

Before the Queenstown Lakes District Council

In the Matter of the Resource Management Act 1991

And

In the Matter of the Queenstown Lakes Proposed District Plan

Chapter 37 (Designations)

**Supplementary Legal Submissions for
Queenstown Airport Corporation Limited
(Requiring Authority for Designations 2
and 4, and Submitter 433 and Further
Submitter 1340 for Designations 29, 64,
65, 230 and 576)**

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Introduction

1. These legal submissions address the Council's evidence (as Requiring Authority) in respect of Designation 29 (QLDC Events Centre and Aquatic Centre, or **Queenstown Events Centre**).
2. This evidence was inadvertently overlooked when preparing QAC's pre-lodged legal submissions (dated 14 October 2016).

Dr Chiles' Evidence

3. As declared in his evidence, Dr Chiles sat as a Commissioner on the Council hearing of Plan Change 35 (**PC35**), in his capacity as a noise expert. The Panel's decision on PC35 was to confirm it in all material respects.
4. PC35 was premised on the New Zealand Standard airport noise management and land use planning: NZS 6805.
5. As Mr Kyle has explained, NZS 6805 recommends that new activities sensitive to aircraft noise (**ASAN**) be prohibited within an airport's outer control boundary (**OCB**) unless the district plan permits such uses. Then they should be subject to a requirement to incorporate appropriate acoustic insulation to ensure a satisfactory internal noise environment.
6. Under PC35, all new ASAN within the Rural Zone are prohibited activities. The underlying zoning of the Queenstown Events Centre is the Rural Zone.
7. Accordingly, the PC35 approach, which Dr Chiles' has previously supported, prohibits the establishment of new ASAN on the Queenstown Events Centre land (under its zoning).
8. Daycare and community facilities are ASAN, as defined.
9. Dr Chiles' evidence is generally consistent with the approach recommended by NZS 6805 and that taken in PC35, but for two paragraphs.
10. At paragraph 5.3 he states that standalone day care and community facilities (my paraphrasing) *might* be appropriate at the Queenstown

Events Centre, if the building housing these activities can be designed so as to achieve an appropriate internal sound level.

11. Dr Chiles does not further elaborate on when such activities “might” be appropriate in this paragraph, although at paragraph 2.1(b) he clarifies that this could be the case “*if there are not equivalent sites available*”.
12. What Dr Chiles appears to be saying, is that standalone day care (and community) facilities could possibly be appropriate at the Queenstown Events Centre, but only if there are no suitable alternative sites for such facilities anywhere proximate and outside the OCB.
13. The Council has not provided any evidence that this is the case, and it is submitted, nor could it. (It is noted that there are currently numerous day care facilities in close proximity to the Queenstown Events Centre – for example, City Impact Childcare at the City Impact Church, immediately adjacent to the Events Centre on the north side of SH6, Little Rockets at Lake Hayes Estate and Zig Zag Zoo in Frankton, for example. Clearly there are suitable alternative/equivalent sites for this activity that are outside the OCB.)
14. The Council has also not produced any evidence that these activities are “reasonably necessary” for achieving the objectives for which the modified designation is sought, or any evidence that addresses any of the section 171 criteria. The Councils’ case is deficient in this regard.
15. In summary, Dr Chiles’ support of standalone day care and community facilities within the OCB the Queenstown Events Centre is very qualified - to the extent that it does not assist or advance the Council’s case in support of these activities.

Ms Galavazi

16. It is noted that Ms Galavazi has not stated that her evidence has been prepared in accordance with the Code of Conduct for Expert Witnesses, which is of some interest given she purports to express the opinion of ‘the Council’ throughout her evidence.
17. Ms Galavazi addresses QAC’s submissions on Designation 29 at paragraph 8.65 – 8.73. Her evidence is somewhat confused.

