

**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 21 Rural and Chapter 33  
Indigenous Vegetation and Biodiversity

**BY SKYDIVE QUEENSTOWN LIMITED**

*Submitter*

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**SUBMISSIONS OF COUNSEL FOR SKYDIVE QUEENSTOWN LIMITED**

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## INTRODUCTION

1. Skydive Queenstown Limited (Skydive<sup>1</sup>) filed submissions to the Proposed District Plan (“PDP”) (number S0122). Skydive submitted<sup>1</sup>;
  - A. That amendments be made to the Zone Purpose, Objectives and Policies of the Rural Zone to provide greater recognition and encouragement of commercial recreation and tourism activities;
  - B. Amendments be made to Policies relating to informal airports;
  - C. The permitted activity rule for informal airports<sup>2</sup> should be based on flight numbers complying with applicable noise rules rather than any stated maxima;
  - D. The “standard” for the number of persons participating in a commercial recreation activity should be increased from 10 to 28<sup>3</sup>.

## SUMMARY OF RELIEF (AND AMENDED RELIEF) SOUGHT

### **Amendments to Zone Purpose, Objectives and Policies**

2. The amendments sought by Skydive are set out in Mr Brown’s evidence – specifically amendments to the Zone standard and new Objective 21.2.2 and associated Policies.

### **Amendments to Policies relating to informal airports**

3. Skydive sought an amendment to Policy 21.2.11.1 so that it would read:

*Recognise that informal airports are an appropriate activity within the rural environment, provided the informal airport is located, operated and managed so*

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<sup>1</sup> So far as they are relevant to this hearing stream

<sup>2</sup> Rule 21.5.26.1

<sup>3</sup> Rule 21.5.21 – Table 5

*as to minimise the adverse effects on the surrounding rural amenity* in  
accordance with Civil Aviation Act requirements

4. The submission reasoned that the operation and management of airports is a matter for the CAA and not a matter for control by territorial authorities which have no particular expertise in these matters. It is accepted that the territorial authority has as one of its functions the management of the effects of the use of land and to that end the establishment of objectives, policies and rules.
5. Skydive amends the relief sought as follows:

*Recognise that informal airports are an appropriate activity within the rural environment, provided the informal airport is located, operated and managed so as to minimise the adverse effects on the surrounding rural amenity, and in accordance with Civil Aviation Act requirements.*

(amendments underlined)

**The permitted activity rule for informal airports should be based on flight numbers complying with applicable noise rules rather than any stated maxima;**

6. Skydive has amended the relief sought under this submission point. As a result of discussions with another submitter (discussed below), Skydive no longer pursues its permitted activity rule. As set out in the Memorandum amending the relief sought, it seeks a controlled activity rule, or in the alternative a restricted discretionary rule<sup>4</sup>.

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<sup>4</sup> Memorandum recording withdrawal of further submissions and amendment of relief sought dated 27 April 2016.

**The standard for number of persons participating in a commercial recreation activity should be increased from 10 to 28**

7. Rather than pursuing a change to the number of participants in Rule 21.5.21, Table 5, Skydive seeks to adopt a similar rule change to that promoted by Totally Tourism Limited (“TTL”), with respect to heli-skiing.
8. Skydive amends the relief sought as follows:

*“21.4.16 Commercial recreation activities that comply with the standards in Table 5, commercially guided heli-skiing and skydiving.”*

(amendments underlined)

#### POSITION OF TOTALLY TOURISM

9. TTL lodged a submission supporting the notified standards for informal airports in the proposed plan<sup>5</sup>, in particular a permitted activity rule qualified by the frequency of flights. In response to Skydive’s submission seeking a different approach to the permitted activity rule, TTL lodged a further submission opposing the relief sought by Skydive, primarily for reasons of uncertainty and costs associated with compliance – a rule specifying a maximum number of flights per day/week is more certain and “easy” to demonstrate compliance with than producing evidence from an acoustic expert that noise limits will not be, or have not been, exceeded. That rationale is accepted and understood by Skydive.
10. In advance of this hearing, Skydive and TTL entered into discussions culminating in both parties agreeing to withdraw their further submissions to each other’s original submissions, and Skydive amending the relief sought in its primary submission, so that regulation of flight numbers based on compliance with noise standards will be required to go through a resource consenting process.

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<sup>5</sup> This submission was the subject of a further submission by Skydive, opposing the relief sought by TT and supporting instead a permitted activity rule based on compliance with noise limits.

