

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

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Queenstown Lakes District Council
Proposed District Plan

AND

IN THE MATTER of submissions and further submissions relating
to the Designations Chapter of the Proposed
District Plan

**Legal Submissions on behalf of Queenstown Lakes District Council
(as Requiring Authority)**

**Hearing Stream 07 -
Chapter 37 Designations**

20 October 2016

1. INTRODUCTION AND STATUTORY FRAMEWORK

1.1 These legal submissions relating to Chapter 37 - Designations of the Proposed District Plan (PDP) are made in Queenstown Lakes District Council's capacity as a requiring authority (Council).

1.2 The Council's involvement as requiring authority relates to:

- (a) The roll over of the Council's existing designations from the Operative District Plan (ODP) into the PDP, with or without modification.
- (b) The inclusion of new Council designations in the PDP.
- (c) The Council's response to submissions and further submissions received in relation to its existing or new designations in the PDP and the Section 42A Hearing Report (Hearing Report).

Statutory framework

1.3 Designations, if confirmed, serve three purposes:

- (a) Protection of land for a public work as no one can undertake any activity that would prevent or hinder the designated work without the prior written consent of the requiring authority;
- (b) Enabling the public work to be undertaken without the need for further land use consents; and
- (c) Providing notice to Plan users of the intended use of the designated land.

1.4 Under clause 4(6) of Schedule 1 to the Resource Management Act 1991 (RMA) a territorial authority may include in its proposed district plan:

- (a) Any requirement for a designation which the territorial authority has responsibility for within its district; and
- (b) Any existing designations, with or without modifications, which the territorial authority has responsibility for within its district.

- 1.5 Where new or modified requirements are included in a proposed district plan, clause 4(7) of Schedule 1 provides that the territorial authority must make available for public inspection all information about the requirement that is required by the prescribed form for the notice of that requirement.
- 1.6 Clause 9(2) of Schedule 1 requires the territorial authority to make its decision on requirements included in the proposed district plan under clause 4(6) in accordance with section 168A(3) of the RMA. Section 168A(3) provides:
- (3) When considering a requirement and any submissions received, a territorial authority must, subject to Part II, consider the effect on the environment of allowing the requirement, having particular regard to –
- (a) any relevant provisions of –
 - (i) a national policy statement;
 - (ii) a New Zealand coastal policy statement;
 - (iii) a regional policy statement or proposed regional policy statement;
 - (iv) a plan or proposed plan; and
 - (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if –
 - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
 - (ii) it is likely that the work will have a significant adverse effect on the environment; and
 - (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
 - (d) any other matter the Territorial Authority considers reasonably necessary in order to make a decision on the requirement.
- 1.7 Section 168A(4) provides that the territorial authority may decide to:
- (a) confirm the requirement:
 - (b) modify the requirement:
 - (c) impose conditions:
 - (d) withdraw the requirement.

- 1.8 Under clause 9(3) of Schedule 1 the territorial authority is not required to make any decision where an existing designation is included without modification and on which no submissions are received.

Overview of Council's designations

- 1.9 The Council's designations in the PDP are set out in Appendix A to the Council's Designation Notification Information. These include:
- (a) Designations rolled over from the ODP without modification (shown in green in Appendix A);
 - (b) Designations rolled over from the ODP with modifications (shown in red in Appendix A);
 - (c) Existing designations that have lapsed or are no longer required, so are sought to be deleted (shown in black in Appendix A); and
 - (d) New requirements (shown in blue in Appendix A).

Scope of submissions

- 1.10 These submissions address:
- (a) The Council's existing designations included in the PDP with modifications;
 - (b) The Council's new designations;
 - (c) The Section 42A Hearing Report (Hearing Report);
 - (d) Submissions made on the existing or new designations; and
 - (e) Specific matters.
- 1.11 These submissions do not address the Council's existing designations included in the PDP without modification, on which no submissions have been received. No decision on these matters is required.¹
- 1.12 To the extent that the Hearing Report addresses matters that are raised in submissions, these matters are addressed in section 4 (Hearing Report) below.

¹ RMA, Schedule 1, cl 9(3).

