

**BEFORE THE QUEENSTOWN LAKES DISTRICT
COUNCIL**

IN THE MATTER of the Resource Management Act
1991 (“Act”)

AND in the matter of the Queenstown Lakes Proposed
District Plan, Submissions and Further Submissions on
Chapter 12 Queenstown Town Centre

BY IMPERIUM GROUP

Submitter

SUBMISSIONS OF COUNSEL FOR IMPERIUM GROUP

MACALISTER TODD PHILLIPS

Barristers, Solicitors, Notaries
3rd Floor, 11-17 Church Street
Queenstown 9300
P O Box 653, DX ZP95001, Queenstown 9348
Telephone: (03) 441 0125 Fax: (03) 442 8116
Solicitor Acting: Jayne Macdonald

INTRODUCTION

1. Imperium Group (“Imperium”) filed a submission on the Proposed District Plan (“PDP”) (#151). Imperium submitted:
 - (a) there is no justifiable resource management reason for providing separate and increased noise limits for the Town Centre Entertainment Precinct (“Precinct”);
 - (b) making provision for higher noise limits in the Precinct will result in significant adverse effects on properties both within the Precinct and in the vicinity of the Precinct;
 - (c) there is no justification for Rules 12.5.11.2, 12.5.11.3 and 12.5.11.4 which allow excessive noise to “spill over” into areas outside the Precinct in a manner that would depart from the standard noise provisions in the PDP; and
 - (d) no or insufficient consideration has been given to alternative options.
2. Imperium also lodged various further submissions supporting and opposing original submission of other submitters (#1318).

IMPERIUM’S CONCERNS

3. Imperium operates several high-end visitor accommodation facilities in the vicinity of the Precinct. James Cavanagh in his Statement of Evidence describes the adverse noise effects experienced by Imperium and its customers under the more stringent noise provisions contained in the Operative District Plan. Imperium is therefore concerned that such adverse noise effects will only be exacerbated in the event that the increased noise limits contained in the PDP become operational.

SUMMARY OF RELIEF SOUGHT

4. Imperium requests that the relief sought in its original submission be granted, with a view to ensuring that existing noise sensitive activities in the Town Centre Zone are not subject to increased levels of noise. To this end, Imperium seeks that the Precinct, all associated noise and insulation rules, and references to the Precinct on planning maps 35 and 36, be deleted and revert to the status quo regarding the existing noise environment. The extent of Imperium’s requested amendments to Chapter 12 (and Planning Maps 35 and 36) are set out at Schedule “A”.

LACK OF CONSIDERATION OF EFFECTS ON EXISTING NOISE SENSITIVE ACTIVITIES

5. Imperium submits that Chapter 12 of the PDP, Dr Chiles' Statement of Evidence and Ms Jones' Section 42A Report do not adequately address the significant adverse effects on existing noise sensitive activities that will result from exposure to higher levels of noise.

Proposed District Plan

6. The broad thrust of the noise provisions of Chapter 12 of the PDP is to:
- (a) acknowledge the incompatibility of competing noise generating and noise sensitive activities;
 - (b) prioritise the “vibrancy” of the Town Centre over other noise sensitive activities;
 - (c) provide for increased levels of noise;
 - (d) record that reduced amenity is expected (and should be accepted) in the Town Centre;
 - (e) discourage new residential activities; and
 - (f) require new noise sensitive activities comply with higher acoustic insulation requirements.
7. Chapter 12 however fails to consider the adverse effects of increased noise on existing noise sensitive activities. Noise in relation to town centres is not considered in Chapter 36 of the PDP.¹ Under s31 of the Act, Council has the primary responsibility for managing the effects of land uses and noise (including the mitigation of noise). Council also has responsibility under the Act to achieve integrated management of the effects of the use, development, or protection of land associated with natural and physical resources. This includes effects on amenity values that may be affected by noise. Imperium submits that the Council has failed to adequately consider how adverse noise effects may be mitigated in relation to existing noise sensitive activities.