11. The rules being promoted by TTL and Skydive are quite different. Mr Dent's evidence for TTL supports a permitted activity rule, which without more, is based on a maximum daily flight number. Skydive promotes a controlled (or in the alternative a restricted discretionary) activity rule based on inter alia compliance with noise levels.
12. It is submitted that the relief sought by Skydive is within the scope continuum – being somewhere between the PDP provisions as notified and Skydive's submissions. With respect to the rule changes proposed, the relief now sought narrows the scope of the rules and moves toward a less liberal regime, closer to the plans provisions as notified. The test is not whether relief has been expressly sought in the original submission, but whether the relief sought would go beyond what was reasonably and fairly raised in submissions.

#### THE AMENDED RELIEF IN MORE DETAIL

##### **A. Amendments to Zone purpose, Objective and Policies**

13. Skydive's submission on these higher order provisions is a continuation of its submissions and evidence presented to the Strategic Directions Chapter.
14. Skydive seeks greater recognition of tourism – including commercial recreation activities in the plan's policy framework.
15. I have read the legal submissions of Counsel for Queenstown Park Limited ("QPL")<sup>6</sup>. Without wanting to unnecessarily lengthen these submissions by repeating matters covered by others, Skydive agrees with and supports QPL's submissions concerning the Rural General Zone's policy framework to the effect that:
  - (a) Tourist activities are essential to Queenstown's economy and should be provided for in the Rural Zone;

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<sup>6</sup> A submitter who is also "covered" by Mr Brown's evidence

- (b) Non-farming activities should be on an equal footing as farming activities.

16. Skydive submits that Mr Brown’s amended Objective 21.2.2 and Policies 21.2.2.1 and 21.2.2.4 provide the necessary platform for the rules that sit “underneath”, which are being promoted by Skydive.

**B. Informal Airports – Skydives controlled or Restricted Discretionary Rule**

- *Re Skydive* [2014] NZEnvC 108
  - Elements of the Rule
- *Re Skydive*
17. Skydive does not seek to relitigate the Environment Court’s decision. It accepts that its skydiving activity, and any “expansion of it” creates adverse effects on the environment – particularly its nearest neighbours. In this regard, the Environment Court was particularly focused on the golf course, especially holes 2, 3 and 5, Lot 14 - The Preserve, the proposed Lodge, walking and cycling tracks and to a lesser degree, the playing fields and playground<sup>7</sup>.
18. Rather, Skydive seeks a rule that enables its activity, and possible growth, whilst managing effects<sup>8</sup>.
19. The decision in *Re Skydive* was of course based on the specific application before the Court, the assessment of effects of that particular application, and the application of the policy framework in the operative District Plan. The decision does not have the effect of a complete veto with respect to any future proposed increase or expansion of Skydive’s activity from its current location. At paragraph [204] the Court said:

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<sup>7</sup> Paragraph [180]

<sup>8</sup> Mr Brown’s Objective 21.2.2

*“We have considered whether we should grant an amended resource consent for substantially lesser average and maximum flights per day to incentivise Skydive to move from its 1997 consent. For the reasons stated earlier, we are insufficiently clear as to what the 1997 consent, with reasonable application of the section 16 duty, might allow so we have an inadequate grasp of what it is we were asked to replace. Further because we find that the witnesses for Skydive assessed the effects on the neighbours so inadequately, and in such an all-or-nothing way that means that compromise options have not been adequately assessed. It may be that if the Skydive application had gone to a council hearing, some of the issues now raised could have been explored more thoroughly. The applicant chose to forego that possibility, and we have inadequate evidence to satisfy us as to alternative operating conditions.”*

- *Elements of the Rule*

<b>Controlled Activity Rule</b>	<b>Restricted Discretionary Rule</b>
- Sits between PER and DISC	- Sits between PER and DISC
- CON if exceeds 3 flights per week and complies with Part B of the Rule	- RDIS if exceed 3 flights per week and comply with Part B of the Rule
- <u>Part B:</u>  (i) Flights must not exceed the noise limits in Rule 36.5.14  (ii) The use of the land for the take-off and landing of aircraft must be part of a Commercial Recreational Activity taking place on the same site upon which the informal airport is situated  Note: <ul style="list-style-type: none"> <li>• standard in relation to 500m separation does not apply, because of</li> </ul>	- <u>Part B:</u>  (i) Flights must not exceed the noise limits in Rule 36.5.14  (ii) The use of the land for the take-off and landing of aircraft must be part of a Commercial Recreation Activity taking place on the same site upon which the informal airport is situated  Note: <ul style="list-style-type: none"> <li>• standard in relation to 500m separation does not apply, because</li> </ul>