Evidence

1.13 Statements of evidence were pre-lodged in accordance with the Hearings Panel's Directions and the Notice of Hearing on 23 October 2016 from the following witnesses:

- (a) Ms Erin Melissa Moogan (Infrastructure);
- (b) Ms Jeannie Ellen Galavazi (Reserves);
- (c) Dr Stephen Gordon Chiles (Acoustics); and
- (d) Mr John Clifford Kyle (Planning).

2. EXISTING AND DELETED DESIGNATIONS

2.1 The Council's 195 existing designations rolled over into the PDP with modifications are outlined in Appendix E to the Council's Designation Notification Information.

2.2 These small scale modifications are generally for the purpose of:

- (a) Providing the correct legal descriptions of the designated sites;
- (b) Providing the correct purpose for the designated sites in accordance with the certificates of title;
- (c) Incorporating adjacent landholdings into existing designations where these areas were developed for the same purpose but not formally recognised by a designation;
- (d) Correcting mapping errors;
- (e) Updating noise standards to reflect industry best practice; and
- (f) Deleting designations that have lapsed or are no longer required.

2.3 Appendix E to the Council's Designation Notification Information provides an assessment of these modification in accordance with section 168A(3). Given the minor nature of the modifications, that assessment is not repeated in these submissions, except in relation to the two Wanaka Airport designations.

Wanaka Airport

- 2.4 Wanaka Airport is one of the Council's existing strategic assets. It was transferred into the ownership of the Council in 1990. In the past, overall management of the airport was delegated to a committee of councillors (the Wanaka Airport Management Committee), however day-to-day operation is now delegated to Queenstown Airport Corporation (QAC), of which QLDC is the majority shareholder (75.1%).
- 2.5 The role of the Airport has been identified in the Astral Report on the Wanaka Airport as being a complementary and supplementary facility to Queenstown Airport, able to accommodate aircraft spill-over from Queenstown. This is increasingly likely to occur as Queenstown focuses its capacity on accommodating jet air transport flights. Wanaka may become more of a base for general aviation in the region as well as accommodating scheduled and charter air transport services.²
- 2.6 Wanaka Airport currently has no scheduled commercial flights, with Air New Zealand having ceased flights to the airport in early 2013 due to lack of profitability. The airport continues to provide a base for scenic and charter flights to destinations such as Milford Sound and Mount Aspiring National Park. There are a number of independent operators leasing hangar space who provide services including flying instruction, tandem skydiving and aircraft maintenance. Wanaka Airport hosts the very popular international air show 'Warbirds Over Wanaka' and also homes several visitor attractions including the 'Warbirds and Wheels Museum and Café'.
- 2.7 Queenstown Airport has various constraints that inhibit its ability to grow, including land-related issues with regard to physical expansion. Wanaka Airport is an obvious proposition to provide an increasing level of air services in the region. According to the Astral report (page 15), this would be likely to include:
- (a) Hangar space for high value privately owned aircraft;

² *Wanaka Airport Planning and Development* report prepared by Astral Ltd in April 2016
<http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Full-Council-Agendas/2016/28-April-2016/Item-9/9a-Wanaka-Airport-Planning-and-Development-Report-c.pdf>

- (b) Hangar and facility space for scientific operations such as NASA super pressure 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.

- 2.8 If planned and managed well, the potential for growth at Wanaka airport could provide not only increased services to the Wanaka area, but also reduced pressure on Queenstown Airport and generate a healthy return for the benefit of the community from a strategic asset.
- 2.9 The Council has sought to roll-over two existing designations for Wanaka Airport into the PDP with some modifications. They are Designation 64 (Aerodrome Purposes) and Designation 65 (Airport Approach and Land Use Controls). The modifications sought by the Council are detailed in the evidence of Mr Kyle.
- 2.10 Council's reporting officer generally supports the modifications to the two designations. However, one issue raised by the Council's reporting officer in relation to Wanaka Airport was the expansion of the range of permitted activities allowed by Designation 64.
- 2.11 As I have previously set out, Wanaka Airport is one of the Council's strategic assets and it is currently experiencing growth, largely as a result of Queenstown Airport activities spilling over to Wanaka. As a consequence of this growth, the nature of activities currently being undertaken at Wanaka Airport has changed and will continue to change as the airport grows. The Council's requirement which seeks to broaden the range of permitted activities included in the aerodrome designation is a reflection of what is currently occurring at the airport

and a direct result of growth and what is anticipated to occur in the future.

