

**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, Submissions and Further Submissions on
Chapter 37 Designations

BY SKYDIVE QUEENSTOWN LIMITED

Submitter

SUBMISSIONS OF COUNSEL FOR SKYDIVE QUEENSTOWN LIMITED

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INTRODUCTION

1. Skydive Queenstown Limited (Skydive¹) filed a submission and further submission to the Proposed District Plan (“PDP”) (number S023/FS1345). Skydive submitted;
 - A. The description of the designation should correctly recite the purpose under the Reserves Act 1977 (“the Reserves Act”) as Local Purpose (Airport) Reserve, rather than Recreation Reserve (Aerodrome) as has been notified.
 - B. Planning Map 25a be amended to show the whole of the reserve as being subject to the designation, in accordance with the notified description that is “Glenorchy Aerodrome, Section 11 SO Plan 443869”.
 - C. Aerodrome is defined in Chapter 2 of the PDP.¹ As such, the area of the designated footprint should include not just land used for the take-off and landing of aircraft, but land used for surface movement of aircraft, parking, loading and unloading, refuelling and the like.
2. By its further submission Skydive opposed the relief sought by Wyuna Preserve Residents Association Incorporated (“Wyuna”) seeking conditions be imposed on the designation. Skydive submitted that such controls were better administered under the Reserves Act regime, to which the Glenorchy aerodrome and its users are subject.²

SUMMARY OF RELIEF SOUGHT

3. Skydive seeks an expanded footprint for the designation in general accordance with the plan appended to Mr Buckley’s evidence. That footprint will allow for the following activities, all of which are within the ambit or scope of the term *Aerodrome* and which occur on site or could be reasonably anticipated in accordance with the objectives expressed in the Management Plan for the Reserve;³
 - a. New Access Road off Queenstown-Glenorchy Road

¹ Aerodrome means a defined area of land used wholly or partly for the landing, departure and surface movement of aircraft including buildings, installations and equipment or adjacent to any such area used in connection with the aerodrome or its administration.

² Reserve Management Plan - Glenorchy Airstrip adopted on 24 August 2016 (“RMP”)

³ The functions and duties of the requiring authority in this case devolve from the Reserves Act classification of the land. The objectives and policies in the Management Plan assist the requiring authority to carry out its functions under the Reserves Act. The evidence for QLDC requiring authority, Ms Galavazi paragraph 8.27 is that the Reserve Management Plan sets out the objectives and policies for the management and development of the aerodrome.

- b. Carpark
 - c. Airstrip proper
 - d. Area alongside airstrip for parking/loading and unloading/refuelling – all aircraft
 - e. Helicopter Landing Pads
 - f. Parachute Landing Area
 - g. Future Hangers/Toilets
 - h. Access Road (operational only)
 - i. Wind socks
4. In all other respects Skydive supports the amendments to the Designation recommended in the s42A report.

DESIGNATIONS – THE LEGAL REQUIREMENTS

5. The statutory considerations will be well known to the Commissioner. They are set out in the Synopsis of Legal Submissions for QLDC-Regulatory⁴, so I do not repeat them here. Ms Jones fully traverses the requirements of s168A(3) in her evidence.⁵
6. Designation 239 is a designation that QLDC has sought to “roll-over” into the PDP. It is not a new designation. This is of significance in my submission, because when considering the effects on the environment of allowing the requirement, there is a baseline – established by activities that have been lawfully established pursuant to the designation, that must be borne in mind when considering what, if any additional conditions can or should be imposed on the designation.
7. I liken it to a comparison of effects if the designation were removed. Pursuant to section 10(1)(b) existing use rights apply in respect of uses that were lawfully established by way of designation and the effects of the use are the same or similar in character, intensity and scale to those which existed before the designation was removed.

⁴ From paragraph 4.1, where the requiring authority is also the territorial authority, the appropriate provision is s168A(3).

⁵ From paragraph 6.2

8. It is Skydive's submission that the existing level, intensity and scale of use now established is the appropriate starting point when considering effects. No conditions can or should have the effect of requiring any lesser effect, and nor I submit is there any jurisdiction for you to require it. I return to scope later in these submissions, but note here the submission from Wyuna. Wyuna seeks that the scale, nature and intensity of use of the aerodrome shall be maintained at the level of use as at 26 August 2015.⁶ In essence this is a recognition of the starting point I have just described – an existing use rights or base line proposition if you like. Ms Galavazi for QLDC as requiring authority at paragraphs 8.39 and 8.49 takes a similar approach.

