

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

**Chapter 15 (Local Shopping Centre Zone) and Chapter
17 (Airport Mixed Use Zone)**

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

Dated: 29 November 2016

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Introduction

1. These legal submissions address Queenstown Airport Corporation Limited's (**QAC**) submissions and further submissions on Chapter 15 (Local Centre Shopping Zone) (**LCSZ**) and Chapter 17 (Airport Mixed Use Zone) (**AMUZ**) of the Proposed Queenstown Lakes District Plan (**Proposed Plan**).
2. These legal submissions also address QAC's submission on Chapter 21 (Rural Zone) in relation to Wanaka Airport. Through this submission QAC seeks a bespoke set of provisions for Wanaka Airport, which recognise and provide for the ongoing operation and use of the Airport, for all users.
3. By minute dated 16 June 2016 the Panel transferred QAC's submission relating the zoning of Wanaka Airport to this hearing stream, (specifically, to the hearing of submissions on Chapter 17).
4. At this hearing, QAC will also address its submission on Chapter 35 relating to provision for airshows. The section 42A report writer for Chapter 35 recommended, and QAC agreed, that QAC's submission should also be transferred to this hearing stream (specifically, to the hearing of submissions on Chapter 17).

QAC

5. QAC is the Airport Authority responsible for operating Queenstown Airport.
6. Queenstown Airport is presently owned by QLDC (75.1%) and the Auckland International Airport Limited (**AIAL**) (24.9%).
7. QAC also manages operations at, and the administration of, Wanaka Airport, on behalf of QLDC.
8. Queenstown Airport is a significant strategic resource that provides direct and indirect benefits to the local and regional economies. It provides an important national and international transport link for the local, regional and international community. The Airport is a fundamental part of the social and economic wellbeing of the community.

9. Wanaka Airport accommodates aircraft movements associated with general aviation and helicopter operations, and is a major facilitator of commercial helicopter operations within the District. It provides a complementary and supplementary facility to Queenstown Airport. Wanaka Airport is infrastructure of regional significance and the Airport plays an important role in providing for the community's health, safety and well being.

QAC's Submission

10. Through its submissions and further submissions on Chapters 15, 17, 21 and 35, QAC is concerned to ensure that the Proposed Plan:
 - (a) Affords appropriate recognition to Queenstown and Wanaka Airports, and protection of Queenstown Airport, as a significant regional resources and infrastructure;
 - (b) Contains an appropriate planning framework for current and future airport and airport related activities, and zones sufficient land for such activities at Queenstown Airport;
 - (c) Contains an appropriate planning framework for current and future airport and airport related activities at Wanaka Airport, so to recognise and provide for the ongoing operation and use of the Airport for all users.

QAC's Evidence

11. Evidence (dated 18 November 2016) has been pre-lodged for QAC as follows:
 - (a) Rachel Tregidga (General Manager – Property, QAC), whose evidence provides an update of QAC's current projects and growth, the likely future development and Queenstown and Wanaka Airports, and existing tenancies at Wanaka Airports. Ms Tregidga's evidence complements and updates Mr Edghill's evidence which was presented for QAC during Hearing Stream 1B.¹ Mr Edghill's evidence remains relevant to this hearing (except where updated by

¹ Dated 29 February 2016.

Mr Tregidga) and for the Panel's convenience, a copy is **attached** to these legal submissions as **Attachment A**.

- (b) Expert acoustic evidence of Chris Day, who addresses the noise issues relating to the Queenstown AMUZ and LSCZ;
- (c) Expert planning evidence of John Kyle, who addresses the planning issues relating to the Queenstown and Wanaka AMUZ and the LSCZ.

Summary of Outstanding Issues

- 12. Section 42A reports have been prepared and notified, and expert evidence pre-lodged, for the Queenstown Lakes District Council (**Council**).
- 13. Evidence has been pre-lodged by other submitters, including relevantly, by RPL (Submitter 806) in relation to the Queenstown AMUZ.
- 14. The outstanding issues, as between QAC, the Council and RPL, can be summarised as follows:

Queenstown AMUZ

- (a) The Zone Purpose statement;
- (b) The wording of policies 17.2.1.1, 17.2.1.2 and 17.2.1.4 and other typographical amendments;
- (c) The provision for visitor accommodation within the AMUZ;
- (d) The activity status of buildings within the AMUZ, and built form and urban design outcomes;
- (e) Maximum noise levels within the AMUZ;
- (f) The extent of the AMUZ/whether it should include all of QAC's designated land;
- (g) related to the above, whether RPL's submission opposing the extent of the AMUZ should be deferred to the hearing of submissions on the planning maps;

- (h) The potential effects of the proposed extension of the AMUZ, including traffic and economic effects, and effects on the Queenstown Town Centre;
- (i) The adequacy of the section 32 evaluation;

Wanaka AMUZ

- (j) The definition of “airport related activity”;
- (k) The wording of proposed objective 17.2.2 and proposed policies 17.2.2.1, 17.2.2.2 and 17.2.2.3;
- (l) The activity status of airport and airport related activities, community facilities, and wholesaling and commercial storage activities;
- (m) The wording and application of the rules and development standards relating to buildings, building height and setbacks;
- (n) Maximum individual and cumulative size of tenancies for cafes, other food and beverage activities, retail activities and offices;
- (o) Provision for air shows.

LSCZ

- (p) Whether the PC35 mechanical ventilation requirements should be apply to new ASAN within the LSCZ; and
 - (q) Related to the above, whether there is “scope” to include the amended mechanical ventilation requirements, as per QAC’s submission on and evidence for Chapter 36.
15. A number of these issues are dealt with in detail in the expert and corporate evidence pre-lodged for QAC.
 16. Other issues have been raised in the evidence and synopsis of legal submissions pre-lodged for RPL, such that the evidence pre-lodged for QAC does not directly address them. These issues will be addressed as

necessary later in these legal submissions, and in the evidence presented to the Panel at the hearing of QAC's submission.²

Previous Legal Submissions Adopted for Present Hearing

17. Comprehensive legal submissions (dated 29 February 2016) were presented for QAC at the hearing of submissions on Chapters 3, 4 and 6³ of the Proposed Plan. They are adopted for the purposes of this hearing, to the extent they are relevant to QAC's submissions on Chapters 15 and 17 (and also 21 and 35, to the extent outlined in paragraphs 3 and 4 above).
18. Particular attention is drawn to the following parts of QAC's February legal submissions:
 - (a) Paragraphs 4 – 10, where an overview of Queenstown Airport is provided;
 - (b) Paragraphs 11 – 22, where the statutory framework within which QAC operates is set out;
 - (c) Paragraphs 23 – 30, where QAC's landholdings are detailed;
 - (d) Paragraphs 31 – 38, where QAC's recent growth and projects are discussed;
 - (e) Paragraphs 45 – 63, where the statutory framework within which submissions on the Proposed Plan must be considered, and decisions made, is detailed; and
 - (f) Paragraphs 80 – 114, where the background to Plan Change 35, and the reasons why its provisions should be incorporated into the Proposed Plan without substantive amendment, is set out.
19. A copy of QAC's 29 February 2016 legal submissions is **attached** as **Attachment B**, for the Panel's convenience. For the avoidance of doubt,

² Noting not all issues identified above will be addressed in these legal submissions, where, for example, they are more properly matters for evidence. It is also noted that the section 42A officer's summary of evidence dated 25 November 2016 indicates agreement with Mr Kyle on some of these issues. For the avoidance of doubt, they are generally still addressed in these legal submissions.

³ Hearing Stream 1B.

the paragraphs identified above form part of these legal submissions and are adopted, and should be read by the Panel for the purposes of this hearing.

20. Legal submissions were also previously pre-logged for QAC in relation to its submission on Chapter 21, including in so far as that related to Wanaka Airport. QAC's legal submissions addressed why the notified Rural Zoning is inappropriate and why a bespoke airport zoning is more appropriate. Because QAC's submission on Chapter 21 relating to the zoning of Wanaka Airport has been transferred to this hearing stream, QAC's legal submissions for Chapter 21 are also relevant presently. A copy of these legal submissions is **attached** as **Attachment C**. Because this Panel is differently comprised, and for its convenience, parts of QAC's legal submissions for Chapter 21 are now set out.

Wanaka Airport

21. Wanaka Airport is located 9 km south-east of Wanaka, and is accessed from the Wanaka - Luggate highway (SH6). The Airport operates 365 days a year. There are currently no scheduled air passenger services to the Airport, however the Airport is a popular base for flightseeing, flight training, private flights, aircraft maintenance operations, and visitor attractions including the popular Warbirds & Wheels Museum and Café.
22. As noted earlier, QAC manages Wanaka Airport on behalf of QLDC, for a modest management fee (cost recovery basis only).
23. QAC employs staff, administers debtors and creditors, manages planning processes, and coordinates projects, CAA compliance and day to day management, on behalf of QLDC.
24. QLDC currently funds planning and capital projects, and is ultimately responsible for CAA compliance, as the identified "airport authority" for the Airport under the Airport Authorities Act 1966.

25. Wanaka Airport has been identified as a complementary and supplementary facility to Queenstown Airport, able to accommodate aircraft spill over from Queenstown Airport.⁴
26. There are more than 200 people working in and around the Airport on day-to-day operations such as:
- (a) Flightseeing to Milford Sound and Mount Cook, and surrounding areas;
 - (b) A large and growing number of helicopters offering training and charter;
 - (c) Pilot training on Cessna and various aircraft types;
 - (d) Tandem skydiving flights and parachuting;
 - (e) Private sport and recreation, and general aviation;
 - (f) Agricultural topdressing operations;
 - (g) Charter operations, particularly ski tours;
 - (h) Regular military visits;
 - (i) Adventure flying in military aircraft.⁵
27. Wanaka Airport also hosts the annual NASA balloon launch, and the biennial Warbirds Over Wanaka air show.
28. A 2016 Report⁶ has noted that Wanaka Airport could increasingly become the base for general aviation (**GA**) in the region, as well as potentially accommodating scheduled and charter air transport service itself, as Queenstown Airport focuses its capacity on accommodating scheduled aircraft.
29. The 2016 Report identifies that in the near term, Wanaka Airport is likely to grow as a result of demand for:

⁴Astral Limited "Wanaka Airport Planning and Development" 20 April 2016 (2016 Report). See also 2008 Masterplan for Wanaka Airport.