- 2.12 The list of permitted activities included in the notice of requirement is consistent with activities commonly found and expected at a modern airports. As Ms Wolt has stated in her submissions on behalf of QAC in relation to the Queenstown Airport, the range of activities that are sought to be enabled are legitimate airport and airport-related activities. Similar activities are sought to be included in the Wanaka Airport designation.
- 2.13 Ms Wolt has addressed the case law on the meaning of “aerodrome” and whether commercial activities, like those contemplated in the Wanaka Airport notice of requirement, amount to the public work of an “aerodrome”. Rather than covering the same material again, I adopt the submissions of Ms Wolt on this point.³
- 2.14 On the basis of the case law discussed by Ms Wolt, it is my submission that the list of activities proposed by the Council in its notice of requirement for Wanaka Airport can properly be considered as legitimate airport and airport-related activities.
- 2.15 The effects of these activities and the reasons why the proposed amendments are necessary to achieve the objectives of the Council are addressed in the evidence of Mr Kyle. Mr Kyle also addresses a concern raised by the Council’s reporting officer that the range of activities proposed are not consistent with the provisions of surrounding zones.

3. NEW DESIGNATIONS

- 3.1 The Council’s requirements for the 181 new designations included in the PDP are outlined in Appendix C to the Council’s Designation Notification Information and discussed in the evidence of Ms Moogan and Ms Galavazi.
- 3.2 The new designations are for the purposes of infrastructure and reserves. In relation to infrastructure, this generally includes stormwater and wastewater facilities. The reserves designations are

³ Legal submissions of R Wolt on behalf of QAC dated 14 October 2016 at [88] – [99].

for the purpose of walkways and accessways, recreation, beautification and tree planting reserves, fire stations, education facilities, halls and civic offices, and public toilets. These Council assets are outlined in the evidence of Ms Moogan and Ms Galavazi.

- 3.3 The Council's objectives in including these designations in the PDP are broadly:
- (a) to formally identify and protect these important assets from adverse land uses or activities locating on or nearby the land to which they relate; and
 - (b) to provide for the ongoing operation, maintenance and upgrading of these facilities.
- 3.4 Ms Moogan's (in relation to infrastructure) and Ms Galavazi's (in relation to reserves) evidence provides an assessment of the proposed new designations in accordance with section 168A(3) of the RMA. In brief:

Environmental effects

- 3.5 Because all of the facilities and reserve assets proposed to be subject to the new requirements are constructed and operating, the environmental effects associated with the inclusion of the designations in the PDP would be limited, if any at all.
- 3.6 The assets will simply continue to operate as they are at present, with the Council having the ability to undertake routine maintenance, upgrades and repair work where necessary. Any significant work on these facilities beyond the purpose of the requirements before the Hearings Panel would require additional planning approvals and an associated assessment of potential effects.

Planning provisions

- 3.7 The planning provisions relevant to the proposed new designations are outlined in Ms Moogan's and Ms Galavazi's evidence. Their analysis shows that the inclusion of the designations is consistent with the intended outcomes of these provisions.

Alternatives

- 3.8 An assessment of alternatives is a requirement if the Council does not have an interest in the land to which a proposed designation relates sufficient for undertaking the work, or it is likely that the work will have significant adverse effects on the environment.
- 3.9 All of the new designations relating to reserves that are proposed to be included in the PDP relate to land that the Council owns. The Council generally owns the land to which the proposed infrastructure designations relate. Where it does not, alternatives are addressed both in Appendix C to the Council's Designation Notification Information and in Ms Moogan's evidence. That assessment outlines that, primarily because the facilities are constructed and operating, the designation path is most practical and efficient, instead of, for example, moving the facilities to alternative locations or commissioning alternative (or new) facilities.
- 3.10 As indicated above, the anticipated adverse effects on the environment are insignificant, so no assessment of alternatives is required in this respect.
- 3.11 In respect of the Wanaka Airport where a small piece of privately owned land is required to be designated to ensure the airport can achieve Code C clearance, Mr Kyle addresses the consideration of alternatives in respect of this designation.

Reasonably necessary for achieving the Council's objectives

- 3.12 The analysis in the Council's Designation Notification information and Ms Moogan's and Ms Galavazi's evidence is clear that the proposed new designations are necessary to achieve the Council's objectives of:
- (a) formally identifying and protecting these important infrastructure and reserve assets from adverse land uses or activities locating on or nearby the land to which they relate; and
 - (b) providing for the ongoing operation, maintenance and upgrading of these facilities.

