

**BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL**

<b>UNDER</b>	the Resource Management Act 1991
<b>IN THE MATTER</b>	of submissions and further submissions of the QLDC Proposed District Plan – Urban intensification variation
<b>BY</b>	<b>CITY IMPACT CHURCH QUEENSTOWN INCORPORATED</b>  Submitter 775
<b>AND</b>	<b>NO. 1 HANSEN ROAD LIMITED</b>  Submitter 766

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**MEMORANDUM IN RESPONSE TO PLANNING QUESTIONS**

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Dated: 22 August 2025

## Introduction

- [1] We presented to the Panel on Thursday 7 August 2025 in support of City Impact Church Queenstown Incorporated (**City Impact Church**) and No. 1 Hansen Road Limited's (**No. 1 Hansen Road**) requested relief.
- [2] At the hearing, the Panel queried the potential for reverse sensitivity effects related to the airport, given that airport potential future growth as compared to the existing environment context.
- [3] This memo responds to two questions on this matter.
- [4] For efficiency purposes, this memorandum is co-authored by legal and planning representatives and reflects both statements of expert opinion and legal issues on reverse sensitivity.

## Should reverse sensitivity include provision for growth?

- [5] Reverse sensitivity is linked to the operation of existing lawfully established activities. It relates to a perceived fear of increased complaint from new land uses (that establish after the activity concerned has commenced operation). Reverse sensitivity is the term used to describe the sensitivity of some activities to other lawfully established activities in the vicinity. It is relevant to both regional and district plan matters. Specific to Queenstown Airport, the key concern is noise, and potential for additional activities sensitive to noise (ASAN) to have an adverse effect on the lawfully established Queenstown operations.
- [6] The PDP definition of 'Reverse Sensitivity' refers to the potential for the operation of the existing lawfully established activity to be constrained or curtailed by the more recent establishment or intensification of other activities which are sensitive to the established activity.
  - (a) **Reverse Sensitivity** means: the potential for the operation of an **existing lawfully established** activity to be constrained or curtailed by the more recent establishment or intensification of other activities which are sensitive to the established activity.<sup>1</sup>

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<sup>1</sup> QLDC PDP chapter 2.

[7] Reverse sensitivity does not provide an unfettered discretion for existing lawful activities to grow or expand.

[8] The Environment Court has provided the following interpretation of reverse sensitivity:

Some **lawfully existing activities** may produce adverse effects on their surrounding environments, or at least they are perceived to do so. Reactions to those effects, or perceived effects, by way of complaints or actions in nuisance can stifle their growth or, in extreme cases, drive them elsewhere. That stifling, or that loss, may be locally, regionally or even nationally significant. If an activity likely to emit adverse effects seeks to come into a sensitive environment, the problem should be manageable by designing appropriate standards and conditions, or by refusing consent altogether. It is when sensitive activities (usually, but not always, residential activities) seek to establish within range of a **lawfully established but effect-emitting** activity that management may become difficult. This is the concept of reverse sensitivity...

Reverse sensitivity is the legal vulnerability of **an established activity** to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The "sensitivity" is this: if the new use is permitted, the **established use** may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.

It is well settled law now that reverse sensitivity is an adverse effect, and is therefore to be avoided, remedied or mitigated.<sup>2</sup>

(emphasis added)

[9] From the above, it can be taken that the Environment Court has clearly considered reverse sensitivity effects in respect of lawfully established and existing activities only, and not a hypothesised (or anticipated) future state of growth for those activities. Lawfully established or lawfully existing are not defined terms in the RMA, however are constructs

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<sup>2</sup> *Ngatarawa Development Trust Limited v The Hastings District Council* W017/2008 [2008] NZEnvC 100.

referred to in ss10 and 20A in respect of existing use rights. The Environment Court has considered this meaning and noted:

[98] In our view the correct understanding of "lawfully established" in the light of *Rodney District Council v Eyres Eco-Park Ltd* requires the local authority to be satisfied both that the activity was lawfully established when it first commenced and remained so under each new district plan thereafter. This seems to have a kind of sinking lid effect. The effects created by an existing use can never be increased at any subsequent stage (if the activity is never permitted under any district plan), but may be decreased if on the proper assessment under some intermediate plan the actual effects of the activity are less than they were at each previous assessment date<sup>3</sup>.

[10] It follows that a plain and ordinary meaning of the definitions of reverse sensitivity effects on 'existing lawfully established' activities must be applied in this Variation process. That requires assessment of the current status quo of the Airport operations, rather than a future state to be established or consented.