EXTENDING THE FOOTPRINT OF THE DESIGNATION

9. Skydive originally sought that the footprint of the designation extend to the totality of the Reserve. Having considered the operational requirements of the aerodrome, and based on the evidence of Mr Buckley, it now seeks a smaller footprint.
10. As outlined above, the footprint reflects the current and future anticipated operational requirements of the aerodrome and its users.
11. Skydive submits as follows with respect to the evidence for the Requiring Authority⁷:
- QLDC's approach is somewhat short-sighted and naïve given the nature of the designated activity – an Aerodrome, and the existing activities at the Aerodrome;
 - None of the matters sought by Skydive necessarily provide for an increase in capacity or intensity of use of the aerodrome, so in that sense are consistent with the objectives of the Requiring Authority as derived from the Reserve Management Plan. The changes sought are common sense, normal operational measures that should be included in a designation for an Aerodrome.
 - One of the Council's stated objectives, as set out in the RMP is to encourage consolidation of structures and facilities. This can be facilitated within a larger designation footprint. The plan appended to Mr Buckley's evidence demonstrates this.

⁶ Being the date of its submission

⁷ In particular that of Ms Galavazi

- While QLDC itself might not have plans to undertake any future works in the short to medium term, whether that be access, roading or structures, QLDC nonetheless has financial responsibility for the work. It does not automatically follow however, that QLDC has to fund or carry out works within the designation. There have been many instances in the district where works authorised pursuant to the designation have been undertaken and funded by a lessee or a licensee.⁸
12. As Ms Jones opines in her evidence,⁹ extending the footprint of the designation will achieve the objectives of the RMP¹⁰ by encouraging the consolidation of replacement structures and buildings in one area.
 13. Ms Jones¹¹ undertakes a comprehensive analysis of the planning process if only the airstrip proper is designated. Her table describes the resource consents that would be required for activities outside the airstrip, but otherwise within the definition of “aerodrome.”
 14. There is no comparable analysis by the requiring authority nor has it undertaken any operational or infrastructure assessment of existing users. In my submission the evidence of Ms Jones and Mr Buckley is to be preferred.

WYUNA’S SUBMISSION

SCOPE FOR ADDITIONAL CONTROLS

15. The essence of the submission from Wyuna is that conditions should control the level of use of the aerodrome to a similar level “as to what presently occurs as at the date of this submission.”¹² The submission continues at paragraph 4.16 asking the Council to clarify the scale, nature and intensity of the existing operations by providing the number of approved operators, number of flights per day/annum. Following that

⁸ For example, the Arrowtown Sports Facility – QLDC is the holder of this designation – the Lessee charitable trust has pursued a NOR, and will fund and undertake construction, also construction of hangars and other aerodrome related infrastructure at Wanaka Airport, QLDC holds this designation, and works are as I understand it authorised pursuant to an outline development plan process.

⁹ Paragraph 7.10

¹⁰ Objectives and policies page 6 “Future Development”

¹¹ Paragraphs 6.1 and 7.5

¹² Submission Point 4.9

same theme, paragraph 4.17 requests as a specific condition a limitation on the scale, nature and intensity of use as at 26 August 2015 by insertion of a maximum number of flights.

16. It is trite law, that any conditions that the Commission might be minded to impose, cannot go further than Wyuna's submission¹³. To do so would be ultra vires and clearly unfair to any potential submitters such as users of the aerodrome who have not submitted, but could be affected by any greater restriction than signalled in Wyuna's submission.

17. My concern here is reinforced by reference to Mr Hunt's evidence, where he says that he has read a submission on designations by "Skytrek Tandem Hang Gliding & Paragliding".¹⁴ I can find no such submission on designations by that company. The only submission I can find was lodged by "Skytrek Tandems Limited" which is concerned with informal airports. The additional controls and measures proposed by Mr Hunt regarding the Glenorchy Aerodrome would doubtless affect the operations on Skytrek, given his evidence is particularly targeted to the effects of activities they operate.¹⁵

18. There are three conditions that Wyuna seeks¹⁶ that I submit are outside of the scope of their original submission as follows;
 - a. A limitation or redefinition of the purpose of the designation.
The designation was notified with the description of **Glenorchy Aerodrome**. There is nothing in Wyuna's submission that seeks to limit that term as defined in the PDP or the purpose of the designation as an Aerodrome. This part of the relief sought is beyond scope of Wyuna's original submission.
 - b. Likewise, conditions purporting to restrict use of the aerodrome under the heading "Building", are beyond the jurisdiction of Wyuna's submission. The existing scale, and nature of use of the aerodrome, sought to be maintained by Wyuna includes buildings. The restrictions sought are thus the anthesis of its submission.