Any other matters

- 3.13 Any other relevant matters are addressed in Ms Moogan's and Ms Galavazi's evidence.

Part 2

- 3.14 Part 2 matters are similarly assessed in the Council's Notification Information and Ms Moogan's and Ms Galavazi's evidence. In particular, the continued operation of these infrastructure and reserve assets will enable the social and cultural wellbeing of the District's community, and provide for the efficient use and development of natural and physical resources and the maintenance and enhancement of the quality of the environment.

4. HEARING REPORT

- 4.1 The Council generally agrees with the analysis provided in the Hearing Report in relation to the Council's existing and new designations. The relevant parts of the Hearing Report are addressed in the evidence of Ms Moogan, Ms Galavazi, Dr Chiles and Mr Kyle. Specific aspects or warranting legal comment are discussed below.

New requirements

- 4.2 At paragraphs 6.10-6.25 and 6.29-6.32 the Hearing Report recommends the imposition of various conditions on the Council's new requirements. This is generally accepted as an appropriate means to address the potential effects on the environment of the relevant designations.
- 4.3 However, the conditions recommended to be imposed on Designations 526, 528 and 529 (refer to paragraphs 6.18-6.23 of the Hearing Report) are for the purpose of ensuring that the bulk and location of any future building is in keeping with the Town Centre Zone provisions. As explained at paragraphs 9.5-9.8 of Ms Galavazi's evidence, no development is envisaged at this point, meaning no environmental effects will arise such that conditions would need to be imposed. Any future development in accordance with these designations will require

an outline plan of works, at which stage any potential environmental effects can be assessed and addressed accordingly.

- 4.4 At paragraphs 6.28, 6.33 and 6.41-6.42 the Hearing Report discusses several reference and mapping errors in the notified requirement and recommends some corrections. These corrections are accepted by the Council subject to one minor point of clarification in respect of designation 586 as set out in paragraph 8.4 of Ms Moogan's evidence..

Modifications sought in submissions

- 4.5 Section 7 of the Hearing Report provides an analysis of the modifications to the Council's existing or new designations sought in submissions. Except where they are discussed in section 5 below, the Council accepts the recommendations made in the Hearing Report.

Roads

- 4.6 As explained in the Hearing Report and in the synopsis of legal submissions provided on behalf of the Council in its capacity as regulatory authority, the first part of Section A Roads in Chapter 37 - Designations provides that all Queenstown Lakes District Council roads are deemed to be designated for the purpose of road.

The Council accepts that it is not possible to designate all roads without going through either the notice of requirement or Schedule 1 process. The Council therefore accepts the deletion of this provision.

General

- 4.7 There are other discrete matters raised in the Hearing Report in relation to the Council's existing or new designations, including corrections to the mapping of several designations. Some of these are addressed in the evidence provided for the Council. Except where outlined below, the Council accepts the various recommendations made.

5. SUBMISSIONS

- 5.1 Several submissions were made in relation to the modifications proposed to the Council's existing designations and the Council's

proposed new requirements. These submissions are addressed in the evidence of Ms Moogan, Ms Galavazi, Dr Chiles and Mr Kyle. Specific topics or submissions made are addressed under the subheadings below.

Site-specific submissions

- 5.2 Various site-specific submissions were made in relation to the Council's designations:
- (a) Submission 270 (Crescent Investments Limited) seeks the deletion of Designations 389 and 390 - the submission is accepted.⁴
 - (b) Submission 282 (Sarah Burdon) seeks that the area of Designation 175 be extended to cover the entire property - this is accepted. The submission also seeks that the campground operator (or lessee) be allowed to undertake development in accordance with the designated purpose - this is not accepted.⁵ It is well established that the benefit of a designation only extends to the requiring authority that has financial responsibility for the public work proposed by the designation. To the extent that the campground operator is undertaking works on behalf of the Council in accordance with the designated purpose, those works will be authorised.
 - (c) Submission 719 (NZTA) identifies the need for the notation of Designation 154 on the District Plan maps - the submission is accepted.⁶
 - (d) Submission 337 (Radio New Zealand Limited) opposes the inclusion of Designation 560 - the Council is no longer pursuing this requirement.⁷
 - (e) Submission 704 (Ross & Judith Young Family Trust) and further submission 1035 (Wanaka Watersports Facility Trust) relate to Designations 105, 110, 111 and 113 - the Council

⁴ Refer to paragraphs 7.10-7.11 of Ms Moogan's evidence.