[11] This is also supported by the definitions and policies and objectives pertaining to protection of the Airport from adverse reverse sensitivity effects.

[12] Regionally significant infrastructure as defined includes the Queenstown airport and associated navigation infrastructure. It does not extend to include its future possible (or anticipated) growth or changing needs.

[13] Strategic policy 3.3.24B provides:

**3.3.24B** Protect Regionally Significant Infrastructure by managing the adverse effects of incompatible activities.

[14] Again, this does not require a protective element in respect of future development, growth, operation or change, for RSI. Rather, it simply refers to the protection of it as defined.

[15] Strategic objective 4.2.2A provides:

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<sup>3</sup> *Dunedin City Council v Saddle Views Estate Ltd* [2013] NZEnvC 228, at [98].

- (a) Objective - A compact, integrated and well designed urban form within the Urban Growth Boundaries that: ...
  - (ii) is managed to ensure that the Queenstown Airport is not significantly compromised by the adverse effects of incompatible activities.

4.2.2.1 Integrate urban development with existing or proposed infrastructure so that: ...

- (b) reverse sensitivity effects of activities on regionally significant infrastructure are minimised.

[16] Again, this does not refer to management of the Airport's ability to grow and change.

[17] Related provisions as to reverse sensitivity include:

- (a) 4.2.2.14 Ensure appropriate noise boundaries are established and maintained to enable operations at Queenstown Airport to continue and to expand over time.
- (b) 4.2.2.15 Manage the adverse effects of noise from aircraft on any Activity Sensitive to Aircraft Noise within the airport noise boundaries while at the same time providing for the efficient operation of Queenstown Airport.
- (c) 4.2.2.16 Protect the airport from reverse sensitivity effects of any Activity Sensitive to Aircraft Noise via a range of zoning methods.

[18] In terms of the Business Mixed Use Zone provisions:

- (a) 16.2.1.1 Accommodate a variety of activities while managing the adverse effects that may occur and potential reverse sensitivity.
- (b) 16.2.1.6 Ensure that residential development and visitor accommodation provide acoustic insulation over and above the minimum requirements of the building Code to limit the potential for reverse sensitivity effects.

[19] Taking all of the above collectively, the only reverse sensitivity provisions that refers to future expansion and growth of the airport is policy 4.2.2.14. that is in respect of establishing noise boundaries, rather than zoning and activity allocation within the same. The latter is the only focus of these submitter relief sought, not the former.

[20] In terms of the latter, the policy direction above amounts to a requirement to protect the Airport (as established at the date of the Panel's determinations) from adverse reverse sensitivity effects and to 'manage'

those effects while providing for efficient operation of the Airport and a range of development activities. The direction is not an avoidance-type outcome signalling a no change environment. Rather, it is anticipated that suitable controls can be included in ASAN development in a way that sufficiently attenuates noise and protects existing Airport efficient operations.

- [21] Policy 4.2.2.1(b) is also important to consider in terms of the language used as contrasted to 4.2.2.1(c). Limb b directs that reverse sensitivity on RSI are to be 'minimised' whereas limb c requires such effects are avoided to the extent reasonably possible and the operation maintenance and upgrade and development of the National Grid is not compromised. Limb c clearly sets a much higher threshold for avoidance of adverse effects as compared to the 'minimise' policy direction relating to the Airport.
- [22] The references to existing lawfully established activities in the definition of reverse sensitivity and in the Environment Court discussion above on similar cases means a slightly different approach to assessing the receiving environment is warranted than compared to the *Hawthorne* receiving environment (in terms of likely further implementation of consented activities).
- [23] The High Court in *Shotover Park* has held that in a plan change context, which is a different exercise to a resource consent, the Council is not obliged to consider the environment by reference to the *Hawthorne* tests / construct. Rather, the High Court's decision suggests that while the Council is not bound to do so, it nevertheless **has a discretion** to take account of any existing resource consents that have not yet been implemented, as well as the future state of the environment as it might be modified by permitted activities.<sup>4</sup>
- [24] This discretion needs to be exercised (or not) on a principled basis. Counsel is not aware of consents the Airport may hold and yet be likely to implement (or yet to be implemented activities under its designation). However, applying the *Shotover Park* considerations to the very clear

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<sup>4</sup> Shotover Park Limited and Ors v QLDC [2013] NZHC 1712 at [90] and [98].

terminology of reverse sensitivity effects relating to established activities (only) suggests that discretion should be applied not to consider a future state of the environment.