⁵ <http://www.wanakaairport.com/about-wanaka-airport-2/about-us>

⁶ 2016 Report (refer Footnote 3).

- (a) hangar space for high value privately owned aircraft;
- (b) hangar and facility space for scientific operations such as the NASA 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.

Appropriate Recognition of and Provision for Wanaka Airport in the PDP

- 30. Under both the Operative and Proposed District Plans, Wanaka Airport is located within the Rural Zone.
- 31. The Airport is the subject of two designations in the Operative and Proposed Plans: Designation 64 and 65. QLDC is the requiring authority for these designations.
- 32. As the requiring authority, QLDC has the benefit of the fairly permissive designation regime for Wanaka Airport (specifically, the Aerodrome Purposes designation), but all other users of the Airport must comply with the underlying rural zoning.
- 33. This is inefficient, and does not recognise the physical environment of the Airport, or the general appropriateness of airport and airport related activities in this location.
- 34. Though its submission on the Proposed Plan, QAC seeks a bespoke set of provisions for Wanaka Airport, which recognise and provide for the ongoing operation and use of the Airport, for all users.

35. The Council generally agrees that a rural zoning for Wanaka Airport is inappropriate, and that a bespoke set of airport focussed provisions is more appropriate.⁷
36. As noted earlier in these legal submissions, at the hearing of QAC's submission on Chapter 21, the Panel suggested, and QAC and the Council agreed, that QAC's submission relating to the zoning of Wanaka Airport should be transferred to the hearing of submissions on the Queenstown Airport Mixed Use Zone, with the intention being that Wanaka Airport would also be addressed by that zoning. Detailed consideration was given by QAC as to whether legal scope/jurisdiction exists to address the zoning of Wanaka Airport in this alternative manner, with the conclusion reached being that such scope clearly does exist (refer paragraphs 77-93 of QAC's legal submissions dated 16 May 2016). QLDC also agreed.
37. Accordingly, the Panel directed that QAC's submission on the zoning of Wanaka Airport be transferred to the present hearing stream, and in accordance with a direction of the Panel, QAC's advisors compiled a set of bespoke zone provisions for Wanaka Airport which were duly provided to the Council for its consideration. When drafting these provisions, QAC's advisors were very mindful of the scope of QAC's original submission on Chapter 21, noting this submission sets the parameters for the scope of permissible changes to Chapter 17 to address Wanaka Airport. Counsel is satisfied that scope exists for the Chapter 17 Wanaka Airport provisions recommended by Mr Kyle.
38. Not all of QAC's recommended provisions have been adopted by the section 42A reporting officer however, and where differences of opinion exist as to the appropriate provisions, these are addressed in QAC's evidence, and later in these legal submissions, as necessary.

Queenstown Airport

39. As noted in the section 32 evaluation for Chapter 17 of the PDP⁸, the operative Queenstown Airport Mixed Use Zone does not reflect the extent

⁷ See for example, paragraphs 8.5 – 8.9 of QLDC's legal submissions dated 25 November 2016, with which QAC generally agrees, but considers Mr Kyle's recommended provisions, as set out in his evidence dated 18 November 2016, should be preferred over Ms Holden's.

of the overlying Aerodrome Purposes Designation (Designation 2 in the PDP). The majority (approximately 90ha) of the land designated for Aerodrome Purposes has an underlying (operative) Rural General Zoning, which does not anticipate airport or airport related activities. Only approximately 25ha of Queenstown Airport is within the operative Queenstown Airport Mixed Use Zone. The Operative District Plan therefore does not adequately recognise Queenstown Airport as a strategic transportation hub and centre of economic activity.

40. The PDP seeks to address this inefficiency by generally aligning the extent of the AMUZ with the Aerodrome Purposes Designation.
41. The PDP AMUZ also proposes to broaden the range of activities (airport and airport related) enabled within the Zone (as compared with the operative AMUZ), so as to better provide for the activities currently occurring at Queenstown Airport and/or enabled under the Aerodrome Purposes Designation, and/or expected at modern Airports and to occur in the future at Queenstown Airport.
42. QAC's submission on the AMUZ generally supported the Zone as notified, subject to the correction of a number relatively minor typographical errors. However, since then, QAC's advisors have undertaken a detailed review of the wording of each provision, and consider that in some instances further amendment is appropriate to ensure the meaning, intent and application of the provision is clear. These amendments are addressed by Mr Kyle. The scope for the amendments is addressed in the next section of these legal submissions, as necessary. The other outstanding issues (as identified in paragraph 14 above) are also addressed, to the extent that they give rise the legal issues on which comment is required.

Outstanding Issues - Queenstown Airport Mixed Use Zone

Scope to Amend Policies 17.2.1.1, 17.2.1.2, 17.2.1.4 and make other Typographical Amendments

43. As already noted, QAC's submission on Chapter 17 generally supported the Chapter as notified, subject to some minor typographical corrections.

⁸ Section 32 Evaluation Report, Queenstown Airport Mixed Use Zone, page 5.

QAC now considers that further amendment of some of the notified provisions is required to ensure they are appropriate in terms of section 32.

44. Given QAC's generally support of Chapter 17 as notified, it is necessary to consider and address whether scope exist to make these additional amendments.
45. The legal principles relating to the Panel's available scope to make changes to the PDP have been addressed at previous hearings.⁹ For this Panel's convenience, they are now again set out:
- (a) It is trite that a council can not grant relief beyond the scope of the submissions lodged in relation to a Proposed Plan.
 - (b) However, the scope of a council's decision making under clause 10 of the First Schedule to the Act is not limited to accepting or rejecting a submission. To take a legalistic view that a council could only accept or reject a submission would be unreal.¹⁰
 - (c) The paramount test is whether or not the amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the Proposed Plan. This will usually be a question of degree to be judged by the terms of the Proposed Plan and the content of submissions.¹¹
 - (d) The assessment of whether any amendment is reasonable and fairly raised in the course of submissions should be approached objectively, with a degree of latitude and in a realistic and workable fashion, rather than from the perspective of legal nicety.¹²
 - (e) Another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought in a submission; the scope to change a plan is not limited by the words of the submission.¹³

⁹ Refer legal submissions for QAC dated 16 May 2016, Hearing Stream 2.

¹⁰ *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 165.

¹¹ *Ibid*, at 166.

¹² *Royal Forest and Bird Society Inc v Southland District Council* [1997] NZRMA 408 at 413, (HC), and *EDS v Otorohanga District Council* (2014) NZEnvc 070, at [43]

¹³ *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556, and 574 – 575.

- (f) It is relevant to consider what an informed and reasonable owner of affected land should have appreciated might result from a decision on a submission, although this is not the sole test (given the danger of endeavouring to ascertain the mind or appreciation of a hypothetical person).¹⁴
- (g) A council can not permit a planning instrument to be appreciably amended without real opportunity for participation for those potentially affected.¹⁵
- (h) Ultimately, it is a question of procedural fairness. Procedural fairness extends to the public as well as to the submitter and the council.¹⁶

46. QAC's submission relating to Queenstown and Wanaka Airports was broadly framed. In summary, (and relevantly for Queenstown Airport), it was that:

- (a) The Proposed Plan should appropriately recognise and provide for Queenstown Airport to operate in a safe, efficient and effective manner;¹⁷
- (b) *"QAC requires flexibility to quickly respond to changes and growth in the tourism market;"*¹⁸
- (c) *"Rezoning the entirety of QAC's landholdings to [AMUZ] is an appropriate means of aligning the zoning with the activities that are currently occurring at the Airport and provided for by QAC's Aerodrome Purposes Designation";*¹⁹
- (d) *"The range of activities provided for in the notified [AMUZ] is appropriate and reflects the range of activities demanded of modern airports";*²⁰

¹⁴ *Countdown Properties*, Supra at 166 – 167.

¹⁵ *Clearwater Resort Ltd v CCC*, unreported: High Court, Tauranga, CIV-2008-470-456, 30 October 2009, Allan J, at para [30].

¹⁶ *Westfield (NZ) Ltd*, Supra, at [74].

¹⁷ QAC's submission dated 23 October 2015, paragraph 4.10.

¹⁸ *Ibid*, paragraph 4.25.

¹⁹ *Ibid*, paragraph 4.27.

²⁰ *Ibid*.

- (e) *“The proposed [AMUZ] will ensure that the Airport is afforded with appropriate flexibility to provide for a range of airport and airport related activities that are expected of modern airports, while balancing the need to maintain an attractive and memorable gateway to the district;”*
- (f) The submission points above, and those contained in Annexure A (detailing specific relief) should be accepted, or the PDP amended in a similar or such other way as may be appropriate to address the submission points, and any consequential changes, amendments or decisions required to address the matters raised in QAC’s submission.²¹

47. QAC’s submission in Appendix A generally supported the proposed AMUZ as notified, subject to a number of relatively minor typographical amendments.
48. It is clear from QAC’s submission that it needs to be read as a whole to ascertain the relief sought, and it clearly leaves open the possibility that the issues raised by QAC may be addressed in a different manner to that set out in its submission.
49. Given its breadth, QAC’s submission generally provides scope for the amendments to the AMUZ recommended by Mr Kyle. Where scope is not directly provided by QAC’s submission, it is generally provided by another submission, as identified by the section 42A reporting officer.
50. There are several proposed amendments that require more detailed consideration however.

Policy 17.2.1.1

51. Mr Kyle has does not agree with the revisions to this policy recommended in the section 42A report, but recommends amendments to the notified version. Specifically, he recommends the deletion of the “necessary” and amendment of the phrase “aviation activities”, along with consequential grammatical changes.

²¹ Ibid, paragraph/section 5.

