works minimise the displacement of natural hazard risk off-site. Or similar relief that helps to clarify the intent of Policy 30.2.9.3.	Accept in Part	3.2
3342	Otago Regional Council	That Policy 30.2.9.4 be amended to provide more certainty as to the outcome sought by the policy.	Accept in Part	3.2
3342	Otago Regional Council	That Policy 30.2.9.3 be relocated to Chapter 28 (Natural Hazards).	Reject	3.2
3342	Otago Regional Council	That Policy 30.2.9.4 be relocated to Chapter 28 (Natural Hazards).	Reject	3.2
3342	Otago Regional Council	That Policy 30.2.9.5 be retained as notified.	Accept	3.2
3342	Otago Regional Council	That a new rule 30.5.1x be introduced that provides for all works including all earthworks structures, facilities, plant, equipment to manage natural hazards that comply with Rule 25.4.1 as a permitted activity.	Accept in part	3.4

Submission No	Submitter	Submission Summary	Recommendation	Section where addressed
3342	Otago Regional Council	That Rule 30.5.1.13 be amended to have restricted discretionary activity status and to read as follows: Works including all earthworks structures, facilities, plant, equipment, to manage natural hazards not otherwise provided for in Rule 30.5.1.x Discretion is restricted to: a. the ability to mitigate the effects on the following overlays: i. Significant Natural Areas; ii. Heritage Features and Heritage Overlay Areas; iii. Rural Character Landscapes; iv. Outstanding Natural Landscape and Features; v. Wahi tupuna sites; b. Positive effects of the structures, facility, plant, or equipment to people and communities.	Reject	3.4
3343	WAYFARE GROUP LIMITED	That utilities and works which protect people and property from natural hazard risk are significant physical resources and should be provided for.	Accept in part	3.4
3343	WAYFARE GROUP LIMITED	That Rule 30.5.1.e be clearer in stating what it permits.	Accept in part	3.6
3343	WAYFARE GROUP LIMITED	That a new clause is inserted to clarify that reference to 'the community' includes individual people and property (i.e. not just the group or the broader community).	Reject	3.1
3343	WAYFARE GROUP LIMITED	That structures, facilities, plant, equipment and associated works are permitted, including earthworks for the protection of the community from natural hazards, are permitted.	Accept in part	3.4
3343	WAYFARE GROUP LIMITED	That underground telecommunication services (including associated earthworks) are permitted.	Reject	3.4
3343	WAYFARE GROUP LIMITED	That the Activity Status of Rule 30.5.1.13 is amended from 'Discretionary' to 'Controlled' or 'Restricted Discretionary'.	Reject	3.4
3343	WAYFARE GROUP LIMITED	That an additional matter of discretion for Restricted Discretionary Activities is inserted to ensure that 'positive effects' of the activity are considered.	Reject	3.6
3383	Z Energy Limited, BP Oil NZ Limited & Mobil Oil NZ Limited	That Clause 30.1.2 is retained as notified.	Accept	3.1
3383	Z Energy Limited, BP Oil NZ Limited & Mobil Oil NZ Limited	That Objective 30.2.9 be retained as notified.	Accept	3.2
3383	Z Energy Limited, BP Oil NZ Limited & Mobil Oil NZ Limited	That Policy 30.2.9.1 be retained as notified.	Accept	3.2
3383	Z Energy Limited, BP Oil NZ Limited & Mobil Oil NZ Limited	That policy 30.2.9.2 be retained as notified.	Accept	3.2
3383	Z Energy Limited, BP Oil NZ Limited & Mobil Oil NZ Limited	That Policy 30.2.9.3 be amended as suggested so that it is specific to natural hazard mitigation structures and works.	Accept in part	3.2
3383	Z Energy Limited, BP Oil NZ Limited & Mobil Oil NZ Limited	That Policy 30.2.9.4 be retained as notified.	Accept	3.2
3383	Z Energy Limited, BP Oil NZ Limited & Mobil Oil NZ Limited	That the definition of Regionally Significant Infrastructure is amended as suggested so that it is consistent with the de-facto definition provided in Policy 4.3.2 of the Partially Operative Otago Regional Policy Statement.	Reject	3.5