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 21 (Rural)

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

Dated: 16 May 2016

---

lane neave.
Level 1, 2 Memorial Street
PO Box 701
Queenstown
Solicitor Acting: Rebecca Wolt
Phone: 03 409 0321
Fax: 03 409 0322
Email:
rebecca.wolt@laneneave.co.nz
QUE912172 4903742.1

Introduction

1. These legal submissions address Queenstown Airport Corporation Limited's (**QAC**) submission on Chapter 21 (Rural) of the Proposed Queenstown Lakes District Plan (**Proposed Plan**).

QAC

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

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

4. QAC also manages operations at, and the administration of, Wanaka Airport, on behalf of QLDC.

5. QAC's submission on Chapter 21 addresses both Queenstown and Wanaka airports.

QAC's Submission on Chapter 21

6. QAC made submissions on Chapter 21 of the Proposed Plan in respect of the following issues:

   (a) The recognition of and provision for significant infrastructure in the Rural Zone, including its associated effects; and

   (b) Acknowledgement that the functional, technical, operational and safety related requirements of infrastructure may necessitate its location in an ONL, ONF or RLC, and provision for that;

   (c) The incorporation of the relevant PC35 provisions into the Chapter, without substantive amendment; and

   (d) The incorporation of the relevant PC26 provisions into the Chapter, without substantive amendment; and

   (e) The recognition of and provision for Wanaka Airport in the Rural Zone, including the inclusion of bespoke objectives, policies and rules;

(f) The identification of Runway End Protection Areas (**REPA**) at Wanaka Airport to protect the public from the risk of aircraft undershooting or overshooting the runway; or

(g) Amendment of the Proposed Plan in a similar or such other way as may be appropriate to address these issues; and

(h) Any consequential changes, amendments or decisions that may be required to address these issues.

Previous Legal Submissions Adopted for Chapter 21 Hearing

7. Comprehensive legal submissions (dated 29 February 2016) were presented for QAC at the hearing of submissions on Chapters 3, 4 and 6 of the Proposed Plan. To the extent they are relevant to QAC's submission on Chapter 21, they are adopted for the purposes of this hearing.

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

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

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

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

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

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

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

(o) 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.

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

Issues Raised in QAC's Submission

10. Expert planning evidence has been prelodged for QAC (refer Statement of Evidence of Kirsty O'Sullivan dated 20 April 2016) which addresses the issues raised in QAC's submission in detail.

11. These legal submissions will address the following issues:

    (a) The incorporation of the relevant PC35 provisions in Chapter 21, without substantive amendment;

    (b) The incorporation of the relevant PC26 provisions, without substantive amendment;

    (c) A bespoke planning regime for Wanaka Airport, including the section 42A Reporting Officer's recommendations, and the Panel's jurisdiction to consider methods other than those sought in QAC's submission;

    (d) The proposed REPA for Wanaka Airport, including the appropriateness of 'prohibited' activity status for activities within those areas, and the requirement to consult with affected landowners.

Incorporation of Relevant PC35 Provisions

12. The history of PC35 and the appropriateness of incorporating its provisions into the Proposed Plan, without substantive amendment, is addressed in detail in QAC's legal submissions dated 29 February 2016 (paragraphs 80 - 114). To the extent they are relevant. those submissions are adopted presently.

13. It is additionally submitted that, given the recent detailed scrutiny given by the Court to PC35, the Panel would need to be presented with detailed and robust evidence (including economic evidence) that the approach endorsed by the Court for protecting Queenstown Airport from potential reverse sensitivity effects is no longer appropriate, and/or the Airport no longer

warrants such protection, before departing from the Court's decisions. No such evidence has been presented to date.

14. Chapter 21 of the Proposed Plan as notified generally incorporates the relevant PC35 provisions, excepting:

    (a) PC35 derived text in the Rural Zone Purpose statement;

    (b) PC35 Objective 7, (Proposed Objective 21.2.7).

15. The section 42A Reporting Officer recommends QAC's submission in respect of the wording of Objective 21.2.7 is accepted, which is appropriate.[1]

16. He recommends QAC's submission seeking the inclusion of additional, PC35 derived text in the Zone Purpose statement be rejected. QAC's planning witness, Ms O'Sullivan, addresses this in her evidence (dated 20 April 2016).

Wanaka Airport

17. Wanaka Airport (**Airport**) is located 9 km south-east of Wanaka, and is accessed from the Wanaka - Luggate highway (SH6). The Airport operates 365 days a year. There are currently no scheduled air passenger services to the Airport, however the Airport is a popular base for flightseeing, flight training, private flights, aircraft maintenance operations, events, and visitor attractions including the popular Warbirds and Wheels Museum and Café.

18. As noted earlier, QAC manages Wanaka Airport on behalf of QLDC, for a modest management fee (cost recovery basis only).

19. Under the management agreement, QAC agrees to run Wanaka Airport in an efficient manner, to the standard expected of a reasonable and competent airport operator.

[1] Note that this objective has been redrafted in the Council's 16 April 2016 memorandum, which is addressed by Ms O'Sullivan in her evidence dated 20 April 2016.

20. QAC employs staff, administers debtors and creditors, manages planning processes, and coordinates projects, CAA compliance and day to day management, on behalf of QLDC.

21. QLDC funds planning and capital projects, and is ultimately responsible for CAA compliance, as the identified 'airport authority' for the Airport under the Airport Authorities Act 1966.

22. Wanaka Airport has been identified as a complementary and supplementary facility to Queenstown Airport, able to accommodate aircraft spill over from Queenstown Airport.[2]

23. There are more than 200 people working in and around the Airport on day-to-day operations such as:

    (a) Flightseeing to Milford Sound and Mount Cook, and surrounding areas;

    (b) A large and growing number of helicopters offering training and charter;

    (c) Pilot training on Cessna and various aircraft types;

    (d) Tandem skydiving flights and parachuting;

    (e) Private sport and recreation, and general aviation;

    (f) Agricultural topdressing operations;

    (g) Charter operations, particularly ski tours;

    (h) Regular military visits;

    (i) Adventure flying in military aircraft.[3]

24. Wanaka Airport also hosts the biennial Warbirds Over Wanaka air show, and is now a proposed annual launch site for NASA's super pressure balloon.