52. Scope for the latter change is provided by the Oil Companies' submission (Submitter 768).
53. The deletion of the word "necessary" broadens the policy somewhat from what was notified. Scope for this change is derived generally from QAC's submission (as summarised above), and more specifically from RPL's submission, which seeks the retention of the operative provisions.²² Operative objective 1 seeks to "*provide for airport related activities while maintaining the environmental quality of the area*". There is no requirement in the objective (or its attendant policies) that the airport activities enabled within the zone be "necessary" to the safe and efficient operation of the Airport. The operative objective is therefore broader than the notified policy, and through RPL's submission, provides express scope for Mr Kyle's recommended amendment.
54. It is noted that the section 42A reporting officer supports Mr Kyle's recommended amendment.²³

Policy 17.2.1.2

55. Mr Kyle recommends that the reference in the policy 17.2.1.2 to "service, business, industrial and commercial activities" be deleted and replaced with a reference to "airport related activities". The definition of airport related activities is broader than the activities listed in the notified policy.
56. Scope for this amendment is generally derived from QAC's submission, and possibly also generally from the Oil Companies' submission (Submitter 768) which seeks the use of defined terms in the Chapter (although its submission specifically relates to "airport activities").
57. In addition, scope is derived from the notified chapter as whole, and specifically, rule 17.4.1 which provides for "airport related activities" as permitted activities. It is appropriate that there be a clear connection between the policies and the rules, and that consistent terminology is used. If the amendment is not made, rule 17.4.1 will be more enabling than policy 17.2.1.2, which is inappropriate.

²² RPL's submission dated 23 October 2015, at paragraph 10.3.

²³ Summary Evidence of Rebecca Holden, dated 25 November 2016, Appendix 1, page 2.

58. A legal opinion previously provide to the Panel²⁴ confirms that in may be appropriate and permissible to amend objectives and policies so they are consistent with rules.
59. It is noted that the resection 42A reporting officer supports Mr Kyle's recommended amendment.
60. The section 42A reporting officer has raised a number of other "scope" issues which require brief comment.

Other Amendments

61. Mr Kyle recommends that notified policy 17.2.1.5 be relocated as policy 17.2.1.5. The section 42A reporting officer agrees that the recommendation has merit, but considers that the change is substantive and there may not be scope for it. QAC does not agree.
62. The change is not substantive, but rather, one of form. As notified, the policy sat beneath objective 17.2.2, but gave effect to both this objective, and to objective 17.2.1. It is not uncommon or inappropriate for a policy to give effect to two objectives. The policy is more appropriately located under objective 17.2.1 however because it seeks to avoid the establishment of activities that may compromise the Airport's ability to become a generator of national and regionally significant economic, social and cultural effects. The policy should therefore be relocated, although no change to its wording is required, so no substantive change arises from the amendment. Should the Panel consider the change is substantive, then QAC's submission provides the necessary scope for it.
63. Mr Kyle recommends that buildings are controlled activities within the AMUZ. The section 42A reporting officer agrees the approach has merit, but considers there is not scope for it. Scope for the amendment is derived from RPL's submission which seeks retention of the operative provisions (paragraph 10.3 and 10.5). Buildings are controlled activities within the operative AMUZ.
64. Mr Kyle recommends the additional matters of control for rule 15.5.5.1 which relates to building design and glare. The section 42A officer agrees

²⁴ By Meredith Connell, dated 9 August 2016.

the recommended approach has merit, but considers there may not be scope for it. The amendments are necessary because without them, with respect to building design, the matters of discretion do not relate to the effects the rule seeks to address. Accordingly without the amendments, the rule does not accord with the requirements of section 87A and it is therefore inappropriate and inefficient, and its retention wholly undesirable. If scope is an issue, it may be derived from QAC's general submission.

65. Mr Kyle recommends the definition of "airport related activity" be amended to include signage and farming activities. The section 42A reporting officer agrees the amendment has merit, but considers there may not be scope for the amendments. The amendments are a matter of form rather than substance. Signage (within parameters) was (implicitly) provided for as a permitted activity within the AMUZ, albeit via a development standard (notified standard 17.5.10.2 and 17.5.10.3). The drafting and placement of the rule was inconsistent with the drafting of other provisions, and potentially confusing. It is therefore more appropriate that it be provided for as an airport related activity. Similarly, farming was provided for as a permitted activity in the notified chapter (rule 17.4.1). Farming is an airport related activity, as it is undertaken for land maintenance and management purposes. It is therefore appropriate and efficient that it be identified as such within the AMUZ provisions. The amendments have no substantive change or effect on the application of the AMUZ. However, if scope is an issue it is derived from QAC's submission.

Visitor Accommodation

66. The definition of "airport related activity" in the PDP (as notified) includes "*visitor accommodation associated with the needs of Airport passengers, visitors and employees and/or aircraft movements and businesses*". The PDP (as notified) proposes that airport related activities be permitted within the AMUZ for Queenstown Airport. That is, it proposes that visitor accommodation (associated with the needs of Airport passengers, visitors and employees and/or aircraft movements and businesses) be permitted within the Zone.

67. The section 42A reporting officer correctly identifies, (with reference to Marshall Day Acoustic's (MDA) report dated 19 November 2014),²⁵ that establishing visitor accommodation within close proximity to an airport has become an acceptable and subsidiary activity to airport operations around the country, but notes that potential reverse sensitivity and adverse noise effects need to be appropriately mitigated. The section 42A officer considers this is achieved by notified standard 17.5.8.1, which requires that any building containing visitor accommodation must be fitted with sound insulation to ensure a satisfactory internal noise environment (of 40 dB L_{dn}) is achieved.
68. As already noted, QAC filed a submission in general support of the AMUZ, including (by implication) the provision for visitor accommodation. Since then, QAC has sought further advice from MDA as to the circumstances in which visitor accommodation can be considered appropriate at an airport, and more particularly, within an airport's noise boundaries, so as not to adversely affect guests' amenity and well-being, or give rise to potential reverse sensitive effects. QAC has sought such advice because much of the proposed AMUZ is located within the ANB for Queenstown Airport.
69. Consistent with the MDA's November 2014 report, Mr Day (founding partner and Director of MDA) has recommended to QAC that any such visitor accommodation should be limited to a maximum of 2 nights stay, should not provide any outdoor amenity areas (e.g. patios, balconies etc), and should be subject to a requirement that the building be designed to achieve an indoor design sound level of 40 dB L_{dn} in all critical listening environments.²⁶
70. QAC generally accepts these recommendations, but for the 2 night maximum stay.
71. As explained by Ms Tregidga,²⁷ QAC considers a 3 night maximum stay is more appropriate as it enables long weekend travellers to be catered for, and/or gives other travellers more flexibility in the event their flight is

²⁵ Appendix 4 of the section 32 evaluation for Chapter 17 of the PDP.

²⁶ Evidence of Chris Day, dated 18 November 2016, at paragraph 25.

²⁷ Evidence of Rachel Tregidga, dated 18 November 2016, at paragraphs 46 – 49.

delayed and an additional night's stay in Queenstown is required, for example.

72. Ms Tregidga explains that a 3 night maximum stay is also required so to cater for weekend visitor from Australia, noting that is a growing market for such travellers with the recent introduction of evening flights.
73. Ms Tregidga also explains that QAC considers a 3 night maximum stay is required in order for visitor accommodation within the AMUZ to be more commercially viable.
74. Based on Mr Day's and Ms Tregidga's evidence, Mr Kyle recommends the inclusion of two additional development standards relating to visitor accommodation, which address the maximum duration of any stay (3 nights), and the provision of outdoor amenity areas (none).²⁸ If the standards are not met, non-complying activity status will be triggered.
75. Mr Day's evidence is that, with the restrictions he recommends embedded in the rules that apply to the AMUZ, short stay visitor accommodation, as is proposed to be enabled within the Zone, is not a noise sensitive activity (ASAN) because:²⁹
- (a) The short duration of the stay means guests are less likely to be annoyed (and complain) about aircraft noise;
 - (b) The short duration of the stay means the guests are not "holidaying" in the Zone as such, but rather chose to stay at the airport hotel because of its convenient location in relation to the Airport. (Mr Kyle's and Ms Tregidga's evidence is that airport hotels are typically located within walking or a short distance from the airport terminal and cater for transiting or short stay visitors, including delayed passengers and overnighing aircrew who may require accommodation at short notice and/or a short distance from the airport in order to catch other flights);
 - (c) Adverse effects on amenity and wellbeing are addressed by the restriction on the provision of outdoor amenity areas and the

²⁸ Evidence of John Kyle, dated 18 November 2016, at paragraph 5.62.

²⁹ Evidence of Chris Day, at paragraph 17.

requirement for an indoor design sound level of 40dB L_{dn} to be achieved within critical listening environments of the hotel building.

76. Mr Day's evidence is that short stay visitor accommodation can be contrasted with longer stay or long term visitor accommodation, which serves a different purpose and caters to different guests (e.g. guests come to "holiday" at the accommodation, with different expectations as to amenity, provision of outdoor space etc).³⁰
77. QAC is very mindful of its general approach to the establishment of new ASAN within the Airport's noise boundaries, both through the PDP and previous planning processes. However, Mr Day's evidence is that short stay visitor accommodation, as is proposed, is not an ASAN (i.e. not a noise sensitive activity), and need not be subject to the same restrictions as other ASAN within the noise boundaries.
78. On this basis, QAC supports the provision of visitor accommodation within the AMUZ, noting that provision of visitor accommodation for transiting passengers and short stay visitors is now common place at major airports, and there is a demand for it at Queenstown Airport.³¹
79. RPL opposes the proposal to enable visitor accommodation within the AMUZ at Queenstown Airport. It does so on the following purported grounds (my paraphrasing):
- (a) It is inconsistent with the Otago Regional Policy Statement (**ORPS**), PC19 and PC35, the rest of the PDP, and NZS6805;
 - (b) It is contrary to QAC's own arguments in previous proceedings where it has "stridently opposed" the establishment of new ASAN within the Airport's noise boundaries;
 - (c) The adverse effects can not be avoided or mitigated sufficiently. In particular, limiting the duration of guests staying in the visitor accommodation is not an effective method of mitigation;
 - (d) The acoustic insulation standards contained in Appendix 13 of the ODP (and replicated in Chapter 36, Table 4 of the PDP) will not

³⁰ Ibid, paragraph 18.