⁵ Refer to paragraphs 8.2-8.7 of Ms Galavazi's evidence.

⁶ Refer to paragraphs 8.8-8.12 of Ms Galavazi's evidence.

⁷ Refer to paragraphs 8.13-8.14 of Ms Galavazi's evidence.

considers the conditions sought by submitter 704 are neither relevant nor necessary and the further submission by submitter 1035 is accepted.⁸

Glenorchy Airstrip

- 5.3 Ms Galavazi's evidence explains the background of the Glenorchy Airstrip, the Council's recent adoption of a Reserve Management Plan (RMP), and the rolled over Designation 239.
- 5.4 Two submissions were received in relation to this designation. Submission 23 (Skydive Queenstown Limited) seeks:
- (a) A correction to the description of the designation - this is accepted.⁹
 - (b) An extension to the area of the designation - this is not accepted on the basis that it is not necessary in order to achieve the intended purpose of the designation.¹⁰
- 5.5 Submission 744 (Wyuna Preserve Residents Association) opposes the inclusion of the designation altogether on the basis that there are no controls on the use of the Glenorchy aerodrome for its designated purpose. The submission was supported by further submission 1308 (Blanket Bay) and opposed by further submission 1345 (Skydive Queenstown Limited). The submission is accepted to the extent that two conditions could be imposed on the designation, one in relation to hours of operation and one in relation to noise.¹¹
- 5.6 I expand further on the key issues raised by submitters below.
- Extending the designation footprint*
- 5.7 Skydive Queenstown originally sought that the designation footprint be extended to encompass the entire reserve. However, Ms Macdonald clarified in her submissions yesterday that Skydive Queenstown now seeks a smaller footprint to reflect the current and anticipated future operational requirements of the aerodrome.

⁸ Refer to paragraphs 8.15-8.22 of Ms Galavazi's evidence.

⁹ Refer to paragraphs 8.29-8.30 of Ms Galavazi's evidence.

¹⁰ Refer to paragraphs 8.31-8.35 of Ms Galavazi's evidence.

¹¹ Refer to paragraphs 8.36-8.50 of Ms Galavazi's evidence.

- 5.8 The Council is not seeking to extend the footprint of its designation. There are a number of reasons for this. However, they principally relate to the fact that the purpose of the designation is to authorise the take off and landing of aircraft from the reserve. Should commercial operators wish to base themselves at the reserve, store their aeroplanes, undertake maintenance and refuelling, the obligation is on the operator to seek both the appropriate planning permission and property permissions from the relevant parts of Council to do so.
- 5.9 It is further submitted that the extent or nature of the designation does not necessarily flow from or need to mirror the RMP. There are a number of ways in which the objectives of the RMP can be achieved. To the extent that it envisages future upgrades or development, it is entirely appropriate that the operators seek the necessary permissions to carry out those activities. The RMP simply guides the Council's decision making in its capacity as the administering authority for the reserve.

Scope for relief sought by Wyuna

- 5.10 Ms Macdonald has raised concerns as to whether the relief sought by Wyuna as set out in the evidence of Mr Ferguson is within the scope of Wyuna's submission. In particular those concerns relate to:
- (a) A limitation or redefinition of the purpose of the designation;
 - (b) Restrictions on the use of the aerodrome under the heading buildings; and
 - (c) The requirement for a noise management plan.
- 5.11 It is well established the question of whether relief sought is within the scope of a submission is "*whether or not the amendments are ones which are raised by and **within the ambit** of the submissions.*"¹²
- 5.12 In my submission, a fair reading of the Wyuna submission is that the relief sought, except that relating to the limitation on the purpose of the designation, is within the ambit of the original submission. The submission seeks controls on noise and the nature and scale of

¹² *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 at 166.

activities at the aerodrome and controls to manage the use of the aerodrome in line with community expectations. However, the Council does not agree with the relief sought by Wyuna.