---

[2] Astral Limited "*Wanaka Airport Planning and Development*" 20 April 2016 (**2016 Report**). See also 2008 Masterplan for Wanaka Airport.
[3] http://www.wanakaairport.com/about-wanaka-airport-2/about-us

25. A 2016 Report[4] has noted that Wanaka Airport could increasingly become the base for general aviation (**GA**) in the region, as well as potentially accommodating scheduled and charter air transport service itself.

26. The 2016 Report identifies that in the near term, Wanaka Airport is likely to grow as a result of demand for:

    (a) hangar space for high value privately owned aircraft;

    (b) hangar and facility space for scientific operations such as the NASA balloon launches;

    (c) operational offices and reception facilities for sport aviation activities;

    (d) hangars and bases for helicopter and general aviation, including flight training;

    (e) ancillary services such as maintenance and repair of aircraft and components;

    (f) aircraft parking, in particular corporate jet overflow from Queenstown Airport;

    (g) charter air services such as winter ski flights.

27. Current demand for hangar space at Wanaka Airport is high. The 2016 Report notes that without advertising, the current Airport Manager has firm interest for 12 sites to accommodate 23 aircraft. In addition, NASA has expressed an interest in potentially building a permanent facility for its annual balloon launches.

Incorporation of Relevant PC26 Provisions

28. PC26 was a QLDC initiated plan change for Wanaka Airport. The Plan Change established a land-use management regime for activities sensitive to aircraft noise (**ASAN**) around the Airport, while providing for the predicted and ongoing growth of the Airport.

[4] 2016 Report.

29. To achieve this, PC26 updated the Airport's outer control noise boundary (**OCB**) to provide for predicted growth in aircraft operations until 2036, and amended various zone provisions relating to land use within the updated OCB, likely to be affected by aircraft noise.

30. PC26 was made operative in March 2013.

31. The background to and approach of PC26 is further summarised in Ms O'Sullivan's evidence dated 20 April 2016 (refer paragraphs 2.4 – 2.6 in particular).

32. For reasons similar to those expressed in relation to PC35, PC26 should be incorporated into the Proposed Plan without substantive amendment for reasons including:

    (a) PC26 has been through a public submission and hearing process, during which its provisions were thoroughly considered and assessed against section 32 and the purpose of the Act, including as an integrated whole;

    (b) The decision on PC26 was made by experienced independent commissioners, (on behalf of QLDC), with expertise in the areas of noise and planning;

    (c) This scrutiny has been undertaken relatively recently; the decision on PC26 was issued in July 2011 and the Plan Change made operative in March 2013. There have been no material changes in the Council's policy approach to land use around the Airport since then;

    (d) Given the above, it would be inefficient to revisit the provisions of the Plan Change;

    (e) It would also be inconsistent with QLDC's general approach to the Proposed Plan, being to exclude from review – so as not to alter - provisions of the Operative Plan that became operative within the last 5 - 7 years, or which relate to a discrete topic or zone.[5]

[5] Section 42A Report, Chapters 3 and 4 of the Proposed Plan, paragraph 6.3.

33. Chapter 21 of the Proposed Plan general incorporates the PC26 provisions, except for:

    (a) Additional Zone Purpose text, as discussed earlier in relation to PC35;

    (b) A new objective (21.2.X) and policy (21.2.X.1), which are necessary in order to give effect to PC26.

34. Ms O'Sullivan addresses the merits of each of these amendments in her evidence.

Recognition of and Provision for Wanaka Airport in Chapter 21

Introduction

35. Under both the Operative and Proposed District Plans, Wanaka Airport is located within the Rural Zone.

36. The Airport is the subject of two designations in the Operative and Proposed Plans: Designation 64 and 65 (discussed further shortly). QLDC is the requiring authority for these designations.

37. As the requiring authority, QLDC has the benefit of the fairly permissive designation regime for Wanaka Airport (specifically, the Aerodrome Purposes designation), but all other users of the Airport must comply with the underlying rural zoning.

38. This is inefficient, and does not recognise the physical environment of the Airport, or the general appropriateness of airport and airport related activities in this location.

39. Though its submission on the Proposed Plan, QAC seeks a bespoke set of provisions for Wanaka Airport, which recognise and provide for the ongoing operation and use of the Airport, for all users.

Designations Generally

40. A designation is a special regime under Part 8 of the Resource Management Act (**Act** or **RMA**) to enable the construction and use of certain pubic works and network utilities without obtaining a resource consent, and notwithstanding the provisions of the relevant district plan.

Section 9(3) of the Act does not apply to a public work or project undertaken by a requiring authority under a designation.

41. Under sections 168 and 176 of the Act, if a designation is included in a district plan, the requiring authority responsible for it may do anything that is in accordance with the designation, provided it has financial responsibility for the work or project.

42. No other person may do anything that could prevent or hinder the public work authorised by the designation without the prior written consent of the requiring authority.

43. The provisions of the district plan (i.e. the underlying zoning and related rules) apply to the use of the land other than for the designated purposes, or by any person other than the requiring authority.

44. Section 176A of the Act requires a requiring authority to submit to the relevant territorial authority an 'outline plan' of the work or project to be constructed on designated land before construction commences. It is noted that the outline plan is not 'approved' by the territorial authority. Rather, the territorial authority has an opportunity to request the requiring authority make changes to the outline plan before construction commences, but the ultimate decision on the plan lies with the requiring authority. This is consistent with the approval regime that applies to NORs generally.

45. The outline plan must show the bulk and location of the work, finished contours of the site, access, landscaping, and any other matters to avoid, remedy or mitigate any adverse effects on the environment arising from the work. The nature and assessment of the information provided at the outline plan stage is not dissimilar to that required for a resource consent.

46. It is implicit in section 176A that an outline plan must relate to works to be undertaken by the requiring authority (as opposed to by another party) and permitted by the designation.

Wanaka Airport Designations

47. Wanaka Airport is the subject of two designations in the Operative District Plan, for which QLDC is the requiring authority:

(a) the Aerodrome Purposes Designation (Designation 64) - the purpose of which is to protect the operational capability of the Airport, while at the same time managing adverse affects from aircraft noise. Its boundaries are shown on Planning Map 18a (copy **attached** for the Panel's reference).

(b) the Approach and Land Use Controls Designation (Designation 65) – the purpose of which is to define the essential airport protection measures, transitional slopes and surfaces, aircraft take off climb and approach slope, and airport height obstacle clearances around the Airport.

48. It is proposed these designations be rolled over (with modifications) in the Proposed Plan. The Aerodrome Purposes Designation is of some relevance to QAC's submission on Chapter 21, and is addressed in detail below.