³¹ Evidence of Rachel Tregidga, paragraphs 38 – 44.

ensure an appropriate indoor sound level, and the Appendix is therefore an inadequate design standard for visitor accommodation located within the ANB (although RPL says the methods in Appendix 13 would be sufficient for visitor accommodation development within the OCB); and.

- (e) Reasonable alternatives, such as allowing visitor accommodation in the OCB in other zones around the Airport, such as the RPZ or FFB Zones, (in both of which RPL owns land), have not been adequately considered.

- 80. These arguments will be addressed in turn below, and also in evidence to be presented at the hearing, as necessary.

Allowing short-stay visitor accommodation in the AMUZ is inconsistent with the ORPS, PC19 and PC35, the rest of the PDP, and NZS6805, and is contrary to QAC's own arguments in previous proceedings.

- 81. By way of background to this argument, (in so far as it is understood), it is acknowledged that QAC's general approach to date, when assessing and addressing the appropriateness or otherwise of aircraft noise sensitive (ASAN) development around Queenstown Airport, including in particular, within the Airport's Air Noise Boundary (**ANB**) and Outer Control Boundary (**OCB**), has been generally guided by NZS 6805 (although QAC has taken a more moderated approach than recommended by NZS 6805, to reflect the current nature and scale of established activities occurring around the Airport, as necessary).

- 82. As explained in previous hearings, NZS 6805 (**Standard**) is generally recognised as the key guiding document for the management of aircraft noise at New Zealand's airports. The Standard recommends the *"implementation of practical land use planning controls and airport management techniques to promote and conserve the health of people living and working near airports, without unduly restricting the operation of airports."*

- 83. The Standard sets out that a balance needs to be achieved between accommodating the needs of an airport on an on-going basis and providing for the health and the amenity values enjoyed by those occupying and using land surrounding the airport.

84. One of the techniques advocated in the Standard for achieving this outcome is the imposition of an ANB. The Standard describes an ANB as a *“mechanism for local authorities to establish compatible land use planning and to set limits for the management of aircraft noise at airports where noise control measures are needed to protect community health and amenity values.”*
85. The ANB comprises a noise boundary inside of which noise exposure is expected to exceed 65dB L_{dn}. The Standard recommends that *“new residential activities, schools, hospitals or other noise sensitive uses”* should be prohibited inside the ANB.
86. The Standard also recommends the establishment of a second and outer control boundary (OCB) around an airport for the protection of amenity values. The OCB is based on a noise contour at or beyond which aircraft noise should not exceed 55dB L_{dn}.
87. The Standard recommends that *“any new residential dwellings, schools, hospitals or other noise sensitive uses”* should be prohibited within the OCB, unless the District Plan permits such uses. Then they should be subject to a requirement to incorporate appropriate acoustic insulation to ensure a satisfactory internal noise environment. The New Zealand Standard also recommends that alterations or additions to existing residences or other noise sensitive uses inside the OCB should be appropriately insulated from aircraft noise to achieve an acceptable internal design sound level.
88. As already noted, much of the AMUZ is located within the ANB, with a much smaller portion being located within the OCB for Queenstown Airport.
89. Notwithstanding this, QAC does not agree with or accept RPL’s criticism that enabling visitor accommodation with the AMUZ is inconsistent with the Standard and processes and statutory planning documents that rely on or refer to it. In light of Mr Day’s evidence, the criticisms are unfounded.
90. As already noted, Mr Day’s evidence is that with appropriate restrictions in place in respect of duration of stay, provision of outdoor space and acoustic insulation of buildings, (Mr Kyle proposes such restrictions be embedded in the AMUZ rules), short stay visitor accommodation, as is proposed to be enabled within the AMUZ, is not a noise sensitive use.

91. As such, enabling short stay accommodation within the AMUZ, as proposed, will not give rise to adverse amenity effects for guests of the accommodation, nor to potential reverse sensitivity effects.
92. Accordingly, no inconsistency with the Standard, or the position taken by QAC in previous (e.g. PC19 and PC35) or the PDP proceedings arises. Similarly, there is no inconsistency with the ORPS because potential reverse sensitivity effects will be avoided by the imposition of the restrictions generally recommended by Mr Day.
93. RPL's noise expert, Mr Hunt, states that MDA's November 2014 report "*fails to address the recommendations of NZS 6805...which prohibits noise sensitive development such as visitor accommodation on sites located within the ANB*".³² Mr Hunt has misstated the Standard however. As already noted, NZS 6805 recommends that the "*new residential, schools hospitals and other noise sensitive uses are prohibited*" within the ANB. The Standard does not expressly reference visitor accommodation. Mr Day's evidence is that longer stay visitor accommodation is a noise sensitive use, but that short stay visitor accommodation, such as proposed within the AMUZ, is not. Mr Day will address this further at the hearing.

The adverse effects of enabling short-stay VA within the AMUZ/ANB can not be avoided or mitigated sufficiently. In particular, limiting the duration of guests staying in the VA is not an effective method of mitigation

94. Mr Hunt's evidence, for RPL, is that restricting the duration of stay at visitor accommodation within the AMUZ will not achieve "*any mitigation/reduction of effects*".³³ By Mr Hunt's logic, a resident exposed to aircraft noise 365 days per year will experience the same adverse effects as a hotel guest who experiences it for one or two nights. That is implausible. Mr Day will address this in further detail at the hearing.

The acoustic insulation standards contained in Appendix 13 of the ODP will not ensure an appropriate indoor sound level for visitor accommodation within the AMUZ

³² Evidence of Malcolm Hunt, dated 18 November 2016, at paragraph 18.

³³ Ibid, at paragraph 19.

95. Appendix 13 of the ODP was introduced via PC35, and was drafted to address the construction of new dwellings (including alterations and additions to existing dwellings) that will in the future (i.e. in 2037, being the planning horizon for PC35) be exposed to noise levels up to 68 dB L_{dn} (i.e. the noisiest location inside the ANB for a potential residential dwelling inside the ANB). Appendix 13 of the ODP is the same as Rule 36.6.2, (Table 4), in Chapter 36 of the PDP.
96. As Mr Day will explain at the hearing, noise measurements inside dwellings near Auckland and Wellington airports have shown that an indoor sound level of 40 dB L_{dn} can be achieved by the construction methods stated in Appendix 13 of the ODP where external (aircraft noise related) noise levels are 68dB L_{dn} or less.
97. It is acknowledged it is possible, however, that an airport hotel could be established within the AMUZ in a location where external noise levels are greater than 68 dB L_{dn} , meaning that the construction methods stated in Appendix 13 (and thus Table 4 Chapter 36) may not be adequate to ensure an appropriate indoor sound level is achieved.
98. In light of this, at the hearing Mr Kyle will recommend an amendment to proposed development standard 17.5.8³⁴ which will ensure that an appropriate indoor sound level (i.e. 40 dB L_{dn}) is achieved for visitor accommodation within the AMUZ, irrespective of its location within the Zone.

Reasonable alternatives, such as allowing short-stay in other zones around the Airport, have not been adequately considered

99. This argument is addressed generally in paragraphs 163 - 171 below.

Built Form and Urban Design, and Activity Status of Buildings

100. RPL purports that there has been no proper consideration of the integration of the proposed expansion of the AMUZ with adjoining zones.³⁵ RPL also purports that the amenity and urban design impacts have been grossly understated or not addressed at all.³⁶

³⁴ Development standard 17.5.7 in Appendix B of Mr Kyle's 18 November 2016 evidence.

³⁵ RPL's synopsis of legal submissions dated 18 November 2016, at paragraph 2.2(b).

³⁶ Ibid, paragraph 2.2(i).

101. RPL's arguments are very similar to those it presented when opposing QAC's NOR to modify the Aerodrome Purposes Designation³⁷ to enable a broader range of activities, with increased building height limits and reduced set back requirements.
102. The building height limits and setbacks sought via QAC's NOR are the same those proposed to apply within the AMUZ. As explained by Mr Kyle at the Designations hearing,³⁸ the nature and scale of the proposed activities, including building heights and setbacks, fall within the range of outcomes enabled and anticipated for land in the adjacent commercial zones. Given this, the effects of the activities proposed to be enabled in the AMUZ will be similar to, and not incongruent with development in the zones surrounding the Airport.
103. This is demonstrated by the assessment set out at Appendix D of Mr Kyle's evidence for this hearing,³⁹ where he compares the bulk form (building height and setbacks) requirements in the commercial zones surrounding Queenstown Airport.
104. Mr Kyle's evidence is that the built form standards proposed to apply in the AMUZ zone will create greater consistency between the various land uses on Frankton Flats and will also provide for the efficient use of what is an increasingly limited land resource at Queenstown Airport.⁴⁰
105. As for RPL's allegation that the potential amenity and urban design impacts have been grossly understated or not addressed, QAC does not agree. The notified chapter contains numerous provisions (rules and development standards) which are focussed on ensuring appropriate built form outcomes are achieved.
106. For example, the enablement of airport and airport related activities within the Zone is proposed to be subject to compliance with detailed rules and/or development standards relating to building design,⁴¹ location, landscaping, site coverage, setbacks and height; signage; lighting and glare; noise (via

³⁷ Hearing Stream 7.

³⁸ For example, Summary Evidence of Joh Kyle dated 20 October 2016, Hearing Stream 7, and paragraphs 2.6 – 2.11.

³⁹ Dated 18 November 2016.

⁴⁰ Ibid, at paragraph 5.64.

⁴¹ As per Mr Kyle's recommendation.

Chapter 36 provisions) and transportation matters (other than for activities located within the terminal building).