¹ The Purpose section at 36.1 (page 36-2) states that noise in relation to town centres is not addressed in this chapter, but rather in the Town Centre Chapters. This is due to the Town Centre-specific complexities of noise in these zones, and its fundamental nature as an issue that inter-relates with all other issues in these zones.

Statement of Evidence – Dr Chiles

8. Dr Chiles does not directly address the issues faced by existing noise sensitive activities which will be now exposed to higher levels of noise.
9. Dr Chiles acknowledges that it is only “*new buildings that are subject to the insulation requirements*”², being buildings with “*appropriate sound insulation*”³, that will ensure World Health Organisation guidance for the avoidance of sleep disturbance is met. Dr Chiles notes that the “*new acoustics treatment rules in the PDP will partly address adverse effects for new noise sensitive activities*”⁴ and accepts that there will be “*compromised residential amenity in the town centre*”⁵.
10. Dr Chiles comes close to discussing this issue at Section 9 of his Statement of Evidence, but does not address the issues faced by existing (noise sensitive) buildings, only suggesting generally that the required level of sound insulation could be achieved “*by installing a second window inside the main window*”⁶. Whilst this may be correct, in practice it may be impractical or cost prohibitive. For example, what about opening windows, or sliding doors or the floor space you lose or condensation in the cavity? Mr Cavanagh addresses some of these issues in his Statement of Evidence.
11. In my submission:
 - (a) Mr Chiles has given insufficient consideration as to the effect of a more permissive noise environment on existing noise sensitive activities;
 - (b) why should existing noise sensitive buildings have to bear the cost of retrofitting to take account of this? The producer of noise ought to be the one taking action, not existing operators who are adversely affected. This is relevant where a noise receiver comes to the nuisance, for example, and

² Paragraphs 4.2 and 4.3

³ Paragraph 3.3

⁴ Paragraph 3.4

⁵ Paragraph 3.5

⁶ Paragraph 9.1

should be expected to avoid or mitigate the effects from an existing noise generating activity, rather than the other way around; and

- (c) it is impractical and cost prohibitive for existing (noise sensitive) buildings to be retrofitted to take account of the more permissive noise environment.

Section 42A Report

12. Similarly, Ms Jones in her s 42A report fails to adequately address the issues faced by existing noise sensitive activities which will be now exposed to higher levels of noise.
13. Ms Jones states that Objective 12.2.3 of the PDP, which requires “*maintaining a reasonable level of residential amenity within...the Town Centre Zone*”, is achieved in part through the sound insulation requirements – but fails to acknowledge that this is only for new buildings⁷. How then does exposing existing noise sensitive buildings and activities to higher noise levels “maintain” a reasonable level of amenity, when internal levels may now exceed World Health Organisation Guidelines? Ms Jones further states that people “*could still feasibly anticipate internal noise levels that are deemed acceptable by the World Health Organisation*”⁸ – and implies that this is what the PDP will achieve. However, this is only the case for new buildings.
14. My reading of the s 42A Report is that Council’s expectation is that existing noise sensitive activities will voluntarily retrofit to take account of the more permissive noise environment. In the case of Nomads backpackers, Ms Jones seems to speculate that because Nomads (as a budget accommodation provider) may not have the funding or enthusiasm to attend to voluntarily retrofit its premises, the entire structure of the Precinct should be modified to protect them. Taking this point to its logical conclusion, a “high-end” operator such as Imperium ought to in a position to voluntarily undertake their own upgrades to protect their customers. Ms Jones comments imply that sleep disturbance to the “*large number of people*”⁹ staying at Nomads appears to be of concern, but not other accommodation providers such as Imperium.