Aerodrome Purposes Designation and Airport Activities

49. The Aerodrome Purposes Designation enables a broad range of airport and airport related activities as permitted uses. The NOR for the inclusion of this Designation in the Proposed Plan seeks authorisation for the following activities:[6]

(a) Aircraft operations, rotary wing aircraft operations, helicopter aprons, and associated touch down and lift off areas, aircraft servicing, general aviation, navigational and safety aids, lighting, aviation schools, facilities and activities associated with veteran, vintage and classic aircraft operations, aviation museums, and aero recreation;

(b) Runways, taxiways aprons, and other aircraft movement or safety areas;

(c) Terminal buildings, hangars, rescue facilities, navigation and safety aids, lighting, car parking, maintenance and service facilities, catering facilities, freight facilities, quarantine and incineration

[6] Note the High Court in *McElroy v AIAL* [2008] 3 NZLR 262 defined the public work of an "aerodrome" very broadly.

facilities, medical facilities, fuel storage and fuelling facilities, and associated offices;

(d) Roads, accessways, stormwater facilities, monitoring activities, site investigation activities, other infrastructure activities, landscaping and all related construction and earthwork activities;

(e) Vehicle parking and storage, rental vehicles, vehicle valet activities, public transport facilities;

(f) Retail activities, restaurants and other food and beverage facilities including takewaway food facilities, and industrial and commercial activities, provided they are connected with and ancillary to the use of the Airport;

(g) temporary activities associated with air shows, conferences and meetings.

50. This list of permitted activities is fairly extensive and provides for all current and foreseeable future activities at Wanaka Airport.

Rural Zoning of Wanaka Airport

51. As stated earlier, under section 176 of the Act, only QLDC has the benefit of the Aerodrome Purposes Designation. All other users of/operators at the Airport must comply with the underlying rural zoning, even if the activity they wish to pursue is located within the Aerodrome Purposes Designation and consistent with its purpose and permitted uses. This results in an unnecessary and inefficient consenting regime for users of the Airport.

52. By way of illustration, whereas QLDC owns all the airside facilities at Wanaka Airport (e.g. runway, taxiways, navigational aids and lighting, etc), all[7] landside facilities (e.g. hangars, the café, aviation museum etc) are privately owned, on ground leases from QLDC.

53. Although these landside facilities are consistent with the purpose of and permitted uses under the Aerodrome Purposes Designation, because they are privately owned (i.e. QLDC, as the requiring authority does not have financial responsibility for them) they can not rely on the Designation, but

[7] Excepting one hangar, which is owned by QLDC.

must be established pursuant to a resource consent, by virtue of the land's underlying rural zoning (noting, by way of example, under the Operative District Plan, a hangar is a non-complying activity, where its height is greater than 7 metres, and is also non-complying activity under the Proposed Plan, given its 'airport' or 'airport related' use).

54. Although these activities must be assessed against the rural zone provisions, under the Operative District Plan they are, for the most part, ultimately determined to be appropriate, given their airport location (and notwithstanding non-compliance with the Rural Zone provisions). This consent process is administratively inefficient.

Section 42A Report

55. The Council's section 42A reporting officer addresses QAC's submission for Wanaka Airport in section 15 of his report.

56. At paragraph 15.7 he expressly accepts that "*the underlying Rural zoning is not appropriate for Wanaka Airport*" and that its "*purpose is fundamentally different to the nature and scale of activities at Wanaka Airport*".

57. Notwithstanding, he recommends QAC's submission for a bespoke planning framework for Wanaka Airport be rejected, as it "*would unnecessarily bulk out and complicate the Rural zone chapter for an established, unique activity that does not have any resemblance to the purpose of the Rural Zone*" (paragraph 15.8).

58. This statement is contradictory. Clearly the bespoke planning framework, or something similar, sought by QAC, is necessary for the very reason stated by the reporting officer: Wanaka Airport is an established and unique activity that bears no resemblance to the purpose of the Rural Zone.

59. The question of an appropriate planning framework is live, having been squarely raised by QAC in its submission. It would be inappropriate to retain the status quo (which is the effect of the reporting officer's recommendation) in light of the facts (refer the hangar example discussed in paragraph 53) and the reporting officer's opinion, as set out above. It

could certainly not be justified under section 32. This is elaborated on shortly.

60. The reason given by the reporting officer for rejecting QAC's submission - that it "*would unnecessarily bulk out*" the rural zone chapter - is not a valid resource management reason, particularly in circumstances where the officer acknowledges a resource management issue exists for the Airport, in that its current planning framework is not appropriate.

61. The claim that Chapter 21 would be '*complicated*' by the addition of bespoke provisions for Wanaka Airport is not substantiated by the reporting officer. Nor is it accepted by QAC.

62. The additional provisions QAC seeks for inclusion in the Chapter are few, focussed, and clearly directed at addressing the unique circumstances of Wanaka Airport. Rather than complicate the Chapter, they will provide clarity in the planning regime that applies to the Airport. This will assist both Plan users, and council staff administering it.

63. A further reason given for rejecting QAC's submission is that for instances where a non-complying resource consent application is made for an airport related activity at Wanaka Airport (which, as noted earlier, would be the case for all hangars to be used for airport or airport related activities), an assessment would need to be undertaken against the rural zone objectives and policies, which do not anticipate airport activities of this nature (section 42A report, paragraph 15.8). This 'logic' is flawed for two reasons.

64. Firstly, it fails to acknowledge that for any such assessment it would be necessary to assess the application against only the *relevant,* more specific objectives and policies of the rural zone.[8] QAC seeks the inclusion of airport specific objectives and policies in Chapter 21, which would address this purported issue.

65. Secondly, it highlights the very reason why maintaining the current approach is inappropriate: because under the Proposed Plan (as notified) airport and airport related activities at Wanaka Airport would fall to be

[8]See for example, *NZ Rail Ltd v Marlborough DC* [1994] NZRMA 70 (HC); *Baker Boys Ltd v Christchurch CC* (1998) 4 ELRNZ 297; *Queenstown Bungy Ltd v Queenstown Lakes DC* EnvC C035/02.

considered as non-complying activities, and, absent the amendments to the zone sought by QAC, would struggle to meet the second limb of the gateway test (section 104D(1)(b)), notwithstanding they would be otherwise appropriate for their location.

66. The reporting officer recommends that "*at Stage 2 of the District Plan Review, investigations are made by the Council's planning and development staff as to whether it is appropriate to identify a new zone for Wanaka Airport that emulates the activities contemplated by the designation*" (paragraph 15.9).