107. In addition, for all other activities (which are not otherwise prohibited) restricted discretionary resource consent is required, with the Council's discretion restricted to the broad matters of design, external appearance and siting of buildings and structures; traffic generation, vehicle parking, site access and servicing, including provision for an integrated transport assessment; landscaping and the extent to which the activity benefits from an airport location.
108. Furthermore, the notified chapter contains two very directive statements that QAC "will" adopt best practice urban design and urban design led principles at Queenstown Airport (non-regulatory method 17.7.1) and that QAC "shall" prepare urban design guidelines for the AMUZ that promote a built form and character which maintains the Airport and its surrounds as an attractive gateway to the District (non-regulatory method 17.7.3). As explained by Ms Tregidga, QAC supports and is committed to these non-regulatory requirements, and considers that good urban design is important to ensuring successful development within the Zone and the surrounding area.⁴²
109. In light of the above, RPL's allegation that potential amenity and urban design impacts are grossly understated or not addressed is inaccurate.
110. Notwithstanding, following the Designations hearing, where QAC's expert planning witness, Mr Kyle recommended (and QAC supported) the inclusion of additional conditions in the Aerodrome Purposes Designation to address the potential effects arising from building development on designated land, Mr Kyle has considered whether similar controls are appropriate for buildings established under the AMUZ, and has reached the view that they are.
111. Accordingly, in his evidence⁴³ Mr Kyle recommends that all buildings within the AUMZ require controlled activity resource consent, and proposes a comprehensive list of matters of control which address building form,

⁴² Evidence of Rachel Tregidga dated 18 November 2016, at paragraph 27.

⁴³ Dated 18 November 2016, at paragraph 5.55.

colour, texture and materials used; alignment with buildings in adjoining zones, where located near the zone boundary; and the scale and adequacy of landscaping, and its potential to obstruct views to ONLs and ONFs. QAC supports Mr Kyle's recommendation.

112. It is noted that Mr Serjeant, for RPL, also recommends that buildings be controlled activities within the AMUZ, so Mr Kyle and Mr Sarjeant are in agreement in this respect.
113. With these additional urban design related building controls in place, RPL's criticisms are unfounded.

The extent of the AMUZ

114. RPL opposes the extension of the AMUZ to include all of QAC's designated land, and by inference also opposes the range of activities enabled on that land. Presumably RPL seeks the operative rural zoning for this land be retained.
115. Mr Kyle's evidence is that there is a clear misalignment between the operative rural zoning of much of QAC's designated land and the activities actually occurring on the ground (or enabled to occur via the Airport's designations).⁴⁴ Mr Kyle's evidence is that many of the activities that would be expected to support a modern airport are discretionary, non-complying or even prohibited activities.⁴⁵ Given Queenstown Airport is New Zealand's fourth busiest and regionally significant infrastructure, this is both inappropriate and inefficient.
116. Notably, RPL's panning witness, Mr Sarjeant, agrees with Mr Kyle that the operative rural zoning for much of Queenstown Airport is not appropriate.⁴⁶ Mr Sarjeant also accepts that the range of activities sought to be enabled with the AMUZ is appropriate.⁴⁷
117. Accordingly, RPL's opposition to the expanded AMUZ boundaries is not supported by its own evidence and is without merit.

⁴⁴ John Kyle evidence dated 18 November 2016, at paragraph 5.6.

⁴⁵ Ibid, paragraph 5.5.

⁴⁶ Evidence of David Sarjeant dated 18 November 2016, at paragraph 7.20.

⁴⁷ Ibid at paragraph 4.15.

118. For the avoidance of doubt, the activities sought to be enabled at Queenstown Airport via the PDP AMUZ (as ‘airport activities’ or ‘airport related activities’) are entirely consistent with the range of activities commonly found at modern airports, and their legitimacy has been confirmed by the Court of Appeal: *McElroy v Auckland International Airport Ltd* [2009] NZCA 621. A detailed discussion of this case is set out in **Appendix A**.
119. In summary, the *McElroy* case makes clear that modern airports comprise a range of activities which extend beyond what could be considered “traditional” airport business, and now include land for hotels, office complexes, light industries, freight warehousing, distribution centres, businesses parks, retail activities and in some instances recreational activities, amongst other activities.

Timing of Hearing of RPL’s Submission Opposing Extent of AMUZ

120. With regards to RPL’s submission opposing the proposal to include all of QAC’s designated land within the AMUZ, the Council has stated that this is a matter for the rezoning hearing,⁴⁸ which is scheduled to commence after Easter 2017. QAC is very concerned by and does not agree with the Council’s position in this regard.
121. QAC considers there is no reason for RPL’s submission on the extent of the AMUZ to be deferred to the later rezoning hearing, noting the general intention of that hearing is to deal with rezoning requests arising from submissions. In contrast, the extent of the AMUZ was included in the notified PDP.
122. QAC considers it would be wholly inefficient to defer RPL’s submission in the manner suggested when RPL has presented evidence and legal submissions at this stream hearing which address the issue, presumably on the understanding that its submission would be addressed in its entirety at this hearing. That was certainly the understanding of QAC, noting that has no previous indication has been given that part of RPL’s submission would be addressed at a later hearing. It is not raised in the section 42A report.

⁴⁸ Opening Legal Submissions for QLDC, dated 25 November 2016, at paragraph 8.16.

123. In fact, the nub of RPL's submission is its opposition to the extent of the AMUZ. That is clear from the opening sentence of Mr Young's (counsel for RPL) legal submissions.⁴⁹ Yet RPL has pre-lodged and presented a full case in support of its submission, which clearly demonstrates it expects it to be addressed in full at this hearing.
124. QAC considers the Panel is therefore able to make a decision on RPL's entire submission following this hearing, and it would be efficient to do so. It would be wholly inefficient to defer to the rezoning hearing, so as to effectively rehear RPL's case in opposition to the extent of the AMUZ. Indeed, it would prejudice QAC to do so. That is because to defer RPL's submission would be to provide RPL with a second opportunity to present its case, and to bolster it in light of what has transpired at this hearing.
125. Further, the distinction required to be made between the different parts of RPL's submission in order to defer hearing part of it until the rezoning hearing is strained and artificial. How can the effects of the proposed AMUZ, and the appropriateness of the provisions (as raised by RPL and addressed in its evidence and legal submissions for this hearing) be properly assessed when the extent of the zoning is unknown? More particularly, how can the appropriateness of the proposed provisions for implementing proposed policy 17.2.1.3 (which relates to the zoning of sufficient land to meet the foreseeable future requirements on the Airport) be assessed when the spatial extent of the AMUZ is not being considered? The suggested approach is fundamentally at odds with the principles of integrated management. It appears to be an unintended consequence of the Panel's Second Procedural minute.⁵⁰
126. Accordingly, the Council's suggestion that RPL's submission opposing the extent of the AMUZ be deferred to the rezoning hearing is very strongly opposed by QAC.

Potential Effects of Proposed Expansion of the AMUZ

127. RPL purports that the effects of the proposed extension of the AMUZ can not be assessed because the extent and location of development is not

⁴⁹ Dated 18 November 2016, paragraph 2.1.

⁵⁰ Dated 5 February 2016.

known, and purports that the economic and traffic assessments that informed the section 32 evaluation are of limited assistance because they do not acknowledge opportunities for development on adjoining land.

128. As for the first part of RPL's argument, it is very similar to the argument made in respect of QAC's NOR to modify the Aerodrome Purposes Designation so to enable a broader range of airport activities.⁵¹
129. As explained by Mr Kyle for that hearing,⁵² and in legal submissions,⁵³ the Airport land is limited in its extent and significant areas are, and will continue to be required to facilitate aviation activities, meaning that the potential for the establishment of commercial and other activity that is not central to the operation of the Airport is low.
130. As also explained by Mr Kyle at the Designation hearing, many of the activities enabled by the AMUZ will likely be located within or in proximity to the terminal complex to complement growing passenger and staff numbers over time.
131. In any case, as already noted, development of the airport and airport related activities will be subject to a range of built form and urban design controls/requirements and the general (district wide) transportation requirements (for activities not located within the Airport terminal). All other development will require a restricted discretionary consent, with the Council's discretion restricted to a broad range of matters relating to buildings, parking and traffic, amongst others.
132. Accordingly, RPL's argument that the significance of the proposed extension to the AMUZ and its potential effects can not be assessed because the extent and location of development is not known is overstated.

Economic and Traffic Effects

133. With regards to RPL's criticism of the economic and traffic assessments, RPL has provided no compelling evidence that demonstrates these assessments are flawed or that the conclusions reached are wrong.

⁵¹ Hearing Stream 7.

⁵² Verbally in response to questions from the Hearing Commissioner and in reply evidence dated 2 November 2016, at paragraph 3.1.

⁵³ QAC's Reply Legal Submissions dated 2 November 2016, refer paragraphs 13 - 16.

134. Rather, the planning evidence of Mr Sarjeant is that the economic assessment is useful because it supports the overall importance of the airport to the local and regional economy and its status as national significant infrastructure, and identifies that while the direct benefit of the airport operation in monetary terms is relatively small, activity which relies on the Airport is very significant in monetary terms.⁵⁴
135. Mr Sarjeant considers that overall, the activities proposed to be enabled within the expanded AMUZ take advantage of the economic opportunities provided by the Airport and so will add to the overall regional economic output. Mr Sarjeant does not consider there to be any specific activity provided for within the AMUZ which raises the potential for an oversupply situation, and potentially adverse economic effects.⁵⁵
136. Accordingly, rather than contradict or challenge the economic assessment, Mr Sarjeant's evidence, for RPL, supports it.
137. Notably, the economic assessment is that the proposed AMUZ's contribution to economic wellbeing through enabling private investment in the District outweighs any potential costs to private investment.⁵⁶
138. As for the transportation assessment of the proposed AMUZ,⁵⁷ the conclusions reached therein are that notwithstanding the proposed zoning is more enabling and greater in extent than the operative zoning, there are only limited differences in terms of transportation outcomes between the operative and proposed AMUZ provisions.⁵⁸ Specifically, the differences are between those activities which are discretionary, non-complying or prohibited activities under the ODP, and would become permitted, controlled or restricted discretionary under the PDP. These activities are visitor, accommodation, commercial activity, industrial activity, conference facilities, offices and land transport facilities and retail.

⁵⁴ Sarjeant, at paragraph 6.9.

⁵⁵ Ibid, at paragraph 6.11.

⁵⁶ Market Economics Limited, Queenstown Airport: Mixed Use Zone Economic Assessment, dated November 2014, at page iv.

