

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

Hearing Stream 13 (Queenstown Mapping)

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

Dated: 14 August 2017

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Introduction

1. This hearing addresses Queenstown Airport Corporation Limited's (**QAC**) further submission on the Proposed District Plan (**Proposed Plan**) in respect of numerous rezoning requests relating to land around Queenstown Airport.

Evidence

2. The following evidence has been pre-lodged for QAC:
 - (a) Rachel Tregidga, General Manager of Property for QAC;
 - (b) Chris Day, Acoustic Engineer;
 - (c) John Kyle, Planner.
3. These witnesses are present today to provide a summary of their evidence and answer any questions the Panel may have.

Queenstown Airport

4. Queenstown Airport is a significant strategic resource and is a fundamental part of the social and economic wellbeing of the District's community.
5. The Airport has been experiencing significant growth in aircraft operations over recent years. International and domestic passenger numbers have increased by 38% in the last three years alone.
6. For the 12 month period ending 30 June 2017 passenger numbers reached 1.89 million, up 15% compared to the previous 12 months.
7. Current demand forecasts predict that annual passenger numbers have the potential to increase from 1.8 million in 2017 to 3.2 million by 2025.
8. QAC is currently undertaking master planning work for the Airport which will consider, amongst other issues, forecast growth in passenger numbers and aircraft operations, and how or to what extent this is to be accommodated at Queenstown Airport.

QAC's Submission

9. Relevant to this hearing, QAC opposes various rezoning requests that would enable activities sensitive to aircraft noise (**ASAN**) in areas that are or are likely to be affected by moderate levels of aircraft noise now or in the future. QAC's submission addresses land both within and beyond the Plan Change 35 (**PC35**) OCB.
10. QAC seeks that the rationale underpinning PC35 is upheld in the Proposed Plan, and having regard to predicted growth in aircraft operations, that potential future aircraft noise effects are properly considered and accounted for when assessing and deciding rezoning requests under the flight paths including for land located beyond the OCB.
11. The reasons for QAC's submission are twofold:
 - (a) To ensure that adverse amenity effects on persons working or residing in these areas are avoided; and
 - (b) To ensure that Queenstown Airport is protected against potential reverse sensitivity effects.
12. Amenity effects are costs borne by landowners under flight paths, and are recognised under section 7 of the RMA.
13. A reverse sensitivity effect is a cost borne by the Airport, and also the wider community.
14. These are costs that must be weighed in the section 32 evaluation of the Proposed Plan and submissions on it, and are highly relevant to the assessment under Part 2 of the RMA.

Reverse Sensitivity

15. While it is incumbent under the RMA that adverse environmental effects of an activity be avoided, remedied or mitigated by the person carrying out the activity, it is generally accepted that some key physical resources, such as airports, can not, in practical terms, internalise all adverse effects. The concept of reverse sensitivity recognises this. :

16. The concept of reverse sensitivity includes, and indeed focuses on, potential and future effects. Its focus is to ensure that actual effects (e.g. alteration or curtailment of lawfully established, existing activities) are avoided via appropriate land use planning decisions.
17. The concept also encapsulates an existing activity's future operations, including future upgrades and development. The inability to grow as planned because of public pressure arising from complaints can be considered a reverse sensitivity effect.
18. The concept is therefore forward looking; it is inherently dealing with a potential future scenario in that a reverse sensitivity effect has the potential to eventuate in the future if, over time, complaints lead to the curtailment of the existing activity's operations.
19. This accords with the forward looking nature of the RMA which is reflected in the focus in section 5 on providing for "future generations", and the section 3 definition of "effect" which includes "future" and "potential" effects.

Rezoning/Upzoning Requests within the PC35 OCB

20. QAC opposes rezoning or upzoning requests relating to land within the PC35 OCB so as to ensure that the Environment Court approved land use planning rationale is not eroded.
21. By way of background, PC35 was initiated by QAC and adopted by the Council around 2008 and sought to rationalise and update the noise management regime that applied to Queenstown Airport, while providing for the then predicted ongoing growth in aircraft operations and protecting the Airport from reverse sensitivity effects and also avoiding adverse amenity effects on people residing around the Airport.
22. PC35 was predicated on NZS 6805 which is widely accepted as an appropriate basis for land use planning around New Zealand's airports. Specifically, for land where there was no existing expectation or right of ASAN development (e.g. within the Rural zone), PC35 sought to prohibit such development. For land subject to an existing development right or expectation (e.g. residential zones) PC35 sought to permit new ASAN development (including alterations or additions to existing ASAN) only

where appropriately insulated from aircraft noise so as to achieve an acceptable internal noise environment.

