

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

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Stream 07 –
Chapter 37
Designations

**OPENING REPRESENTATIONS / LEGAL SUBMISSIONS FOR
QUEENSTOWN LAKES DISTRICT COUNCIL**

Hearing Stream 07 – Chapter 37 Designations

20 October 2016

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MAY IT PLEASE THE PANEL:

1. INTRODUCTION

1.1 These legal submissions are made on behalf of Queenstown Lakes District Council (**Council**) in its regulatory capacity in respect of Hearing Stream 07 Chapter 37 Designations (**Designation Chapter**) of the Proposed District Plan (**PDP**).

2. OUTLINE OF LEGAL SUBMISSIONS

2.1 These submissions should be read together with the synopsis of the Council's legal submissions filed on 7 October 2016. At the time of filing the Council's synopsis, evidence and legal submissions from requiring authorities and submitters had not been filed. Therefore, for the assistance of the Panel, these submissions address key legal issues that have been raised in legal submissions for requiring authorities and submitters, and also identify issues arising from requiring authority and submitter evidence. They are not a comprehensive response to all evidence that has been filed.

2.2 Despite the fact that there are a number of issues raised in evidence for requiring authorities and submitters that are not accepted by the Council, because there is no direction for rebuttal evidence, the summaries of the Council's evidence have responded, at a very general level, to some of the key issues raised.

2.3 These submissions address:

- (a) NZ Transport Agency's (**NZTA**) late submission on the Designations Chapter;
- (b) the conditions volunteered by the Council on Designation #239 Glenorchy Airstrip;
- (c) the extension of the boundary of Designation #64 (Aerodrome Purposes) at Wanaka Airport;

- (d) the proposed broadening of the list of permitted activities in relation to Designation #2 (Aerodrome Purposes) at Queenstown Airport;
- (e) proposed amendments to Designation #4 (Approach and Land Use Control (transitional slopes and surfaces)) to align the text with the figures that depict the obstacle limitation surfaces at the airport; and
- (f) the Council's withdrawal of its proposed requirements over closed landfills in Kingston, Luggate and Glenorchy.

3. NZTA'S LATE SUBMISSION

- 3.1** In its synopsis of submissions, the Council advised the Panel that following notification of the PDP, NZTA wrote to the Council and advised it that a number of alterations are either not included in the PDP or contain errors. Further, NZTA's letter advised the Council that the references to the State Highways that currently have the status of Limited Access Roads (**LARs**) are outdated.
- 3.2** At the time that the Council's synopsis of submission was filed, NZTA had not made a submission on the above matters. However, by way of its Minute on 11 October 2016, the Panel invited NZTA and the Council to consider whether a late submission might be appropriate in the circumstances.
- 3.3** NZTA has now applied for and been granted an extension of time under section 37 of the RMA, and has filed a late submission. This submission addresses the alterations that were omitted from NZTA's designations and requests that the references to the LARs in the Designations Chapter be updated.
- 3.4** The Council advises that the following process will now be followed in respect of NZTA's late submission:
 - (a) the Council will give public notice of the submission, and serve the submission on all persons who made a

submission on the PDP¹ and all persons who in the Council's opinion may be directly affected by the matters contained within the submission;

- (b) the Council will prepare a s 42A report on NZTA's submission and any further submissions received on it; and
- (c) a hearing will be held on NZTA's late submission and any further submissions, if necessary.

4. DESIGNATION #239 GLENORCHY AIRSTRIP

4.1 The Council is the requiring authority in respect of Designation #239, over the Glenorchy Airstrip. The designation was rolled over into the PDP without modification. However, Wyuna Preserve Residents Association Incorporated² filed a submission on the PDP seeking that conditions be imposed on the designation, to manage the adverse effects of aircraft movements on the environment.

4.2 In response, the Council as requiring authority volunteered two conditions on the designation restricting the hours of operation, and requiring aircraft operators to plan routes and operate their aircraft in accordance with the "Fly Neighbourly" guidelines.³ The evidence of Ms Rebecca Holden, the s 42A report author for the Designations Chapter, is that the conditions volunteered by the Council are appropriate to manage the adverse effects of aircraft movements on the environment.⁴ Ms Jeannie Galavazi, the Council's Senior Parks and Reserves Planner, has provided evidence on behalf of the Council as requiring authority and agrees that the volunteered conditions are appropriate.⁵

4.3 Dr Stephen Chiles has also provided acoustic evidence for the Council, as requiring authority. It is Dr Chiles' view that the Glenorchy

¹ In accordance with Clause 7 of Schedule 1 of the RMA.

² Submitter 744.

³ See paragraphs 8.40-8.45 of the evidence of Ms Jeannie Ellen Galavazi on behalf of Queenstown Lakes District Council as requiring authority, dated 7 October 2016.