⁵⁷ Carriageway Consulting, Review of Queenstown Airport Mixed Use Zone, dated 26 November 2014.

⁵⁸ Ibid, page 2.

139. For these activities, the transportation assessment is that because they must be an ancillary activity or service that provides support to the airport (as per the definition of “airport related activity” and proposed objective 17.2.1.2), the extent of any associated traffic generation will be very limited⁵⁹ or negligible.
140. All other activities (that are not otherwise prohibited) will require restricted discretionary consent, for which transportation remains a matter of discretion. The transportation assessment correctly identifies that this will ensure that the Council can consider potential transportation effects of such activities,⁶⁰ and can decline consent if such effects can not be appropriately addressed.
141. Additionally, although it is not addressed in the transportation assessment, it is also noted that, with the construction of the Eastern Access Route (**EAR**) underway, there will soon be increased capacity in the roads servicing the Airport and the wider environs. It is understood the EAR is scheduled for completion in December 2017.
142. RPL’s planning witness, Mr Sarjeant, acknowledges that the transportation assessment “*provides a global level of comfort in relation to the effects of traffic generation on the network*”.⁶¹
143. He opines however, that the analysis is not sufficient to underpin no controls on the scale of activities, “*the overwhelming majority of which*” he says “*are airport and airport related activities, and so exempt from any form of traffic assessment or parking demand.*”
144. Mr Sarjeant appears to misunderstand the application of the transportation provisions within the AMUZ. The district wide transportation provisions (currently located within Chapter 14 of the ODP, but due for review via Stage 2 of the PDP) will apply to all airport and airport related activities within the zone, excepting those that occur within the Airport terminal.
145. The rationale for exempting airport related activities located in the terminal from the district wide transportation requirements is that they in themselves

⁵⁹ Ibid, page 3.

⁶⁰ Ibid, pages 3 – 4.

⁶¹ Evidence of Mr Sarjeant dated 18 November 2016, at paragraph 6.16.

do not generate any traffic activity; patrons or users of the activities and services within the terminal are already at the Airport due to an aircraft arrival or departure.

146. Additionally, as the section 32 evaluation correctly notes, car parking requirements in and around airports involve a unique set of circumstances in that many of the visitors to the airport utilise public transport, taxis or shuttles to reach the airport, such that applying district wide rules to activities associated with the terminal building would result in an oversupply of parking and an inefficient use of the land resource.⁶²
147. Furthermore, as noted above, all other activities (that are not otherwise prohibited) will require restricted discretionary consent, for which transportation remains a matter of discretion.
148. Therefore, there is not a complete lack of control over transportation matters within the AMUZ, as Mr Sarjeant purports.
149. Accordingly, in the absence of any compelling evidence to the contrary (noting again that RPL has not presented any), the economic and traffic assessments accompanying the section 32 evaluation should be given significant weight.

Impact on Queenstown Town Centre

150. RPL purports that the impacts of further commercial expansion at Frankton on the Queenstown Town Centre (**Town Centre**) have not been considered, and with reference to PC50, infers that the PDP AMUZ will adversely affect the vibrancy of the Town Centre. Presumably, RPL's purported concerns only relate to the proposed enablement of airport related activities within the extended AMUZ, as airport activities by their nature and purpose require an airport location.
151. RPL's allegations are without substance or merit for reasons now explained.

⁶²Section 32 Evaluation, Evaluation of Proposed Provision, Minimum Car Parking, page 27.

152. The purpose of PC50 was to address an identified shortage of land zoned as “Town Centre” and to provide an appropriate planning framework for a convention centre.
153. The plan change came about due to a number of factors including a concern that the Town Centre was at risk due to oversupply of commercial land around Frankton, coupled with the Town Centre being at or near capacity.
154. In respect of the land at Frankton, a report by McDermott Miller Strategies Ltd⁶³ had identified a risk that, if its development potential was realised, the commercially zoned land at Frankton could undermine the sustainability of the Town Centre, in that the Town Centre would no longer be the principle centre for retailing which would impact its vitality and viability for both residents and tourists, and could, in turn, affect Queenstown’s tourism industry.⁶⁴
155. However, a peer review of the McDermott Miller report reached a different conclusion. The peer review (undertaken by McDermott Consultants Limited in September 2014) concluded that the supply of commercial land at Frankton would not undermine the sustainability of the Town Centre, because there were functional differences between the two centres.
156. Related evidence at the Council hearing of PC50 stated:
- “...the two main centres (Queenstown Town Centre and Frankton) can be differentiated in functional terms and are subject to different drivers of growth, so that planning for their land uses can be undertaken more or less independently. This means that planning should respond to the distinctive roles of each centre rather than assuming that they cater for homogeneous demand and that their individual growth therefore depends on competing against each other”.*⁶⁵
157. The evidence stated that *“the different roles of Frankton and the town centre mean that Plan Change 50 has integrity regardless of the current state of commercial land supply in Frankton. There is substantially more economic activity in and around QTC. It is more diverse and more*

⁶³ Dated 15 November 2013, which accompanied the Section 32 evaluation of PC50.

⁶⁴ PC 50 Queenstown Town Centre Zone Extension: Section 32 report at 1.

⁶⁵ Evidence of Philip McDermott for PC50, dated 10 November 2014, at paragraph 14.

*focussed on the visitor facilities and service which underpin Queenstown's growth. It also remains the centre of high order business and community facilities.*⁶⁶

158. Further, the evidence stated that the main result of any "over-zoning" of commercial land in Frankton *"is most likely strong competition within Frankton itself"*.⁶⁷
159. The peer review was cited with approval and relied in in the section 42A report, which stated:⁶⁸

"Overall, based on the more recent MCL report [being the peer review], I am satisfied that the oversupply of land at Frankton may not be as significant a threat as first identified within the McDermott Miller report. This is largely due to the fundamental differences in the role of central Queenstown and QTC relative to Frankton. That said, it is evident that the land capacity issues identified for the QTC have the potential to constrain the ability for future investment in activities directly related to tourism. So irrespective of the supply land available for development in Frankton, an undersupply of land in QTC will ultimately constrain economic growth in the tourism industry. The District depends upon the tourism industry for its economic, social and cultural wellbeing and indeed the national economy benefits from it. As concluded within the MCL report, "...the main economic impact of Plan Change 50 will be to boost to the town centre by facilitating further accommodation and associated tourism investment. It will also provide additional residential capacity for a local community in support of that growth. This is likely to include young people in non-family households or families without children attracted to the opportunities to work in tourism as well as to the wider service sector in an attractive town centre."

160. The conclusions reached in the peer review and related evidence were accepted by the Council in its decision on the plan change. The Council's decision was generally upheld on appeal to the Environment Court.⁶⁹
161. In light of the above, RPL's inferred argument that commercial expansion within the AMUZ will detract from a "vibrant Queenstown town centre" is

⁶⁶ Ibid, at paragraph 28.

⁶⁷ Ibid, at paragraph 45.

⁶⁸ Section 42A report for Plan Change 50: Queenstown Town Centre Zone Extension (prepared by Nigel Bryce, for Queenstown Lakes District Council, 6 November 2014) at paragraph 23.

⁶⁹ *Well Smart Investment Holdings (NZQN) Limited v Queenstown Lakes District Council* [2016] NZEnvC 99.

unsubstantiated and without merit. The issue addressed by PC50 was an undersupply of commercial and other land in the Town Centre, as opposed to an oversupply at Frankton, and the two centres were found to be complementary rather than in competition.

162. In any case, the airport related activities proposed to be enabled within the AMUZ are restricted to those ancillary activities or services that provide support to the airport. The AMUZ proposal is therefore entirely different to that considered for PC50; there will be no competition between the AMUZ and Town Centre as in order to be permitted⁷⁰ development at Queenstown Airport must, by definition, serve a distinct and confined airport related purpose.

The adequacy of the section 32 evaluation

163. RPL purports that the section 32 evaluation of the AMUZ is flawed because it fails to consider “*all other reasonable alternatives*”, such as adjoining zones providing convenient accommodation and commercial services to users of the Airport for example. QAC considers this argument is without merit.
164. The Act does not require that “*all other reasonable alternatives*” be identified and consider under section 32. Rather, section 32(1)(b)(i) requires that an evaluation report must examine whether the proposed provisions are the most appropriate way to achieve the objectives by identifying “*other reasonably practical options for achieving the objectives*”, and must “*contain a level of detail that corresponds to the scale and significant of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal*”.
165. The Environment Court has stated that this requirement could be satisfied by simply requiring the benefits and costs of a proposed rezoning to be compared with the benefits and costs of the operative zoning of the same area.⁷¹

⁷⁰ As an airport or airport related activity.

⁷¹ *Well Smart Investment Holding (NZQN) Ltd v Queenstown Lakes District Council* [2015] NZEnvC 214, at paragraph [20].

166. In the *Well Smart* case, the Environment Court noted that ostensibly only the efficiency and effectiveness of the provisions (section 32(1)(b)(ii)) need be assessed and quantified under section 32(2) (assessment of benefits and costs), but held that, given efficiency involves a comparison, the more plausible reading of section 32(2) is that the assessment under that subsection needs to compare the benefits and costs of the proposal with the benefits and costs of at least *one other* reasonably practical option for achieving the objectives.⁷²
167. The section 32 evaluation of the Queenstown AMUZ identified and evaluated *three* other reasonably practical options for achieving the objectives of the AMUZ. The evaluation was consistent with the evaluation taken for other PDP chapters and, with regard to the *Well Smart* case, was clearly adequate.
168. It is also noted, in response to RPL's argument that other alternatives that should have been considered include providing convenient accommodation and commercial services in the zones adjoin the Airport, the zones where such activities would most likely establish are the Frankton Flats A and B zones (**FFAZ** and **FFBZ**), and the Remarkables Park Zone (**RPZ**). The FFA and FFB Zones are not readily accessible from the Airport, so they do not offer a reasonably practical option for achieving the objectives of the AMUZ. The FFBZ is not being addressed via the PDP, given that zoning was only relatively recently confirmed and made operative, nor is the RPZ, as result (counsel understands) of a private agreement between RPL and QLDC to that effect.
169. Accordingly, irrespective of suitability or merit, the option of providing for airport related activities within these zones was not available via the current planning process.
170. In addition, it is again noted that RPL's planning witness, Mr Sarjeant, agrees that the operative rural zoning of much of the Airport is inappropriate and that the activities sought to be enabled within the AMUZ are appropriate. Further, he considers the potential activities within the expanded AMUZ will add to the overall regional economic output and will

⁷² *Ibid*, at paragraph 22.

not give rise to an over supply of commercially zoned land, or adverse economic effects.