67. QAC agrees that a new zone for Wanaka Airport could be an alternative method by which to recognise and provide for the Airport in the Proposed Plan. However, the reporting officer's recommendation in this regard is qualified (recommending only *investigations* be undertaken as to *whether* a new zone is appropriate), and provides no certainty that the issue will be addressed at Stage 2, or the timing of that.

68. It is also of little assistance to the Panel as it requires the Panel to adopt, in its decision on Stage 1 of the District Plan Review, the status quo, (i.e. maintain the underlying rural zoning), notwithstanding the reporting officer has acknowledged that the status quo is not appropriate for Wanaka Airport.

69. The Panel would likely confront real difficulty in justifying this approach under section 32, given the status quo is not efficient or effective, and there are clearly other reasonably practicable options available for addressing resource management issues at Wanaka Airport.

70. Further, the Panel has no jurisdiction over what will be addressed during Stage 2 of the Review, and the reporting officer's recommendations in respect of it are vague and uncertain.

71. As an aside, it is noted that if the zoning of Wanaka Airport is to be addressed at Stage 2 of the District Plan Review, it will need to be by way of a variation to (Stage 1 of) the Proposed Plan[9], given the issue has

[9] It would be administratively very difficult and arguably *ultra vires*, to withdraw, under clause 8D of the First Schedule to the Act, the 'part' of the rural zone that relates to Wanaka Airport. A variation would therefore be required.

already been addressed, and submissions made, through the Stage 1 process. This begs the questions: given QLDC and the Panel are seized of the issue, having been squarely raised in QAC's submission, why not address it now?

72. The reporting officer recommends that until Stage 2 is notified (at some unknown future time), QLDC, as the requiring authority for Wanaka Airport, lodge an outline plan of works on behalf of its tenants, for development works they seek to pursue. This recommendation is flawed.

73. As already explained, under Part 8 of the Act (sections 168(1) and 176 in particular) QLDC only has the benefit of the Designation (i.e. can rely on it), where it has financial responsibility for the public work it seeks to undertake pursuant to the Designation. For other works (i.e. works for which QLDC does not have financial responsibility, or which are not permitted under the Designation) the underling rural zoning, including any consenting requirements, applies.

74. In the circumstance proffered by the reporting officer, QLDC would not have financial responsibility for the works, (that would lie with its tenants), and therefore could not rely on the Designation or the outline plan process to authorise those works.

75. To be clear, contrary to the reporting officer's recommendation, QLDC is not legally entitled to lodge an outline plan for works (e.g. hangar construction) that is to be undertaken by its tenants. QLDC can only do so if it intends to construct and own the development works (e.g. hangars etc), which is not the case at Wanaka Airport.

76. Accordingly, the reporting officer's recommendation is unsatisfactory, erroneous at law, and does not address the issue raised by QAC.

Overlay, Subzone, or Wanaka Airport Zone

77. QAC's submission on Wanaka Airport seeks a bespoke set of provisions for Wanaka Airport, which is to be defined by either:

(a) The identification of an overlay on Planning Map 18a (within which the bespoke provisions will apply);[10] or

(b) Defining the spatial extent of Wanaka Airport by reference to (i.e. its boundaries being the same as) the Aerodrome Purposes Designation;[11] or

(c) In a similar or such other way as may be appropriate to address QAC's submission points;[12] and

(d) Any consequential changes, amendments or decisions that may be required to give effect to the matters raised in QAC's submission.[13]

78. QAC understands the Panel has inquired (of the reporting officer) what a 'good' planning framework for Wanaka Airport might be, with a particular interest in an overlay, subzone, or Wanaka Airport specific zone, the latter to be dealt with (perhaps) during the hearing on the planning maps.

79. As noted, in its submission QAC has suggested an overlay or written definition as method by which to define the spatial extent of Wanaka Airport, but they are not the only available or appropriate methods.

80. A subzone method could be utilised in much the same way as an overlay, noting both methods are adopted, seemingly interchangeably, in the Proposed Plan, with no apparent distinction between them.

81. Ms O'Sullivan addresses this in further detail in her supplementary evidence, to be lodged prior to the hearing.

82. QAC's submission clearly provides the scope for an overlay or subzone approach – refer paragraph 77(a) and (c) above.

83. Similarly, QAC's submission provides scope for the creation of a new, Wanaka Airport zone, whether in its own right, or as a component of the Proposed Queenstown Airport Mixed Use Zone (which would be renamed the 'Airport Mixed Use Zone').

---

[10] QAC's submission dated 23 October 2015, Annexure A, Page 22.
[11] Ibid.
[12] QAC's Submission dated 23 October 2015, paragraph 5.
[13] Ibid.

Scope to Approve Wanaka Airport Zone or Similar

84. The relief summarised in paragraph 76(c) above makes clear that the methods suggested in QAC's submission are examples only, and foreshadows that QAC's submission points may be appropriately addressed in other ways.

85. Case law has established that when considering the scope of possible decisions on submissions on a plan change (or review), the issue is to be approached objectively, and with a degree of latitude so as to be realistic and workable, rather than a matter of legal nicety.[14]

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

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

(b) However, the scope of a council's decision making under clause 10 of the First Schedule to the Act is not limited to accepting or rejecting a submission. To take a legalistic view that a council could only accept or reject a submission would be unreal.[15]

(c) The paramount test is whether or not the amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the Proposed Plan. This will usually be a question of degree to be judged by the terms of the Proposed Plan and the content of submissions.[16]

(d) The assessment of whether any amendment is reasonable and fairly raised in the course of submissions should be approached in a realistic and workable fashion, rather than from the perspective of legal nicety.[17]

(e) Another way of considering the issue is whether the amendment can be said to be a 'foreseeable consequence' of the relief sought

---

[14] *EDS v Otorohanga District Council* (2014) NZEvnc 070, at [43]
[15] *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 165.
[16] Ibid, at 166.
[17] *Royal Forest and Bird Society Inc v Southland District Council* [1997] NZRMA 408 at 413, (HC).

in a submission; the scope to change a plan is not limited by the words of the submission.[18]

(f) It is relevant to consider what an informed and reasonable owner of affected land should have appreciated might result from a decision on a submission, although this is not the sole test (given the danger of endeavouring to ascertain the mind or appreciation of a hypothetical person).[19]

(g) A council can not permit a planning instrument to be appreciably amended without real opportunity for participation for those potentially affected.[20]

(h) Ultimately, it is a question of procedural fairness. Procedural fairness extends to the public as well as to the submitter and the council.[21]

87. In applying the above presently, it is significant that QAC's submission squarely raises the issue of an appropriate zoning for Wanaka Airport. It states the current rural zoning is not appropriate, and proposes a bespoke set of provisions (objectives, policies and rules) that are consistent with and reflect the Aerodrome Purposes designation, and will apply to only the Airport. It states that the issue may alternatively be addressed in a similar, but different way to that stated in the submission.