- 5.13 In respect of the limitation on the purpose of the designation, I agree with the submission of Ms Macdonald that there is nothing in the submission by Wyuna that seeks to limit or confine the current use of the airport. In my submission, no reasonable person reading the submission could have inferred that this was an outcome sought by the submitter.

Controls in the designation vs the reserve management plan

- 5.14 The Council is very much alive to the issue of noise at the Glenorchy airstrip. However, it is the Council's understanding that the level of noise currently experienced by residents in Glenorchy is acceptable – except perhaps for some concerns around microlight use. On that basis, the Council is currently seeking information from commercial operators to establish the current level of use at the airstrip. Armed with that information, it will impose controls on the number and perhaps the type of aircraft that can take off and land at the airstrip to ensure that the use of the airstrip is not intensified and effects are managed.
- 5.15 In the interim the Council has sought to impose controls around the hours of operation of the airstrip and the fly neighbourly guidelines to ensure that the effects associated with use of the airstrip are confined.
- 5.16 The Council and Skydive share similar concerns that it would not be appropriate to impose stringent controls on the use of the airstrip to control noise before it has sufficient information to understand the current level of use and level of noise generated as a result.
- 5.17 It is the evidence of Mr Chiles that there is no technical reason why noise controls must be imposed on the designation rather than on the RMP.
- 5.18 Mr Ferguson for Wyuna Preserve yesterday commented that he had concerns around the ability of the RMP to control environmental effects in terms of the RMA. However it is my submission that if airport

operations are controlled through the lease or licence regime under the RMP, it follows that noise effects in an RMA sense will also be controlled. I also submit that neither a designation nor the RMP absolve the Council and all operators from the duty under s 16 of the RMA to adopt the best practicable option to ensure noise does not exceed a reasonable level.

- 5.19 The Council considers that licences under the RMP will in fact be a more effective tool for managing noise as they create a simple and effective enforcement mechanism. It is anticipated that licences will contain a provision that enable the Council to revoke them should the licence holder not comply with the terms. The process for enforcement under the RMA is more prescriptive and arguably not as easy to implement when it comes to controlling noise.

Designation as notified

- 5.20 Ms Baker-Galloway noted in her submissions yesterday that the designation for the Glenorchy Aerodrome as notified included the standard conditions for recreation reserves.
- 5.21 This is not correct. While the reserves conditions in Chapter 37 are expressed in general terms, they only apply where there is specific reference to those conditions in the schedule of designations.
- 5.22 Designation 239 for the Glenorchy Aerodrome as notified is not subject to any conditions.

Wyuna subdivision

- 5.23 There was some discussion yesterday about the timing of the Wyuna Preserve development.
- 5.24 I note that Wyuna in its submission on the designation stated:¹³

The submitter acknowledges that the aerodrome existed prior to the development of Wyuna Preserve.

- 5.25 It is the Council's understanding that the first subdivision took place at Wyuna in 2005.

¹³ Wyuna Submission at [4.7]

Queenstown Events Centre

- 5.26 Ms Galavazi's evidence explains the purpose of the Queenstown Events Centre designation (Designation 29) and the proposed modifications to this designation.
- 5.27 A number of submissions were made in relation to the designation. Submission 719 (NZTA) seeks various amendments including:¹⁴
- (a) A correction to the extent of the designation on District Plan map and the legal description of the designation - this is accepted.
 - (b) The inclusion of the structure plan referred to in the designation conditions - this is accepted.
 - (c) Changes to the conditions - the proposed deletion of the reference to State Highway 6A is accepted; the amendments in relation to signage and consultation with NZTA are either not accepted or only accepted in modified form.
- 5.28 Submission 433 (Queenstown Airport Corporation) seeks:¹⁵
- (a) A new control to ensure that any rooms containing activities sensitive to aircraft noise are designed to achieve an indoor sound level of 40 db Ldn within any Critical Listening Environment - this is accepted and a condition is proposed in Dr Chiles' (and repeated in Ms Galavazi's) evidence to this effect.¹⁶
 - (b) A condition restricting the use of day care facilities to use by children whose parents are using the site for its designated purpose - this is not accepted on the basis of Dr Chiles' evidence which, as above, outlines that buildings can be designed to provide acceptable internal sound levels and

¹⁴ Refer to paragraphs 8.54-8.64 of Ms Galavazi's evidence.
¹⁵ Refer to paragraphs 8.65-8.73 of Ms Galavazi's evidence.
¹⁶ Refer to paragraphs XYZ of Dr Chile's evidence.

therefore a broader range of day care facilities may be appropriate.¹⁷

- (c) That provision of community activities must be “directly related or ancillary to” the operation of the Events Centre - this is not accepted on the basis that it is unnecessary because any activities authorised by a designation must be consistent with its purpose. This is also the position taken in the Hearing Report.
- (d) A control that activities on the Events Centre site do not penetrate the Airport’s obstacle limitation surface - this is accepted and an amendment to the relevant condition is proposed in Ms Galavazi’s evidence.