<p>the requirement to demonstrate compliance with Rule 36.5.14 i.e. 55 dBLdn at all times</p> <ul style="list-style-type: none"> <li>• Failure to comply with noise levels = N-C, Rule 36.5.14</li> </ul>	<p>of the requirement to demonstrate compliance with Rule 36.5.14 i.e. 55 dBLdn at all times</p> <ul style="list-style-type: none"> <li>• Failure to comply with noise levels = N-C, Rule 36.5.14</li> </ul>
<p>- Control reserved to the following:</p> <ul style="list-style-type: none"> <li>• Flight Paths</li> <li>• Holding Position of aircraft in relation to idling noise</li> <li>• Alignment of airstrip</li> <li>• Measures to comply with the duty under s16 of the RMA to adopt the best practicable option to ensure noise does not exceed a reasonable level</li> </ul>	<p>- Discretion restricted to the following:</p> <ul style="list-style-type: none"> <li>• Flight Paths</li> <li>• Holding position of aircraft in relation to idling noise</li> <li>• Alignment of airstrip</li> <li>• Measures to comply with the duty under s16 of the RMA to adopt the best practicable option to ensure noise does not exceed a reasonable level</li> </ul>

20. Picking up on the effects that require management from *Re Skydive* the following controls are proposed, such that effects are either avoided, remedied or mitigated to an acceptable degree<sup>9</sup>.

- Flight Paths – at paragraphs 30, 53, 54 and 75, the court examines the effects on those located beneath the flight paths, observing that noise and the level of annoyance received at these locations depends on the flight paths.
- s16 duty – the court comments on this factor at paragraph 90 of the decision, noting various actions or measures that could be taken to comply with this duty.
- Use of the airstrip an essential element of the commercial recreation activity – the court touches on this from paragraphs 92 to 96 of the decision in its discussion of the commercial recreation assessment matters.
- Holding position of aircraft in relation to idling noise – a mitigation measure discussed at paragraph 105 of the decision.
- Compliance with 55 dBLdn noise limit<sup>10</sup> - paragraph 111, the agreed criterion for controlling noise effects on residential and visitor accommodation activities.

<sup>9</sup> Mr Brown's Policy 21.2.2.1

<sup>10</sup> This is the standard specified in Rule 36.5.14 of the proposed plan's noise chapter for fixed wing aircraft



21. Mr Days evidence<sup>11</sup> is that during the course of preparing an application, the analysis by the acoustic engineer might develop a condition of consent that would restrict the number of flights per day (for practical compliance purposes), but that this is dependent on the type of aircraft used and will be different for each airport and aircraft combination. The condition would be to the effect that whatever the restrictions proposed in the condition, be it flight numbers, flight paths, or type of aircraft for example, there must be compliance with Rule 36.5.13/14.

Rule is narrowed in scope

22. The rule as promoted by Skydive in its submission applied to any informal airport, irrespective of its use.
23. Consistent with its submissions that the plan provisions recognise and provide for tourism and commercial recreation activities, Skydive proposes that its rules relate only to airports that are part of a Commercial Recreational Activity taking place on the same site as the informal airport.
24. As defined, Commercial Recreation Activity means<sup>12</sup>:
- “the commercial guiding, training, instructing, transportation or provision of recreational facilities to clients for recreational purposes including the use of any building or land associated with the activity, excluding ski area activities.”*
25. Skydiving, by its nature, is a recreational activity that has as its central component the act of jumping out of an aircraft. The use of aircraft to transport clients is a fundamental component of the activity. The activity begins and terminates (the drop zone is located on the same site as the airstrip) on the same site as the informal airport.
26. It is thus not “any old” Informal Airport that can take advantage of Skydive’s rule. This is appropriate in the context of both the policy framework supporting

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<sup>11</sup> At paragraph [16]

<sup>12</sup> Page 2-7, Part 2,

the rules, and also narrowing the potential number of activities that could seek to take advantage of the rule.

C. Skydiving not subject to the “numbers cap”

27. For much the same reasons as set out in the evidence of Mr Dent for TTL<sup>13</sup>, Skydive seeks that skydiving be added to Rule 21.4.16.

28. In summary:

- Skydiving falls within the definition of a Commercial Recreation Activity – being the commercial guiding, transportation and provision of a commercial recreation activity.
- A typical day’s skydiving involves one or two machines taking up to 19 passengers (clients and guides) per trip. There are numerous trips or “cycles” of clients and their guides per day.
- This would breach the proposed group size of 10 people and trigger a Discretionary Activity resource consent pursuant to proposed Rule 21.2.21.
- Fixed wing aircraft used to provide the essential transportation for the skydiving activity lead to the greatest effects on the environment by virtue of the noise that they emit, rather than the number of persons partaking in the activity.

Jayne Macdonald  
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23 May 2016

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<sup>13</sup> Paragraphs 76 – 83. Totally Tourism - Submitter Number 571