- [25] The airport has clearly defined designation boundaries and noise control boundaries within the plan. Amendments to these can reasonably be expected to be tested in terms of effects on adjoining land uses.
- [26] In any case, reverse sensitivity concerns are not a sufficient justification for not increasing heights / density commensurate to the accessibility and demand of the area, given the direction of Policy 5.

### **What is the appropriate standard for ASANs in the BMUZ?**

#### *Existing PDP provisions*

- [27] Residential activity, as an ASAN, is enabled in the PDP within the OCB (subject to controls) in the following zones:
  - (a) Lower Density Suburban Residential – PDP (includes the City Impact Church Land);
  - (b) Local Shopping Centre Zone – PDP (includes the No. 1 Hansen Road Land); and
  - (c) Informal Recreation, Community Purposes and Nature Conservation Zones – PDP.
- [28] In each of these zones, ASANs are subject to standards regarding acoustic insulation i.e.
  - (a) Buildings or additions to buildings containing ASANs within the OCB to be designed to achieve an Indoor Design Sound Level of 40 dB within any Critical Listening Environment and ventilated in accordance with Rule 36.6.2. Non-compliance with this standard is a non-complying activity.
- [29] ASANs are prohibited within the OCB in the General Industrial and Services zone and Business Mixed Use zone in the PDP.

- [30] Spatially, the PDP provisions enable ASANs to the north-west, west and south-west of the airport (including of similar distance to the submitter sites). The zonings to the north and east of the airport are prohibitive of ASANs. These areas include parts of the commercial areas and the Frankton North Structure Plan area, which is proposed to include a range of residential and non-residential activities.

*Intent of the Variation and NPS-UD*

- [31] Objective 3 of the NPS-UD provides for district plans to enable more people to live in, and more businesses and community services to be located in, areas of an urban environment where the area is near a centre or area of employment opportunities; is well- serviced by existing or planned public transport; or is an area of high demand for housing or business land.
- [32] The Frankton area meets all of the criteria (a) – (c) in objective 3 of the NPS-UD.
- [33] Limiting the height and density on sites in Frankton that are highly accessible and in an area of high relative demand, due to reverse sensitivity concerns of Queenstown Airport, does not give effect to the intent of the NPS-UD. Particularly when, as set out above, those effects can be appropriately managed through noise standards consistent with the policy direction.
- [34] The Queenstown Airport itself is a significant area of employment opportunities and generates accommodation demand from both residents and visitors.

*Recommended change*

- [35] Reverse sensitivity effects can be considered and appropriately managed as a factor in resource consent decision making. This is more appropriate than a prohibited activity status, and consistent with the strategic policy direction relating to the Airport operations, as set out above.
- [36] A consenting pathway would be consistent with the existing framework for No. 1 Hansen Road Land in the Local Shopping Centre Zone



(Standard 15.5.4 relating to acoustic insulation for development within the OCB) and City Impact Church Land (Standard 7.5.4 relating to buildings within the OCB). In these zones, ASANs are generally permitted activities provided that the noise standards for buildings can be met. If there is non-compliance with the noise standard, then non-complying resource consent is required.

- [37] No specific evidence has been provided by Queenstown Airport to demonstrate how these areas have given rise to reverse sensitivity effects in a way that has restricted its efficient operation (which is the policy direction).
- [38] Applications should be assessed on their merits in terms of the potential effects and appropriate management.
- [39] Ms Clouston's statement of evidence at paragraph [87] supports a deletion of Rule 16.4.19, or a change to a non-complying activity status.
- [40] Having reviewed the LDSR and LSC zone provisions of the PDP, it is considered that ASANs could be permitted insofar as they meet acoustic insulation standards (consistent with provisions in Chapters 7 and 15).
- [41] Rule 16.4.19 in the BMU zone can be deleted:

~~16.4.19 Activities Sensitive to Aircraft Noise within the Queenstown Airport Outer Control Boundary – PR~~

- [42] An additional standard can be included in Standard 16.5.5 of the BMU zone that references the Ventilation Requirements for within the airport OCB in noise standard 36.6.2.