88. The general public can therefore be deemed 'on notice' that the current rural zoning of Wanaka Airport may change and a bespoke set of provisions that are enabling of airport and airport related activities may instead apply.

89. Whether this is achieved by way of an overlay, subzone or Wanaka Airport zone is immaterial to the issue of potential prejudice to submitters because the substantive outcome under each alternative method (being the enabling of airport and airport related activities) is no different (provided of

---

[18] *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556, and 574 – 575.
[19] *Countdown Properties*, Supra at 166 – 167.
[20] *Clearwater Resort Ltd v CCC*, unreported: High Court, Tauranga, CIV-2008-470-456, 30 October 2009, Allan J, at para [30].
[21] *Westfield (NZ) Ltd*, Supra, at [74].

course, the activity status of these activities is no more permissive than sought in QAC's submission).

90. That is, an alternative zoning for Wanaka Airport, including a focussed, airport specific zoning (such as a Wanaka Airport zone, or as a component of the Airport Mixed Use Zone) can fairly and reasonably considered within the ambit of QAC's submission; it is a reasonably foreseeable outcome.

91. That said, it is acknowledged that the bespoke provisions sought for Wanaka Airport in QAC's submission do not in themselves comprise a complete zone (whether a stand alone zone or a component of the Queenstown Airport Mixed Use Zone), and if a standalone zone is preferred by the Panel, further additional provisions would be required to ensure the resource management issues for the Airport are appropriately addressed. Ms O'Sullivan discusses this further in her supplementary evidence.

92. Should the Panel prefer a Wanaka Airport zone, (as a standalone zone or a component of the Airport Mixed Use Zone), the detail of that can be addressed at the later (relevant) hearing.[22]

93. Suffice to say, there are a number of ways in which QAC's submission in respect of Wanaka Airport could be addressed through Stage 1 of the District Plan Review. There is no valid reason to delay consideration until (the yet to be scheduled) Stage 2, and it would be inefficient to do so given the Panel is seized of the issue presently.

Wanaka Airport REPA

Planning Framework

94. QAC seeks the identification of Runway End Protection Areas (**REPA**) at the ends of the main runway at Wanaka Airport, to protect the public (i.e. persons and property) from the risk of an aircraft undershooting or overshooting the runway.

95. As the name implies, these areas are sought for safety reasons, noting the consequences of an aircraft undershooting or overshooting the runway

[22] Noting the most recent timetable indicates that the submission on the Airport Mixed Use Zone will not be heard until later November, and submissions on the Planning Maps not until 2017.

could (self evidently) be catastrophic for any persons or property within its path, and/or for persons within the aircraft, resulting in damage and/or loss of life. While the probability of this outcome may be low, the potential impact is very high (refer section 3(f) of the Act). Prohibited activity status is sought for certain activities within the REPA, given these potential catastrophic consequences/effects (QAC's proposed rule 21.4.X).

96. In for the rule to have an appropriate policy basis, QAC seeks the addition of two policies (21.2.X.3 and 21.2.X.1), which, respectively, provide for the REPA, so as to maintain and enhance public safety, and require the avoidance of activities that may compromise the safety of aircraft arriving to and departing from Wanaka Airport.

97. The reporting officer supports the overall intent of QAC's submission, "*in so far as to recognise the importance of safety associated with Wanaka Airport*" (section 42A report, paragraph 15.13).

98. He supports QAC's proposed policy 21.2.X.3, but recommends it be relocated under objective 21.2.8, which he explains is "*an overarching objective for identified activities that have been identified as being unsuitable for development.*" This recommendation arises because he does not support the bespoke planning regime QAC seeks for Wanaka Airport.

99. He does not support QAC's proposed policy 21.2.X.1 however, as he considers it "superfluous" given objective 21.2.4 and its associated policies.

100. Related to this, he recommends that the associated rule prohibiting certain activities within the REPA, (rule 21.4.X) be rejected, or alternatively, that it be amended so that the construction of buildings within these areas (which he recommends be reframed as 'building restriction areas') is a non-complying activity.

101. QAC does not support the reporting officer's recommendations, and maintains that the relief sought in its original submission is necessary and appropriate.

102. Objective 21.2.4 is differently focussed than QAC's proposed policy 21.2.X.1. The objective seeks to "*Manage situations where sensitive activities conflict with existing and anticipated activities in the Rural Zone.*"

Its attendant policies refer to and seek to recognise and *provide* for established and permitted uses that may give rise to adverse effects, but which can be reasonably expected to occur within the rural zone. In contrast, QAC's policy 21.2.X.1 seeks the *avoidance* of activities that may compromise safety at and around Wanaka Airport.

103. Additionally, whereas objective 21.2.4 seeks, *inter alia*, to recognise and provide for established and permitted uses, airport and airport related activities, including the arrival and departure of aircraft, are not permitted activities in the rural zone; they are non-complying. There is a therefore, a serious 'disconnect' between the objective and the rules.

104. Further, contrary to the reporting officer's assertion, QAC's proposed policy 21.2.X.1 is not superfluous if the associated rule prohibiting the establishment of certain activities with the REPA is accepted. In order for prohibited activity status to be justified, there must be an appropriate policy framework in place. The *King Salmon* case makes clear that the use of the word 'avoid' at a policy level connotes an expectation of a restrictive (e.g. prohibited) activity status in the relevant rule(s).

105. Accordingly, the officer's recommendation in respect of QAC's policy 21.2.X.1 is clearly flawed, and can not survive scrutiny under section 32.

106. The reporting officer does not support QAC's proposed rule 21.4.X, and recommends QAC's submission seeking its inclusion be rejected. This is at odds with his recommendation to accept QAC's policy 21.2.X.3 (albeit relocated), as the purpose of the rule is to implement this policy. Without the rule, the policy has no regulatory 'teeth'.

107. As an alternative to outright rejection, the reporting officer recommends, in lieu of the REPA, the identification of a "building restriction area" on the planning maps, within which the construction of *buildings* are non-complying activities.