⁴ See paragraph 7.71 of the 42A Report of Ms Rebecca Holden on Chapter 37 Designations (QLDC), 23 September 2016.

⁵ See paragraphs 8.40-8.45 of the evidence of Ms Jeannie Ellen Galavazi on behalf of Queenstown Lakes District Council as requiring authority, dated 7 October 2016.

Airstrip Reserves Management Plan (**RMP**) includes appropriate noise control measures for the Glenorchy Airstrip. As such Dr Chiles considers that there is no technical reason to impose the conditions volunteered by the Council on the designation.⁶

- 4.4** While Dr Chiles' view is acknowledged, from a legal perspective the Council submits that designation conditions provide a stronger and more certain regulatory mechanism than the provisions of the RMP. This is because, there is no provision in the Reserves Act 1977 that provides for the specific enforcement of the RMP. On the other hand, the Resource Management Act 1991 (**RMA**) provides specific enforcement options in circumstances where the RMA is not complied with. Accordingly, it is the Council's position that the conditions volunteered by the Council will not result in unnecessary duplication of the provisions of the RMP, but rather are reasonably necessary in the circumstances, and should be imposed.

5. WANAKA AIRPORT DESIGNATION EXTENSION

- 5.1** The Council, as requiring authority, gave notice to modify Designation #64 (Aerodrome Purposes) by extending the boundary to include an additional 0.127 ha of land. Counsel understands from the notice of requirement⁷ and the evidence of Mr John Kyle,⁸ that the Council does not own this additional land.
- 5.2** The evidence of Mr Kyle on behalf of the Council as requiring authority is that the Panel is not required to consider whether adequate consideration has been given to alternatives under section 168A(3)(b)(i) of the RMA. This is because the landowner was contacted prior to submissions on the PDP closing and made no submission.⁹
- 5.3** While the fact that the landowner has not submitted is relevant to the Panel's consideration of effects, it is submitted that it does not

⁶ See paragraph 6.7 of the evidence of Dr Stephen Gordon Chiles on behalf of Queenstown Lakes District Council as requiring authority, dated 7 October 2016.

⁷ See paragraph 3.12 of the notice of requirement of the Queenstown Lakes District Council in relation to Designation #64 (Aerodrome purposes), dated 30 March 2015.

⁸ See paragraphs 4.38 - 4.39 of the evidence of Mr John Clifford Kyle on behalf of Queenstown Lakes District Council as requiring authority, dated 7 October 2016.

⁹ Ibid.

necessarily relieve the requiring authority of the need to give adequate consideration to alternatives in terms of section 168A(3)(b)(i). Of itself, consultation with a landowner and the absence of a submission, does not overcome this requirement.

- 5.4 Given, however, the absence of a submission from the relevant landowner and/or occupier, this may mean that the requiring authority can rely on section 168A(3)(b)(ii). In any event, the weight given to relevant matters is at the Panel's discretion. In addition, the relevant matters that must be considered under section 168A(3) are not tests that need to be met.

6. QUEENSTOWN AIRPORT

Airport Related Activities - Designation #2 (Aerodrome Purposes)

- 6.1 Queenstown Airport Corporation Limited (**QAC**) gave notice to modify Designation #2 (Aerodrome Purposes) by broadening the list of expressly permitted activities.
- 6.2 QAC relies on the decision of the High Court in *McElroy v Auckland International Airport Limited*¹⁰ to provide justification for this modification.¹¹ QAC submits that the discussion in the *McElroy* case confirms that the activities sought to be enabled by way of the modification to Designation #2 (Aerodrome Purposes) can properly be considered as legitimate airport and airport related activities.¹²
- 6.3 The Council submits that the High Court's decision in the *McElroy* case is not an answer to whether the proposed modifications should be included in the designation. The *McElroy* case concerned a declaration as to whether certain land was held and still required for a public work under section 40 of the Public Works Act 1981. The factors that the Panel is required consider in respect of section 171 of the RMA and in terms of what is properly within the scope of an

¹⁰ [2008] 3 NZLR 262; and the Court of Appeal decision *McElroy v Auckland International Airport Limited* [2009] NZCA 621.

¹¹ See paragraphs 4.16 - 4.19 of the evidence of Mr John Clifford Kyle on behalf of Queenstown Airport Corporation Limited, dated 7 October 2016

¹² See paragraph 99 of the Legal Submissions of Ms Rebecca Wolt on behalf of Queenstown Airport Corporation Limited, dated 14 October 2016.

airport purposes designation are different from the factors that the Court considered in the *McElroy* case.