171. RPL's criticisms as to the adequacy of the section 32 evaluation are therefore overstated.

Outstanding Issues – Wanaka Airport

Activity Status of Airport and Airport related Activities

172. The section 42A reporting officer has recommended that airport and airport related activities be permitted at Wanaka Airport. Mr Kyle agrees that there is merit in this approach, but queries whether there is scope for it, noting that QAC's submission on this issue sought that airport and airport related activities be controlled activities.
173. QAC's submission on Wanaka Airport sought (relevantly) that "*the Proposed Plan appropriately recognises and provides for [Wanaka Airport] to operate in a safe, efficient and effective manner*"⁷³, and that amendments be made to the rural zoning "*insofar as it applies to Wanaka Airport to provide for airport and airport related activities that would not otherwise be anticipated in the Rural Zone*"⁷⁴. In Annexure A⁷⁵ of its submission, QAC sought that airport and airport related activities at Wanaka Airport be controlled activities. In section 5 of its submission, QAC sought that these submission points "*be accepted, or that the Proposed Plan be amended in a similar or such other way as may be appropriate to address QAC's submission points.*"
174. As is clear from the above, QAC's submission in respect of Wanaka Airport was broadly framed, and leaves open the possibility that the issues raised in its submission may be addressed in a different manner to that set out in its submission.
175. It is therefore arguable that scope exists for airport and airport related activities to be permitted within the Wanaka AMUZ, should the Panel agree that permitted activity status is more appropriate than controlled, noting

⁷³ QAC's submission dated 23 October 2015, paragraph 4.10.

⁷⁴ Ibid, paragraph 4.47.

⁷⁵ Page 21, proposed rule 21.4.X.

that in either case, these activities will be appropriately enabled, as per QAC's submission.

Individual and Cumulative GFA of Retail, Food and Beverage and Office Tenancies

176. The section 42A reporting officer considers that retail and commercial activities at Wanaka Airport “*require a degree of control*”⁷⁶ so as to ensure that they do not have “*adverse effects on the airport land resource or on the viability of the Wanaka town retail and commercial viability.*”⁷⁷ She recommends that a 100m² limit be placed on the total gross floor area (GFA) of any “separate” airport related activity,⁷⁸ and that the GFA area over the entire Zone be limited 1000m².⁷⁹ These rules purport to implement the section 42A reporting officer’s recommended policies 17.2.2.2 and 17.2.2.3.
177. As presently drafted, the section 42A officer’s recommended rules would apply to all café, other food and beverage, retail and office activities within the Wanaka AMUZ.
178. It is assumed these provisions arise from Mr Heath’s evidence⁸⁰. Mr Heath states, in very general terms, that airport zones have the potential to undermine the commercial network of the cities in towns in which they are located by potentially diverting retail and office activity growth from centres, because generally an airport’s large scale land holdings give rise to large scale development potential.⁸¹ He states that Wanaka Airport is no different, but does not provide an analysis or reasoning for his opinion in this regard.
179. He then recommends that the provision for “non-aviation” commercial activity (retail and office activity) should be small at less than 1000m² GFA in total, with an individual tenancy cap of 100m² GFA⁸².

⁷⁶ Section 42A Report, Chapter 17 – Airport Zone, dated 2 November 2016, paragraph 10.22.

⁷⁷ Ibid.

⁷⁸ Section 42A report, Appendix 1, recommended rule 17.5.13.

⁷⁹ Ibid, recommended rule 17.5.14.

⁸⁰ Dated 2 November 2016.

⁸¹ Ibid, paragraph 4.7.

⁸² Ibid.

180. Mr Heath's analysis is flawed for several reasons. Firstly he appears to overlook or fails to appreciate that all airport related activities at Wanaka Airport must, by definition, be an ancillary activity or service that provides support to the Airport. "Destination" type retail and commercial activities are not permitted. Mr Kyle recommends a minor amendment to the definition of airport related activities to ensure this is abundantly clear.
181. Secondly, Mr Heath undertakes no real analysis as to whether an individual and cumulative tenancy cap at Wanaka Airport is necessary, other than to say that at other much larger airports with large landholdings and development potential, there may be a potential for development to undermine the city or town within which they are located by diverting retail and office activity growth from the centre. In contrast, he acknowledges that Wanaka Airport is a small scale airport⁸³ located some distance from the Wanaka town centre⁸⁴ and is likely to cater for demand generated from predominantly localised airport business activity.⁸⁵ His own evidence therefore suggests that regulation as to tenancy size for airport related activities is not necessary at Wanaka Airport.
182. Thirdly, he fails to provide any analysis or reasoning as to why a 100m² individual and 1000m² cumulative tenancy cap is appropriate, both of which appear arbitrary. Related to this, he fails to consider the implications of his recommendations on the future growth and development of Wanaka Airport. In this regard, as Ms Tregidga explains, based on QAC's rough calculations, existing office, retail and food and beverage tenancies at Wanaka Airport comprise at least approximately 3000m². Mr Heath's recommendations would therefore preclude any further such activities from establishing, or existing activities from expanding, notwithstanding that the existing activities have no demonstrated or apparent effect on the Wanaka Town Centre's viability or vibrancy.
183. Mr Heath's recommendations appear to be based on a concern that unconstrained airport related activity development at Wanaka Airport may give rise to retail distribution effects. Retail distribution effects are caused by new business activity being located away from established centres, and

⁸³ Evidence of Timothy Heath, dated 2 November 2016, at paragraph 4.9.

⁸⁴ Ibid, at paragraph 4.10.

⁸⁵ Ibid, at paragraph 4.12.

impact on the function, vitality and amenity of existing centres.⁸⁶ They may occur if a proposal leads to the decline of an existing centre to the extent that it would no longer be viable, with consequent adverse effects on the community.⁸⁷

184. Retail distribution effects may take the form of loss of employment opportunities; loss of the overall availability and accessibility of important community services; loss of amenity as a result of the closure or serious decline in the attractiveness or viability of a centre;⁸⁸ or large numbers of existing businesses and services relocating resulting in empty shops unable to be re-tenanted, which results in loss of viability, investment and community function,⁸⁹ for example.
185. The threshold for establishing a retail distribution effect is high, and is far from being made out in the present case.
186. Mr Heath has since confirmed (in his summary evidence⁹⁰) that his recommended individual and cumulative tenancy cap is intended to apply only to non-aviation and non-commercial activity at Wanaka Airport, and that commercial activity that falls within the definition of “airport related activity” should not be caught by the restriction. However, as already noted, such activity is not proposed to be permitted within the Wanaka AMUZ. Rather, it would be a non-complying activity (Mr Kyle’s proposed rule 17.4.13). Mr Heath’s recommended tenancy caps are therefore unnecessary.
187. Ms Holden has acknowledged that she misunderstood Mr Heath’s evidence when recommending rules 17.5.13 and 17.5.14, but opines that the rules remain appropriate nonetheless. QAC strongly disagrees for the reasons expressed above and considers there is not cogent evidential basis or justification for the restrictions.

⁸⁶ *General Distributors Limited v Waipa District Council* (2008) 15 ELRNZ 59 at [87].

⁸⁷ *Westfield (New Zealand) Limited v North Shore City Council* [2005] NZSC 17 at [89].

⁸⁸ *Westfield (New Zealand) Limited v North Shore City Council* [2005] NZSC 17 at [89].

⁸⁹ *Pohutukawa Coast Community Association v Progressive Enterprises Limited* [2013] NZEnvC 104 at [71].

⁹⁰ Dated 28 November 2016.

Airshows

188. As noted earlier in these submissions, QAC's submission on Chapter 35 of the PDP (Temporary Activities) sought provision within that chapter for airshows at Wanaka Airport, such as the biennial Warbirds Over Wanaka. It was agreed at that hearing that the issue would be more appropriately addressed by the zoning of Wanaka Airport, and the submission was transferred to this hearing.
189. The section 42A reporting officer appears to have inadvertently overlooked this in her report. Mr Kyle considers the issue in his evidence however,⁹¹ and recommends the inclusion of a development standard relating to airshows at Wanaka Airport that generally accords with, but is more detailed than, that sought in QAC's original submission.

Outstanding Issues - Local Shopping Centre Zone (Frankton)

190. The LSCZ at Frankton is located wholly within Queenstown Airport's OCB. Through its submission on the PDP, QAC seeks the inclusion of PC35 derived provisions relating to the acoustic treatment of buildings containing noise sensitive activities (ASAN) within the Zone.
191. Specifically QAC seeks (inter alia) the inclusion of a new rule (15.4.3.3) which requires that new buildings and alterations and additions to existing buildings containing an ASAN be designed to achieve and indoor design sound level of 40 dB L_{dn} based on the 2037 noise contours, with compliance to be demonstrated by either installation of mechanical ventilation to achieve the requirements of Table 5⁹² Chapter 36 or by submitting a certificate to the Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the indoor design sound level with windows open.
192. QAC also made a submission on Chapter 36 in respect of Table 5, (which sets out the "Ventilation Requirements for the Queenstown And Wanaka Airports"), in which it requested the Table be amended so as to be

⁹¹ Evidence of John Kyle dated 18 November 2016, at paragraph 6.46 – 6.47.

⁹² Note, QAC's original submission contained a typographical error in that it referenced Table 4, instead of Table 5 of Chapter 36 in proposed rule 15.4.3.3. It is clear however, from reading Chapter 36, that the correct reference in the proposed rule should be to Table 5.

workable and appropriate for the Queenstown environment. QAC's submission on this issue was heard as part of Hearing Stream 5.