108. Given the potentially catastrophic consequences of locating *obstacles* (e.g. buildings, people, hazardous substances) or other *impairments* (e.g. production of light or reflective glare that may visually impair pilots, or production of radio or electrical interference that could affect aircraft communications or navigation), within the proposed REPA, specifically damage to property or persons and/or loss of life, any activity status other

than prohibited can not satisfy section 32. The potential costs of a lesser activity status are intolerably high.

109. Likewise, limiting the ambit of the rule to restricting the construction of only *buildings* is inappropriate. The reporting officer provides no substantive reasons for rejecting the inclusion of: the mass assembly of people; the storage of hazardous substances; or the production of light beams, reflective glare, radio or electrical interference, within the ambit of the rule, notwithstanding these activities have equal potential to give rise to the effect the rule seeks to address.

110. Ms O'Sullivan addresses this issue further in her supplementary evidence. She also recommends further amendments to the proposed rule to improve clarity and enforceability.

Requirement to Consult

111. At paragraph 4.22 of QLDC's legal submissions[23] counsel submits, with reference to QAC's proposed rule 21.4.X, that there is "*element of unfairness on affected landowners through imposing a prohibited activity status through a submission*".

112. There is however, no mandatory requirement to consult before making a submission on a Proposed Plan (or requesting a plan change for that matter), including where that submission (or plan change) seeks certain activities be prohibited on certain land.

113. Rather, 'consultation' can be considered achieved via the First Schedule process.

114. To further explain, the role of the written submissions and further submissions process is clearly an important one, as is the public notice of those submissions.

115. The further submission process in particular plays a key role in ensuring persons potentially affected by a decision sought in a submission have the opportunity to respond to that submission. The further submission process gives affected persons the right to respond to matters raised in another

[23] Dated 2 May 2016.

party's submission that may affect their land, or have other implications for them.

116. This view has been confirmed by the Court.

117. In *Butel Park Homeowners Association v Queenstown Lakes District Council*[24] the Court noted the fundamental role of the written submission is to inform other parties of other submitter's concerns.

118. It is submitted that the notice provisions in the First Schedule to the Act require a proactive approach on the part of those persons who might be affected by submissions to a plan change, and that those persons are required to make enquiry on their own account once a local authority has given public notice. [25]

119. In the present case, QAC's submission on Chapter 21 was notified to the wider public, which includes affected landowners, when the council's summary of submissions was published late year. The relief sought by QAC in respect of Wanaka Airport was included in the notified summary largely verbatim. Any affected party had an opportunity to further submit on QAC's submission at this time, in accordance with ordinary process.

120. Significantly, landowners around the Airport are actively engaged in the Proposed Plan process (e.g. Lake McKay Station Limited, located to the west of Wanaka Airport, whose land is directly affected by the proposed REPA, has four separate submissions on the PDP, prepared by Opus), however no party further submitted in opposition to QAC's proposed rule 21.4.X.

121. Notably, QLDC, who raised the fairness issue, has not presented any evidence of any party who considers themselves disenfranchised by QAC's submission in respect of the rule.

---

[24] (2007) 13 ELRNZ 104 at [14]. See also *Rowe v Transit New Zealand* W068/05 at [5], in the context of a designation.

[25] This approach was endorsed by the Environment Court in *Motor Machinists Ltd v Palmerston North CC* [2012] NZEnvC 231, at paragraph [28]. The Environment Court's decision was overturned by the High Court, but this finding was not specifically addressed in the High Court decision.

122. Accordingly, QLDC's concerns about the fairness of granting QAC's relief in respect of the rule are unsubstantiated, unwarranted, and are not supported by the Act.

R Wolt
Counsel for Queenstown Airport Corporation Limited

ATTACHMENTS

Before the Queenstown Lakes District Council

In the Matter of	the Resource Management Act 1991
And	
In the Matter of	the Queenstown Lakes Proposed District Plan
	Chapter 3 (Strategic Direction), Chapter 4 (Urban Development) and Chapter 6 (Landscape)

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

Dated: 29 February 2016

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

Introduction

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

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

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

Queenstown Airport – An Overview

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

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

[1] Specifically, Chapters 7, 15, 17, 21, 36 and 37.
[2] It is noted this circumstance was raised with the Panel Chair in advance of the hearing, and appears to be expressly contemplated on page 3, 4th paragraph of the First Procedural Minute, dated 25 January 2016. For the avoidance of doubt, further detailed evidence (and possibly legal submissions) will be presented at the later hearings of chapters on which QAC has submitted and where the appropriate incorporation of the operative PC35 provisions is at issue, but the evidence and submissions presented for at this hearing will not be repeated.

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

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

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

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

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

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

QAC's Statutory Framework

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

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

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

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

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

    (b) be a good employer; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

QAC's Current and Future Landholdings

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

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

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

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

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

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

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

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

Lot 6

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

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

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

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

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

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

[8] [2015] NZEnvC 222.

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

Airport Growth and Recent Projects

Recent Growth

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

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

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

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

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

---

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

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

Recent Projects

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

(a) a significant terminal expansion;

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

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

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

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

Wanaka Airport

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

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

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

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

QAC's Submissions on Proposed Plan

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

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

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

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

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

---

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

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

Statutory Framework

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

Act's Purpose

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

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

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

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

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

---

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

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

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

Section 31

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

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

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

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

Sections 32 and 32AA

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

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

---

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

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

District Plan Preparation (Sections 74 and 75)

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

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

    (b) the provisions of Part 2; and

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

    (d) any regulations.

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

---

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

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

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

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

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

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

Case Law

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

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

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

---

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

[33] This is usefully tested by asking:

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

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

[34] A078/08.

[35] [2014] NZEnvC 55.