⁷ Paragraphs 12.11 and 12.12

⁸ Paragraph 12.14

⁹ Paragraph 12.51

15. Ms Jones states *“it is essential that all new critical listening areas established in that precinct are required to be insulated to this standard”*¹⁰ – how can it be “critical” that new buildings are insulated, but existing buildings are not considered?
16. Ms Jones’ comments that the costs of insulation are not significant in the context of a new commercial building may well be the case. However, the cost may be significant in the case of an existing building. In addition, it may be completely impracticable to implement the upgrades. The Spire Hotel for example, has large sliding glazed doors, which cannot be turned into “double windows” with a 100 mm gap between.
17. Finally, Ms Jones notes in her Section 42A Report that conditions will still be able to be imposed on licenced premises requiring operators to undertake mitigation and enabling Council to monitor compliance.¹¹ In my submission, such measures are entirely dependent actively monitoring and enforcing by Council. I note from Mr Cavanagh’s Statement of Evidence that Imperium’s experience to date however has been that Council is slow to investigate noise complaints and undertake enforcement action.¹²
18. In conclusion:
 - (a) there will be potential effects on existing noise sensitive buildings (why else would special insulation be “critical” for new buildings?);
 - (b) the cost of upgrading existing buildings may be substantially higher than if such upgrades were simply integrated into the design of a new building or may simply not be practicable in reality;
 - (c) it is inequitable to expect existing noise sensitive operators to voluntarily upgrade their buildings as a response to a situation created by the PDP; and

¹⁰ Paragraph 12.6

¹¹ Paragraphs 12.12, 12.21, 12.60 and 12.61

¹² Paragraphs 3.12 and 3.13

- (d) if Council wants to prioritise the “vibrancy” of the Town Centre at the expense of existing noise sensitive activities, it is incumbent on it to undertake a more collaborative process with the owners/operators of existing noise sensitive buildings, such as Imperium, to address these issues. Potential mitigation measures may have included offering rates reductions or some other form of compensation to affected noise sensitive owners/operators, to take into account their reduced amenity and costs of upgrading their buildings resulting from the new noise environment. Unfortunately, Council did not have the foresight to undertake such a process and in this forum at least, options are far more limited.

OVERLAP BETWEEN THE ACT AND SALE AND SUPPLY OF ALCOHOL ACT 2012 (“SSAA”)

19. I note Council’s position concerning the overlap between the Act and SSAA, and that the Act is the more appropriate forum for dealing with adverse effects on amenity, such as those created by noise.¹³
20. Imperium is concerned that once noise levels are “set” as rules in the PDP, it will be difficult to argue against noise as a factor as part of a SSAA licence or renewal application.

CONCLUSION

21. In the absence of suitable measures to address the concerns raised by Imperium, and the inequity of the rules proposed vis-à-vis existing activities, Imperium submits that the only means available to Council to carry out its functions under the Act is to maintain the status quo and delete the concept of the Precinct.

Jayne Macdonald
Counsel for Imperium Group

6 December 2016

¹³ Legal submissions of J G A Winchester/S G Scott dated 25 November 2016, at Paragraphs 5.13-5.16

Schedule “A”

Imperium requests that Chapter 12 of the PDP and Planning Maps 35 and 36 are varied as follows (deleted text struck through and additional text underlined):

A. Amend the last paragraph of “12.1 Zone Purpose” as follows:

“Development within the Special Character Area of the Town Centre Zone (shown on Planning Maps) is required to be consistent with the Queenstown Town Centre Design Guidelines 2015, reflecting the specific character and design attributes of development in this part of the Town Centre. ~~The Entertainment Precinct (also shown on Planning Maps) has permitted noise thresholds that are higher than other parts of the Town Centre in order to encourage those noisier operations to locate in the most central part of town, where it will have least effect on residential zones.~~”

B. Amend Policy 12.2.1.3 as follows:

“Recognise the important contribution that night time activity makes to the vibrancy and economic prosperity of the Town Centre by enabling restaurant and bar activities to occur ~~without unduly restrictive~~ subject to appropriate noise controls.”