Closed landfills

- 5.29 The Council included three new closed landfill requirements in the PDP under clause 4(6) of Schedule 1 to the RMA. These relate to facilities at Glenorchy, Luggate and Kingston. Several submissions were made in relation to these facilities, as discussed in section 7 of Ms Moogan’s evidence.
- 5.30 Instead of imposing these designations on the subject sites, the Council considers it would be more appropriate to include a notation on the relevant District Plan maps recording the sites as closed landfills. This lesser approach:
 - (a) Is consistent with the requirement of the conditions of the discharge permits held by the Council in relation to these facilities;
 - (b) Would be less burdensome on the relevant landowners, including those who made submissions on the PDP relating to these requirements;
 - (c) Is supported at 6.43-6.48 of the Hearing Report, in relation to the Kingston closed landfill.

¹⁷ Refer to paragraphs XYZ of Dr Chile’s evidence.

- 5.31 The legal submissions for Submitter 769 (Island Capital Limited), which owns the land subject to proposed Designation 428 (Glenorchy Closed Landfill), set out the submitter's agreement with the Council's proposed approach. In particular, the legal submissions confirm that the correct process is for the designation to be withdrawn (rather than modified) and then replaced with a non-regulatory planning notation on the relevant District Plan map.
- 5.32 There is scope for the Council to adopt this approach and notate the Plan in this way. As has long been accepted, the paramount test to be applied to the question of scope is "*whether or not the amendments are ones which are raised by and **within the ambit** of the submissions.*"¹⁸ (emphasis added)
- 5.33 In the present case, the Island Capital Limited submission clearly seeks to have designation 428 relating to the Glenorchy landfill removed.¹⁹ The submission continues:²⁰
- ICL seeks to make any similar, alternative and/or consequential relief that may be necessary or appropriate to address the matters raised in this submission or the specific relief requested in this submission.*
- 5.34 The amendment suggested by the Council and accepted by the submitter is within the ambit of the submission. The submission opposes the identification of a notice of requirement for designation on the submitter's land and seeks that the designation be removed, with the consequence that the land be free of any notation in relation to the landfill. The Council can confirm, modify, or withdraw the requirement, or impose conditions on it.²¹ If the Council withdraws the requirement, it is open to it (ie within the scope of the submission, or the "gap" between the submission and the Plan as notified) to include a lesser imposition, such as the notation now suggested to you by the Council and accepted by the submitter.
- 5.35 The Luggate closed landfill designation is opposed in similar terms by Wakatipu Holdings Ltd. That submitter opposes the PDP in it's entirely and specifically seeks that designation 429, Luggate closed landfill be

¹⁸ *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 at 166.

¹⁹ Paragraph 15.

²⁰ Paragraph 16.

²¹ RMA, s 168(4).

removed from its property. Again, the amendment to the PDP suggested by the Council and accepted by the submitter is within the ambit of the submission, which seeks to remove a restriction on the land and move to a completely “clean slate” zoning for the property. The notation moves towards that ultimate aim of the submitter, even if it does not go quite that far.

5.36 In respect of the Kingston closed landfill, Council agrees with the reporting officer’s recommendation that the landfill be noted on the planning map to correct a mapping error.

5.37 The Council considers this to be the correct course for all three closed landfill designations and seeks that the Hearings Panel use its discretion under clause 9(2) of Schedule 1 to the RMA to implement this approach.

6. CONCLUSION

6.1 The Council is seeking that a number of existing designations be rolled over into the PDP with or without modification and a number of new notices of requirement be confirmed.

6.2 Very few submission have been received in relation to the designations and where they have the Council has sought to address submitters concerns in so far as is possible while still achieving the Council’s objectives with respect to the designations.

Alice Balme

20 October 2016