- 6.4 In particular, the Panel must consider whether the evidence before it demonstrates that the proposed modifications are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought. These objectives are outlined in the evidence of Mr Kyle and are narrower than simply *providing airport and airport related activities*.¹³

Transitional Surfaces - Designation #4 (Approach and Land Use Control (transitional slopes and surfaces))

- 6.5 QAC seeks to modify the conditions of Designation #4 (Approach and Land Use Control (transitional slopes and surfaces)) by updating the reference to the distance of the take-off climb and approach surfaces and the transitional surfaces.

- 6.6 Two modifications are proposed to the text of the conditions. The first is that QAC seeks to amend the reference to the distance of the take-off climb and approach surfaces being "75 metres" either side of the main runway centreline to "150 metres." This proposed modification was not, however, underlined in QAC's notice of requirement (**NOR**) to roll over and modify the designation. The second proposed amendment is to include additional text specifying that the transitional surfaces start "*at the inner edge of 150 m from the main runway centre line.*" This proposed addition was underlined in QAC's NOR.

- 6.7 The position of QAC is that there was an inconsistency in the Operative District Plan (**ODP**) between the figures that depict the obstacle limitation surfaces (**Figures**) and the text of Designation #4. QAC submits that its proposed modifications address this inconsistency and align the text of Designation #4 with the Figures.¹⁴

- 6.8 Remarkables Park Limited opposes QAC's proposed modifications on the basis that QAC has not established that it is the ODP text rather

¹³ See paragraph 5.13 of the evidence of Mr John Clifford Kyle on behalf of Queenstown Airport Corporation Limited, dated 7 October 2016.

¹⁴ See paragraph 145 of the Legal Submissions of Ms Rebecca Wolt on behalf of Queenstown Airport Corporation Limited, dated 14 October 2016.

than the Figures that are incorrect.¹⁵ The Council submits that if QAC is able to confirm that the Figures contained in the PDP are correct and the proposed amendments to the text correctly reflect the Figures then there is no reason why the Panel should decline to recommend that the proposed modifications be made.

6.9 Further, it is the Council's position that, if QAC is able to confirm that its proposed amendments reflect the existing position, the fact that the modification to the distance of the take-off climb and approach surfaces was not underlined in QAC's NOR is unlikely to cause prejudice to any party.

7. CLOSED LANDFILLS

7.1 The following three new Council requirements were included in the PDP as notified:

- (a) Designation #428 Glenorchy Closed Landfill;
- (b) Designation #429 Luggate Closed Landfill; and
- (c) Designation #439 Kingston Closed Landfill (**closed landfills**).

7.2 Submissions were received on Designations #428 and #429.¹⁶ On the basis of these submissions Ms Holden reviewed the extent of the designations and observed that they did not align with extent of the closed landfills shown on the Council's Hazards Register. Accordingly, she recommended that the boundaries of the designations shown on the planning maps be amended.¹⁷ These are the amendments that the Council refers to in paragraph 5(e) of its synopsis of submissions.

¹⁵ See Part 3 of the Legal submissions of Mr John Young on behalf of Remarkables Park Limited, dated 6 October 2016.

¹⁶ Cabo Limited (submitter #481); Island Capital Limited (submitter #769) and Wakatipu Holdings Limited (submitter #314).

¹⁷ See paragraphs 7.78 and 784 of the s42A Report of Ms Rebecca Holden on Chapter 37 Designations (QLDC), dated 23 September 2016.

7.3 Ms Holden further observed that Designation #439 Kingston Closed Landfill was not shown on the planning maps. Accordingly, she recommended that this be corrected.¹⁸

7.4 However, the evidence of Ms Erin Moogan for the Council as requiring authority, is that the Council no longer intends to pursue the designations for the closed landfills.¹⁹ The Council submits that, upon receiving notice of a withdrawal of a designation the Council, as regulatory authority, is required to remove that designation from the PDP without using the Schedule 1 process.²⁰ However, as the requiring authority has notified the Panel of this matter through its evidence and has not provided formal notice of withdrawal there would be nothing to prevent the Panel from making a decision to withdraw the designations in accordance with s 168A(4) of the RMA.

8. WITNESSES

8.1 The Council will call evidence from Ms Rebecca Holden on the following s 42A reports:

- (a) s 42A report Chapter 37 Designations – QLDC;
- (b) s 42A report Chapter 37 Designations – General; and
- (c) s 42A report Chapter 37 Designations – Airports.

DATED this 20th day of October 2016



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¹⁸ Ibid, at paragraph 6.48.

¹⁹ See paragraphs 7.5 and 7.8 of the evidence of Ms Erin Melissa Moogan on behalf of Queenstown Lakes District Council as requiring authority, dated 23 October 2016.

²⁰ In accordance with Clause 4(10) of Schedule 1 of the RMA.