C. Amend Policy 12.2.3.3 as follows:

“Recognise the important contribution that night time activity makes to the vibrancy and economic prosperity of the Town Centre and specifically provide for those activities, while mitigating effects on residential amenity by:

(a) Enabling night time dining and socialising, both indoors and outdoors, to varying degrees throughout the Town Centre;

~~(b) Providing for noisier night time activity within the entertainment precinct in order to minimise effects on adjacent residential zones; and~~

(c) Ensuring that the nature and scale of licensed premises located in the Town Centre Transition subzone are compatible with adjoining residential zones.”

D. Amend Policy 12.2.3.4 as follows:

“Enable residential and visitor accommodation activities within the Town Centre while:

- (a) Acknowledging that the level of amenity will be lower than in residential zones due to the density, mixed use, and late night nature of the Town Centre and requiring that such sensitive uses are*
- (b) Discouraging residential uses at ground level in those areas where active frontages are particularly important to the vibrancy of the Town Centre;*
- (c) Avoiding, or, where this is not possible, mitigating adverse traffic effects from visitor accommodation through encouraging operators to provide guests with alternatives to private car travel, discouraging the provision of onsite car parking, and through the careful location and design of any onsite parking and loading areas; ~~and~~*
- (d) ~~Discouraging new residential and visitor accommodation uses within the Entertainment Precinct.”~~*

E. Amend Rule 12.5.11 as follows:

“12.5.11.1 Sound from activities in the Town Centre Zone and Town Centre Transition Subzone (~~excluding sound from the sources specified in rules 12.5.11.3 to 12.5.11.5 below~~) shall not exceed the following noise limits at any point within any other site in these zones:*

- a. Daytime (0800 to 2200hrs) 60 dB LAeq(15 min)*
- b. Night-time (2200 to 0800hrs) 50 dB LAeq(15 min)*
- c. Night-time (2200 to 0800hrs) ~~75~~ 70 dB LAFmax*

**measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008*

12.5.11.2 Sound from activities in the Town Centre Zone and Town Centre Transition Subzone (~~excluding sound from the sources specified in rules 12.5.11.3 and 12.5.11.4 below~~) which is received in another zone shall comply with the noise limits set for the zone the sound is received in.

~~*12.5.11.3 Within the Town Centre Zone only, sound* from music shall not exceed the following limits:-*~~

- ~~*a. 60 dB LAeq(5 min) at any point within any other site in the Entertainment Precinct; and*~~
- ~~*b. 55 dB LAeq(5 min) at any point within any other site outside the Entertainment Precinct.*~~

~~**measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008, and excluding any special audible characteristics and duration adjustments.*~~

~~12.5.11.4 Within the Town Centre Zone only, sound* from voices shall not exceed the following limits:-~~

- ~~a. 65 dB LAeq(15 min) at any point within any other site in the Entertainment Precinct; and~~
- ~~b. 60 dB LAeq(15 min) at any point within any other site outside the Entertainment Precinct.~~

~~*measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008.~~

~~12.5.11.5 Within the Town Centre Zone only, sound* from any loudspeaker outside a building shall not exceed 75 dB LAeq(5 min) measured at 0.6 metres from the loudspeaker.~~

~~* measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008, excluding any special audible characteristics and duration adjustments.~~

Exemptions:

- *The noise limits in 12.5.11.1 and 12.5.11.2 shall not apply to construction sound which shall be assessed in accordance and comply with NZS 6803:1999.*
- *The noise limits in 12.5.11.1 to 12.5.11.5 shall not apply to outdoor public events pursuant to Chapter 35 of the District Plan.*“

F. Delete Rule 12.5.13 as follows:

~~*Acoustic insulation within the Entertainment Precinct*~~

~~12.5.13.1 A mechanical ventilation system shall be installed for all critical listening environments in accordance with Table 6 in Chapter 36.~~

~~12.5.13.2 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.~~

G. Amend Planning Map 35 by deleting “Town Centre Entertainment Precinct.

H. Amend Planning Map 36 by deleting “Town Centre Entertainment Precinct.