¹³ Refer Tab 8, Casebook, Submissions on scope from QLDC Hearings Stream 1

¹⁴ Paragraph 2.5(a)

¹⁵ For example at paragraphs 5.5-5.6

¹⁶ Ferguson, at page 14

- c. Requirement for a Noise Management Plan. Mr Hunt advocates for a condition imposing a Noise Management Plan.¹⁷ Clause 4(a) is of particular concern, from a jurisdictional perspective.

Clause 4(a), provides for:¹⁸

- (a) “The ongoing restrictions required on the type of aircraft, frequency of movements and flight tracks necessary to ensure noise received at the closest dwelling or residential building **does not exceed Ldn 55 dB**, as determined by a suitably qualified acoustic consultant.”

(emphasis added)

Of relevance to this condition, Mr Hunt says:¹⁹

*“By arbitrarily capping daily movements to **current levels**, Council could well be authorising an unacceptable level of aircraft noise (for example approved building platforms being exposed to aircraft noise at levels above Ldn 55dB or even 65dB)”*

(emphasis added)

19. This sounds two warning bells with me;
1. That Mr Hunt has not appreciated the essential scope of his client’s submission, that is, to maintain character, intensity and scale at current levels; and
 2. That the limitations proposed in the noise management plan condition may well have the effect of reducing the level of activity or “use” below that which is existing – something that could not in my submission have reasonably been anticipated from Wyuna’s submission to the PDP.
13. The fall-back position is Wyuna’s submission seeking to impose specific controls on number of operators, and flight numbers. That matter is addressed next.

¹⁷ Included as Condition 4, Ferguson, page 14

¹⁸ Ferguson, page 15

¹⁹ Paragraph 9.2

CONTROLS IN DESIGNATION V'S RESERVE MANAGEMENT PLAN

14. Mr Ferguson and Ms Jones describe the Reserve Management Plan process in their evidence.
15. Skydive agrees with the evidence for QLDC (regulatory and requiring authority) that it is not necessary, nor desirable to duplicate Reserve Management Plan controls/restrictions in the Designation.²⁰ Ms Jones expresses a similar opinion.²¹
16. The RMP provides a process to manage and control effects of aircraft movements by quantifying the level of existing use.
17. The type of information the Council are requiring to quantify this use includes demonstrated evidence of current and historic use of the aerodrome, including:
 - Frequency of flights, including time of day and year
 - Numbers of take offs and landings
 - Type of aircraft
 - Approximate flight paths.
18. This information is well capable of establishing a reliable factual basis for existing use.
19. While it is accepted that the RMP is not a statutory planning document under the RMA, it is nonetheless a statutory instrument with the Council in exercising its functions must comply²². This is not a case as Mr Ferguson suggests²³ where there will be unfettered use of the designated land. Nor do I accept his evidence²⁴, that it is "clear" the RMP seeks to rely on future conditions in the designation to address effects relating to noise.

²⁰ QLDC evidence Chiles at 6.5, Galavazi at 8.48-8.50 and Holden at 7.67-7.70

²¹ At 8.3

²² Reserves Act s41(11)

²³ At 33

²⁴ At 18

20. The “Actions” at page 8 of the RMP, so far as the District Plan is concerned seek to ensure the designation provision is appropriate and aligned with the RMP.

21. There is nothing in the RMP (not the RMA or any case law I can find) that diminishes or makes redundant the proposition on the part of Skydive and QLDC that the two processes – designation under the RMA and the RMP can’t work together and complement each other. The RMP contains an effective and enforceable regime whereby it can control and manage the effects of noise by limiting, via the lease and licence process, the scale and intensity of flights to the current level of use. There is no need to duplicate that process by way of conditions imposed on the designation.

Jayne Macdonald

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20 October 2016