#### *16.5.5 Acoustic Insulation*

*For all residential development and visitor accommodation the following shall apply:*

*16.5.5.1 A mechanical ventilation system shall be installed for all critical listening environments in accordance with Table 5 in Chapter 36; and*

*16.5.5.2 All elements of the façade of any critical listening environment shall have an airborne sound insulation of at least 40 dB RW+Ctr determined in accordance with ISO 10140 and ISO 717-1.*

*For all Activities Sensitive to Aircraft Noise within the Queenstown Airport Outer Control Boundary, the following shall apply:*

*16.5.5.3 Buildings or additions to buildings containing an Activity Sensitive to Aircraft Noise shall be designed to achieve an Indoor Design Sound Level of 40 dB Ldn within any Critical Listening Environment.*

*16.5.5.4 A mechanical ventilation system shall be installed for all critical listening environments in accordance with Rule 36.6.2.*

*Non-compliance with this standard is a Non-Complying activity.*

- [43] This recommended standard mirrors the acoustic insulation standard in the Lower Density Suburban Residential Zone – Standard 7.5.4.
- [44] This provides for a consistent approach to be applied to the BMUZ land.
- [45] However, if the Panel is of the view that there are scope issues for a change for the wider BMUZ area, there is no reason a provision specific to these sites (City Impact Church Land and No. 1 Hansen Road Land) cannot be included. This could also apply to the Latitude 45 Development Limited land for which the same submission point has been addressed.
- [46] This could be achieved via a mapping notation i.e.

*Within the area shown on the District Plan web mapping application, for all Activities Sensitive to Aircraft Noise within the Queenstown Airport Outer Control Boundary, the following shall apply:*

*16.5.5.3 and 16.5.5.4 [as set out in paragraph 20 above]*

- [47] Alternatively, if Rule 16.4.19 is retained, the activity status could be amended from PR to NC, to enable a consenting pathway.

#### *Section 32AA analysis*

- [48] For completeness, the following section 32AA analysis is provided, in addition to the statements of planning evidence already provided for both

City Impact Church and No. 1 Hansen Road, as well as Latitude 45 Development Limited insofar as it relates to the same matters.

- (a) This is the most appropriate way to achieve the purpose of the RMA and the NPS-UD, to enable people and communities to provide for their wellbeing as well as health and safety, while managing adverse effects of activities on the environment;
- (b) This is the most appropriate way to achieve the objectives of the NPS-UD and the PDP, including:
  - (i) The existing provisions mean that residential activity cannot develop within the area of Frankton that is within the OCB to the north of the airport. This area is most connected and accessible to the existing commercial / employment opportunities in the Five Mile Centre.
  - (ii) Policy 4.2.2.17 of the PDP provides for new buildings that contain an ASAN within the OCB, with a direction to ensure that critical listening environments of these buildings are designed and built to achieve appropriate indoor design sound levels. The overall policy direction seeks to manage the effects of reverse sensitivity on the Airport to provide for its efficient operation. This does not create an avoidance type outcome for all new ASAN where suitable standards of design can be achieved. No evidence is provided to the effect that efficient operation of the Airport has been, or will be, at risk.
  - (iii) The recommended wording of the standard is effective and efficient in that it directly reflects the policy intent and is consistent with the approach for other areas of zoning within the OCB.
  - (iv) Enabling ASANS, i.e. residential activity, acknowledges and provides for a level of personal choice. If potential airport noise is a critical factor for a resident, then they may choose to live further away from the airport / outside the OCB. It may not be an issue for others.

- (v) Economic growth and employment are both anticipated to be provided for by removing the prohibited activity status, as it would enable residential and visitor accommodation activity, subject to compliance with standards or resource consent.
- (vi) The non-complying activity status for non-compliance with acoustic standards is an appropriate pathway for QLDC to consider reverse sensitivity effects on the airport, based on a specific proposal put forward for assessment. This would be both efficient and effective.
- (vii) It is efficient to not require resource consent where a proposed building containing an ASAN meets the standard that has been accepted for other zonings within the OCB.
- (viii) The consenting pathway would not preclude the airport from utilising any other mechanisms available to it outside of the RMA and district plan requirements, such as non-object covenants, that could be utilised in terms of managing potential reverse sensitivity effects.

[49] Benefits of removing the prohibited activity status are the enabling of intensification of land within Frankton as an accessible area (in line with the direction of the NPS-UD) and encouraging mixed use activities throughout the OCB, which could result in positive urban design outcomes. This is consistent with, and more appropriate to achieve, policy 16.2.1.1; SO 3.2.2; 4.2.21(b) and reverse sensitivity effects of activities on regionally significant infrastructure are minimised.

[50] A consenting pathway is appropriate for making decisions on specific applications, and reverse sensitivity concerns are not otherwise a reason for opposing the increased height limits sought, consistent with strategic objectives 4.2.2A and 4.2.2B for compact, integrated and well-designed urban form.

[51] There are missed opportunity costs of retaining a prohibited activity status and preventing intensification within this area.

[52] There is sufficient information available about the subject matter for the Panel to make determinations, including evidence from the Queenstown Airport Corporation.

Dated: 22 August 2025

**Charlotte Clouston / Rosie Hill**