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

Application of Legal Principles to QAC's Submissions

Chapter 3 - Designated Airports as Regionally Significant Infrastructure

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

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

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

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

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

69. QAC's submission is supported by:

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

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

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

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

72. This reasoning is flawed for the following reasons:

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

[52] At paragraph 12.109

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

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

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

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

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

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

Chapter 4 - Incorporation of PC35 Provisions in Proposed Plan

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

QAC's Submission

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

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

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

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed Plan

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

---

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

PC35 Provisions Operative for Less Than 10 Years

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

Proposed Policy 6.3.1.8

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

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

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

List of witnesses

138. QAC will call the following witnesses:

(a) Mark Edghill - Acting CEO of QAC;

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

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

R Wolt
Counsel for Queenstown Airport Corporation Limited

APPENDIX A

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

General Requirements

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

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

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

- In relation to regional plans:

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

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

- When preparing its district plan the territorial authority:

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

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

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

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

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

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

Objectives

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

Provisions[88]

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

---

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

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

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

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

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

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

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

Rules

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

Other Statutes

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

---

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

APPENDIX B

Reverse Sensitivity

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

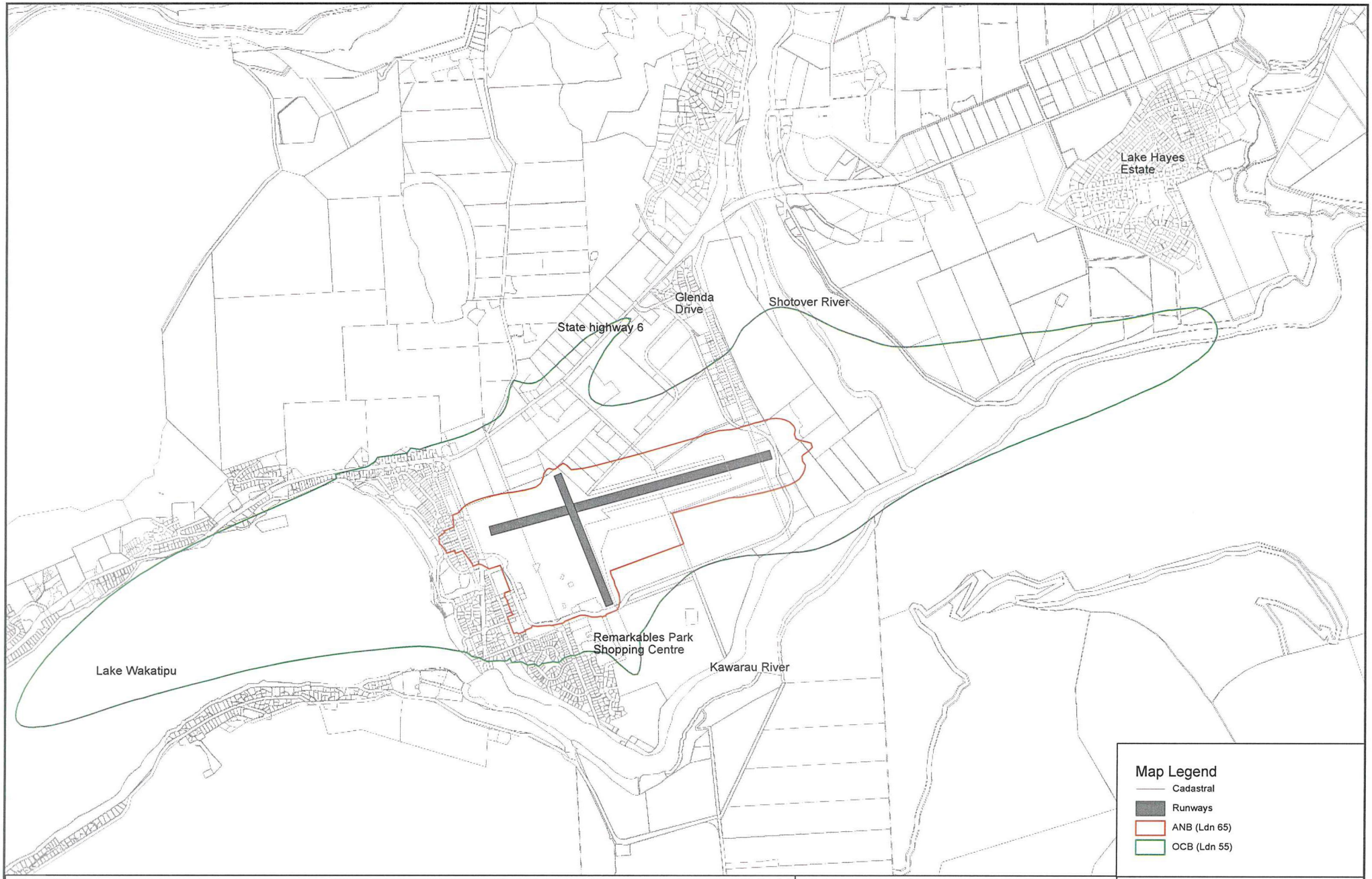
- The Court has recognised reverse sensitivity as an "*effect*" for the purposes of the Act, and as such there is a duty, subject to other statutory directions, to avoid, remedy or mitigate it, so as to achieve the Act's purpose of sustainable management.[97]