23. This moderated approach recognised and grandfathered existing development and associated zoning for residential purposes that had occurred in close proximity to the Airport but precluded new ASAN development from establishing in these areas where there was no previous right or expectation of such development.
24. No submitter has seriously challenged the continuation of the PC35 approach in the Proposed Plan and the Council supports it (except in relation to its own submission (790), in respect of which the section 42A report is notably silent on the aircraft noise issue).
25. It is submitted that in the absence of any cogent evidence to the contrary which challenges the validity of PC35 or the appropriateness of its continuation in the Proposed Plan, the Panel should accept QAC's submission (and its evidence) in respect of rezoning requests within the OCB.

Rezoning Requests Beyond the OCB

26. QAC opposes rezoning requests that would enable new ASAN on land located beyond the PC35 OCB in areas that may be affected by moderately high levels of aircraft noise in the future.
27. QAC's submission is forward looking in this respect and takes account of the sustained growth in aircraft operations and passenger numbers that the Airport has continued to experience since PC35 was promulgated, and the current indications that aircraft noise at Queenstown Airport will likely reach the PC35 noise boundaries much earlier than originally predicted.
28. QAC's submission is criticised by the Council and some submitters as being inconsistent with PC35, and without any legal basis.
29. Those criticisms are not accepted.
30. QAC's submission is consistent with PC35; it seeks to ensure protection of people's amenity and of the Airport against potential reverse sensitivity effects, by grandfathering existing (operative) ASAN development rights

but precluding new ASAN development in areas where there is no previous development right or expectation.

31. Additionally, while QAC's submission addresses land beyond the current OCB, QAC's evidence is that the noise levels permitted by that boundary will likely be reached earlier than originally anticipated (i.e. when PC35 was formulated) and that it is reviewing its noise boundaries and will progress changes to the noise planning framework, if required, in due course.
32. This evidence should not be ignored or QAC's submission rejected simply because there is currently no proposal on foot to expand the noise boundaries.
33. It is submitted that it is entirely appropriate and responsible that QAC has presented this evidence to the Panel, even though there is currently no proposal to before the Council to alter the PC35 noise boundaries, because the Proposed Plan will be in effect for many years, and land use planning decisions, particularly decisions that enable residential or other noise sensitive land use around an airport, can be irreversible.
34. Conversely, it is submitted it would be a failure in terms of the Council's functions and duties under the RMA (including the Panel's delegated functions, as relevant) to overlook or ignore QAC's evidence on this issue.
35. Further, it should be remembered that PC35 was formulated in 2008 – almost 10 years ago. It was the result of master-planning work undertaken at the time which was informed by various forecasts and technical reports prepared by highly qualified experts. These reports were tested in in two RMA forums.
36. PC35 was therefore a product of the best available expert and technical information at the time. However, land use planning is not and should not be static, particularly in this District, and since PC35 was formulated actual growth has outstripped projections.
37. It is submitted that accepting QAC's submission in respect of rezoning requests beyond the OCB is not disenabling because this land has not historically been available for ASAN development of the nature or density requested by submitters.

38. Additionally, for the majority of this land aircraft noise not the only constraint to ASAN development, and in most cases there are other significant constraints that would need to be overcome before such development could proceed.
39. QAC's submission can be considered enabling in that it conserves development options for the future, and for future generations, if growth in aircraft operations does not materialise as currently predicted for example.
40. QAC's submission carries with it the significant benefit of future proofing the regionally significant infrastructure and physical resource that is Queenstown Airport. These benefits have local, regional and national significance.
41. It is submitted that the relief sought by QAC is the most appropriate, particularly given that no evidence has been presented of a pressing need to enable ASAN development on land in this noise area, nor any evidence presented as to a shortage of residential land within the District generally.

Conclusion

42. Queenstown Airport is a significant strategic physical resource which brings significant economic and social benefits to the community that ought to be protected, as should the amenity of future generations.
43. The continued growth and development of the Airport enables the wider community to provide for its social and economic wellbeing in particular, and for its health and safety.
44. The risks or costs of not accepting QAC's submission are that the growth and development of Queenstown Airport is unduly constrained, with significant flow on effects for the wider community's economic and social wellbeing, in addition to the adverse amenity effects experienced by persons residing under the Airport's flight paths.
45. Ultimately, the Panel must determine whether the purpose of the Act, including sections 5 and 7, is better achieved by enabling new or intensified ASAN development in areas that are currently or in likely future will be affected by moderately high levels of aircraft noise, with the

attendant amenity and potential reverse sensitivity costs, or by not enabling ASAN within these areas.

46. It is submitted that the relief sought by QAC is clearly the most appropriate, as any alternative decision comes with environmental costs in terms of amenity and potential reverse sensitivity effects which cannot be avoided or otherwise addressed.

R Wolt
Counsel for Queenstown Airport Corporation Limited