18. In respect of QAC's submission on provision for childcare facilities at the Queenstown Events Centre, and the necessity of a condition which limits such facilities to use by children whose parents are, at the time of requiring the childcare facility, using the site for its designation purpose, she states that such condition is unnecessary, because the use of childcare facilities must be consistent with the purpose of the designation, or otherwise resource consent is required (paragraph 8.68).
19. It is agreed that the use of childcare facilities must be consistent with the site's designation purpose (section 176(2)), that being the very point of QAC's submission. However, community facilities are ASAN, as defined, meaning they also prohibited activities in terms of the site's underlying zoning, and resource consent could therefore not be sought or obtained.
20. In relation to this same issue, Ms Galavazi infers that Dr Chiles' evidence supports her view that the condition sought by QAC is unnecessary, and that standalone childcare facilities are appropriate.
21. However, as previously discussed, Dr Chiles' evidence in respect of the appropriateness of ASAN at the Events Centre is very qualified, and does not provide the support for Ms Galavazi's view that she suggests.
22. Ms Galavazi's evidence is contradictory. She appears to be saying, on the one hand, that standalone day care facilities (which it is noted, are a commercial activity as defined in the Proposed Plan), are appropriate at the Events Centre but that they must be related to the purpose of the Designation - which is a "multi purpose indoor and outdoor recreation, cultural and conference complex", on the other. These statements can not be reconciled.
23. Standalone facilities *may* be appropriate, where they are demonstrated to be reasonably necessary for achieving the requiring authority's objectives, and the other section 171 criteria are satisfied. However, as already noted, no assessment of section 171 matters has been undertaken in the Council's evidence, and the assessment contained in the NOR is wholly inadequate.
24. The same comments apply in respect of Mr Galavazi's discussion of standalone community facilities.

25. At paragraph 8.71 she states that “*it is not a requirement of a designation that an activity be directly related or ancillary to the operation of the use authorised by the designation*”, but only that the activities authorised by the designation “*be consistent with its purpose.*”
26. It is accepted that the Act does not expressly require that activities carried out under a designation be related or ancillary to the designated purpose, however it is submitted that it is a logical inference of section 176(2). That is, in order for an activity to be consistent with the designated purpose, it must be related or ancillary to that purpose. The distinction Ms Galavazi seek to draw is therefore artificial.
27. As for her comment at paragraph 8.71, that QAC’s submission seeking to restrict community facilities to those that “are directly related or ancillary to the operation of the Queenstown Events Centre” serves no resource management purpose, it is strongly refuted.
28. QAC’s submission to so limit community facilities is based on a principled approach that is consistent with PC35 and NZS 6805. It seeks to avoid the establishment of new, unnecessary ASAN within the OCB, where they would otherwise be prohibited, so to avoid bringing new persons to the aircraft noise, so to avoid the potential for adverse amenity and reverse sensitivity effects, and also to avoid any ‘precedent’ effects that may arise and ultimately undermine the integrity of the OCB.
29. The scope to consider “any other matter” under section 171(1)(d) of the Act is broad, and it is submitted that these matters clearly fall within it.

Summary

30. The Council, as the requiring authority for Designation 29, is under section 171, required to demonstrate that the modifications to the Designation, including the proposed new permitted activities, are reasonably necessary for achieving the objectives for which the designation is sought; to consider the relevant statutory planning documents, and to assess the environmental effects. The Council has done none of these things.
31. In the absence of any compelling evidence for a different approach, QAC therefore seeks to uphold the approach taken in PC35, which is consistent with the approach taken to land use planning around other New Zealand

airports, and which has been endorsed by the Environment Court. Under the PC35 approach, new ASAN are to be prohibited within the OCB.

32. It is noted that QAC is not seeking a blanket prohibition on such activities at the Queenstown Events Centre, but rather that there be nexus between such activities and Designation 29's purpose. No nexus between this purpose (or the objectives for the NOR) and the need for stand alone ASAN at the Events Centre has been established by the Council.
33. The Council has provided no evidence as to why the PC35 approach should be departed from in this instance, and the evidence of Dr Chiles' suggests it should not.
34. PC35 is a relevant matter which can and should be considered under section 171(1)(d).

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