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

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

---

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



MARSHALL DAY Acoustics

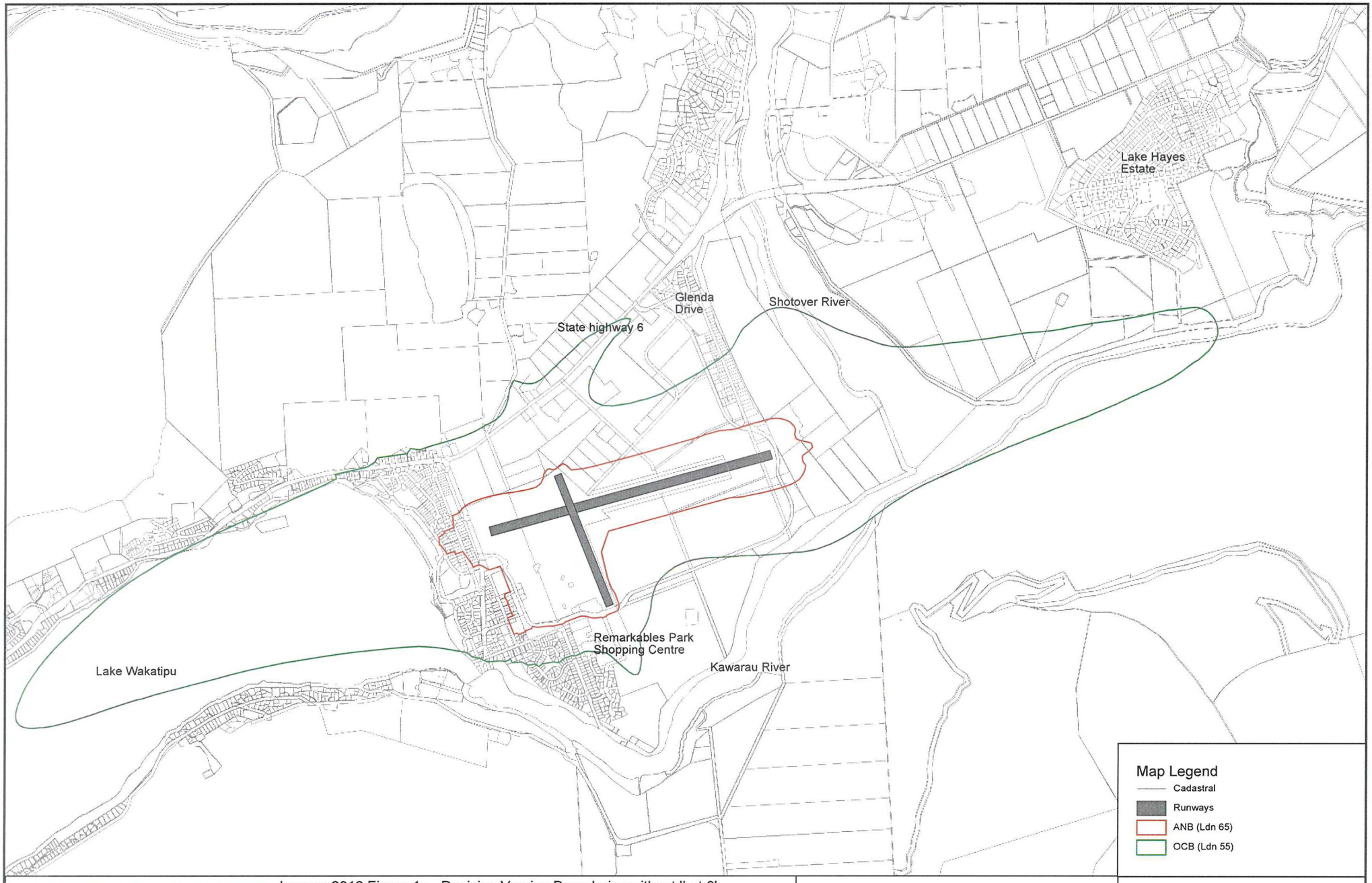
January 2012 Figure 0 - Decision Version Boundaries with 'Lot 6'

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

Scale 1:22500

0 100 200 400 600 800 m

N



MARSHALL DAY Acoustics

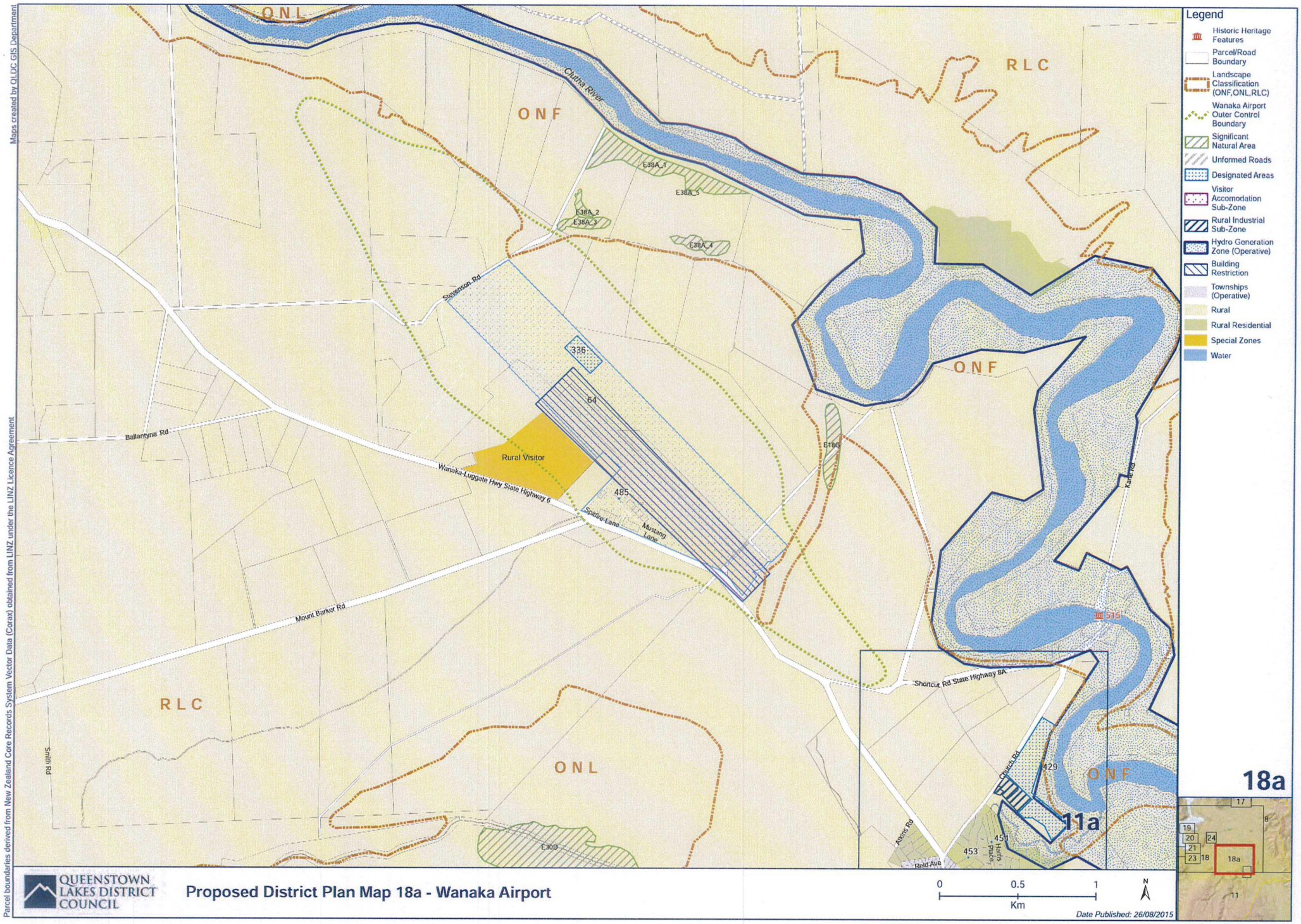
January 2012 Figure 1a - Decision Version Boundaries without 'Lot 6'

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

Scale 1:22500

0 100 200 400 600 800 m

N



QUEENSTOWN LAKES DISTRICT COUNCIL

Proposed District Plan Map 18a - Wanaka Airport

Date Published: 26/08/2015