193. With reference to QAC's submission on Table 5 Chapter 36, Dr Chiles notes that it would be preferable to amend the ventilation requirements that apply to the LSCZ, but opines that there is no scope to do so. Dr Chiles' understanding of this legal issue is incorrect.
194. Dr Chiles' opinion as to scope presumably arises from the discussion of a similar issue during the course of Hearing Steam 5, specifically, the application of Table 5 Chapter 36 to the Town Centre, and the ability to amend that Table in so far as it applies to the Town Centre, in the manner sought by QAC in its submission relating to airport related mechanical ventilation requirements.
195. On that issue, QAC submitted, and the Council agreed, that there was no scope to amend Table 5 Chapter 36 in so far as it applied to the Town Centre, because QAC's submission only related to airport related mechanical ventilation requirements, whereas the mechanical ventilation requirements in the Town Centre relate to other (non-airport) noise.
196. The position is different for the LSCZ however. QAC's submission seeks the inclusion and application of airport related provisions in the LSCZ that reference the airport related mechanical ventilation requirements in Table 5 Chapter 36. Given QAC's submission also seeks the amendment of Table 5 Chapter 36, it follows that the QAC's submission on the LSCZ seeks the inclusion of provisions referencing the amended Table 5.
197. Accordingly, there is scope for the Panel to apply the amended airport related mechanical ventilation requirements to ASAN within the LSCZ, as sought by QAC.

Conclusion

198. Queenstown and Wanaka Airports are significant regional resources and infrastructure which contribute to the District's economic and social wellbeing. Queenstown Airport in particular is a significant contributor to the District's economy, as well as being an essential gateway to the District. It is therefore imperative that the current and future operations of these Airports are appropriately enabled in the PDP.

199. To function efficiently and effectively, modern airports, such as Queenstown and Wanaka, require demand a diverse mix of commercial, industrial and retail land uses that serve the needs of passengers, crew, ground staff, airport workers and those that meet and greet travellers. They also need to be adaptable to respond to technological advances and growth in the aviation sector. Focus is also increasingly being placed on improving airport revenue to offset operational costs.
200. The proposed Queenstown and Wanaka AMUZ appropriately provide for such activities, with sufficient flexibility to enable the Airports to efficiently respond to changes and growth in the tourism market, while being subject to appropriate development controls to ensure development at the Airports is appropriate for its context and the surrounding environment.
201. The Council and QAC are generally agreed that the proposed AMUZ for Queenstown and Wanaka Airports is appropriate, subject to matters of detail. Where differences exist as to the most appropriate provisions, Mr Kyle's evidence, with his in excess of 10 years' experience in airport planning matters, should be preferred.
202. In respect of the Queenstown AMUZ, RPL has not raised any issue or presented any evidence that gives rise to a conclusion that the operative AMUZ provisions are more appropriate than the proposed provisions (incorporating Mr Kyle's recommended amendments), or that the extent of the AMUZ to incorporate all of QAC's designated land for the full range of airport and airport related activities should not be confirmed.
203. RPL's entire submission can and should be considered at this hearing, and QAC strongly opposes and considers wholly inefficient any proposal to defer any part of it to another hearing. QAC would be prejudiced by such approach.
204. There is scope to amend the LSCZ mechanical ventilation provisions in the manner sought in QAC's submission, and it would be consistent with the approach taken in PC35 to do so, that approach being generally adopted elsewhere in the PDP.

R Wolt
Counsel for Queenstown Airport Corporation Limited

Appendix X

1. McElroy v Auckland International Airport Ltd⁹³ concerned an application for a declaration that Auckland International Airport Limited (**AIAL**) was under an obligation, pursuant to section 40 of the Public Works Act 1981 (**PWA**), to offer land back to the Craigie Trust (**Trust**) because it was no longer required for the public work purpose of an “aerodrome,” for which it was originally taken and held.
2. The Trust’s land had, over time, been used by AIAL for a number of commercial operations (including service stations, banking facilities, car parking and rental, food and retail outlets and a supermarket), as well as development more directly associated with airside activity (including access routes with major and secondary roads running through the land, and possible rail access).
3. The High Court case centred on the meaning of “aerodrome”, and specifically, whether the commercial activities amounted to the public work of an “aerodrome”.
4. In determining this issue, the Court preferred the expert evidence of AIAL’s witness, whose evidence was that a modern day aerodrome is more commonly known as an airport, and the term “airport” embraces the entire site and facilities of an integrated operation, and is a sophisticated and diverse business providing a wide range of supporting facilities and services.⁹⁴
5. The Court accepted AIAL’s witness’ evidence that airports around the world now consistently including a wide range of facilities, some not obviously connected directly to the arrival and departure of aircraft, their passengers, crew and freight and those involved in that activity, but with all such activity being focused on providing revenue to the airport operator to offset the losses inevitably derived from aircraft operations strictly so-called.⁹⁵

⁹³ [2008] 3 NZLR 262, per Williams J.

⁹⁴ At paragraphs [136] and [195].

⁹⁵ At paragraphs [193] and [195].

6. The Court held that all facilities connected with the operation of airports and meeting the expectations of airport users, being travellers, staff, security and border agents, travellers' services, "meeters and greeters" and general airport users, should be regarded as included in the phrase "wholly or partly...used in connection with the aerodrome or its administration," as per the definition of "aerodrome" in the Civil Aviation Act 1990 and the 1994 Convention on International Civil Aviation, the definition of "airport" in the Airport Authorities Act 1966.⁹⁶
7. Examples of the use or projected use of the Trust's land which the Court considered "wholly or partly... used in connection with the aerodrome or its administration" included the provision of banking facilities, rental car and campervan parking, the supermarket servicing airport users and inbound tourists, food outlets and even Butterfly Creek - a primarily recreational facility offering convention facilities, which the Court noted was now an important facility at airports.⁹⁷
8. The Court of Appeal⁹⁸ took a different approach to determining the issue the subject of the proceeding, finding that the High Court's focus on the use of the word "aerodrome" was misplaced in the particular circumstances of the case. The Court of Appeal did not state the High Court's analysis was wrong however, and ultimately reached the same decision - finding that the Trust's land was still required for a public work, namely being the Auckland International Airport.⁹⁹
9. The Court of Appeal accepted AIAL's submission that airport development planning is a dynamic and long term exercise.¹⁰⁰ It accepted, as the High Court had, that an ambulatory approach to the word "aerodrome" should be adopted,¹⁰¹ and that "*the word "aerodrome" can therefore properly be held to encompass the facilities commonly found at airports – Auckland Airport in particular – and changing over time to what is now available.*"¹⁰²

⁹⁶ At paragraph [196].

⁹⁷ At paragraph [202].

⁹⁸ *McElroy v Auckland International Airport Ltd* [2009] NZCA 621.

⁹⁹ At paragraph [89].

¹⁰⁰ At paragraph [54].

¹⁰¹ At paragraph [59].

¹⁰² At paragraph [60].

10. In response to an argument by the Trust that some of its land was used for activities that were purely commercial, rather than strictly necessary for the function of the airport¹⁰³ the Court of Appeal stated:

***“[71] Since AIAL’s incorporation, there has been an increase in commercial activity on land which has otherwise not been utilised. All of this has been done on the basis of short-term development. AIAL has always been able to ensure that, in the medium to long-term, any direct aviation functions would not be compromised by other activity.*”**

[72] It is instructive to note that, at one point, a second runway would have included the trust land and other taxiways and land-side aviation support, as well as an access road. In a further development plan, there was a possibility of the land being used as part of a passenger terminal and commercial support services. None of these projects are in and of themselves decisive of the issue before us, but they demonstrate the flexibility which is essential in a public work such as a modern airport. Assessing the nature of the airport as a whole, regard must be had to the needs for parking, shopping, and ancillary service requirements. Such services are necessary when there is not only an ever-increasing number of tourists using the airport, but an ever-increasing number of staff permanently supporting its operation, and who work in a somewhat isolated area where there is a need for everyday commerce.”

[73] Mr Carruthers [for the trust] relied heavily on publications issued by AIAL which show a distinction between aeronautical and non-aeronautical activities. Particular emphasis was placed on Board papers and development plans throughout the last decade, which demonstrated that there was concentrated attention to the commercial property portfolio and the possibility of exploiting more effectively the value of the land by undertaking commercial activities, which were not necessarily an adjunct to the core activity of running an international airport.

[74] We are satisfied that the entire area of land described in the Auckland Airport Act continues to be held by AIAL for airport purposes.

¹⁰³ Including NZ Post; service stations; Flyways; retail banking services; a car rental facility; offices leased to companies unrelated to the operation of Auckland Airport and marketed accordingly; a Toyota car dealership; fast food restaurants; Warehouse Stationary – providing low priced office and stationary products; Foodtown – a large scale supermarket, Fedex; Priority Fresh; Butterfly Creek – offering a playground with a train circulating the wetlands with a crocodile attraction, a petting zoo, a bar and café and wedding facilities marketed across the city; and mini golf.

[75] *The evidence does not demonstrate that there are, on a realistically discrete basis, segments of land within that whole which are no longer held for that airport purpose. **We accept that some segments may be being used for other purposes in the meantime and some areas have not been developed. However, that is the very nature of a modern international airport precinct. To hold that those segments ought to be cleaved off from the whole and offered back, would be quite unworkable.***

[76] *The contention that the appellants' land could be carved out so that one was left with a patchwork of land held by the respondent interspersed with, and splintered by, land belonging to private owners, is unrealistic. If the appellants' former land could be treated in this fractured way just because parts of it are not currently in use, the same standard would have to apply to the land of other former owners. **Such an outcome would wholly frustrate the flexibility that is necessary for planning, coordination, development and responding to changing demands for a modern international airport.***

[emphasis added]

11. Although the AIAL case concerned declaration proceedings and section 40 of the PWA, the discussion as to what legitimately comprises a modern aerodrome/airport is of direct relevance presently, and confirms that the activities sought to be enabled at Queenstown Airport via the AMUZ can properly be considered as legitimate airport and airport related activities.