BEFORE THE INDEPENDENT HEARING PANEL FOR THE PROPOSED QUEENSTOWN LAKES DISTRICT PLAN

Under	the Resource Management Act 1991
In the Matter	of the Urban intensification Variation to the Proposed Queenstown Lakes Distrct Plan
	QUEENSTOWN AIRPORT CORPORATION LIMITED
	Submitter 822 and Further Submitter 1355

Legal Submissions for **Queenstown Airport Corporation Limited** (Submitter 822 and Further Submitter 1355)

Dated: 27 August 2025

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MAY IT PLEASE THE PANEL

INTRODUCTION

1. These legal submissions are presented on behalf of Queenstown Airport Corporation Limited (**QAC**).

2. QAC has made a submission and further submissions on the Urban Intensification Variation (**Variation** or **UIV**).

3. In general terms, QAC:

   (a) Largely supports the notified Variation;

   (b) Opposes submissions that seek to enable new or intensified noise sensitive activities (**ASAN**[1]) within the existing aircraft noise boundaries for Queenstown Airport;

   (c) Opposes submissions that seek to enable building heights that risk encroaching into the obstacle limitations surfaces that apply to the airspace around Queenstown Airport, including during the construction phase.

4. In broad terms, QAC is concerned to ensure that the Variation appropriately recognises and provides for the ongoing operations of the Airport in a safe an efficient manner and ensures that these are not compromised by incompatible, sensitive activities.

EVIDENCE

5. Evidence has been lodged for QAC as follows:

   (a) Melissa Brook, General Manager Strategy at Queenstown Airport;

   (b) Chris Day, Acoustics;

   (c) Sam Kealey, Planning.

[1] Being an "Activity Sensitive to Aircraft Noise" which the PDP defines as: *"…any residential activity, visitor accommodation activity, residential visitor accommodation activity, homestay activity, community activity and day care facility activity as defined in this District Plan including all outdoor spaces associated with any education activity, but excludes activity in police stations, fire stations, courthouses, probation and detention centres, government and local government offices."*

QUEENSTOWN AIRPORT

6. Queenstown Airport (**Airport**) is located at Frankton. It was established at its current location in 1935, when the surrounding area was farmland. The Airport is now located within an urban area and is largely surrounded by urban development.

7. Queenstown Airport is a recognised important existing strategic asset to the Queenstown Lakes District and Otago Region. It provides an essential link for domestic and international visitors to New Zealand's premier destinations of Queenstown, the Lakes District, Milford Sound and in general, the lower South Island and has a major influence on the Region's economy. It is a significant strategic resource and provides substantial direct and indirect benefits to the local and regional economy. Consequently, it is a fundamental part of and critically important to the ongoing social and economic well-being of the Queenstown Lakes District.

8. Queenstown Airport falls within the definition of nationally significant infrastructure under the National Policy Statement-Urban Development (**NPS-UD**), and regionally significant infrastructure under the Otago Regional Policy Statement 2019 (**ORPS 2019**), the Proposed Otago Regional Policy Statement 2021 (**PORPS 2021**), and the Proposed District Plan (**PDP**).

9. QAC has just released its 2025 Annual Report, highlighting a year of strong financial performance, strategic infrastructure development, and positive community engagement. The Airport welcomed 2.6 million travellers in the 12 months to 30 June 2025. This is a 5% increase on the previous year, reinforcing the Airport's role as a vital gateway to the Southern Lakes region and an increasingly important entry point to New Zealand. This year, QAC will pay a total dividend of $18.8 million, with the Queenstown Lakes District Council, as the majority shareholder, receiving $14.1 million. This equates to $440 per ratepayer across the District. In the words of QAC Chair, Simon Flood, "*when [the] terminal is humming, other local businesses are also doing well.*"

QAC

10. QAC was formed in 1988 under section 3(1) of the Airport Authorities Act 1966 to manage Queenstown Airport. QAC also manages operations at and administers Wanaka Airport on behalf of QLDC and has a caretaker role for Glenorchy Airport.

11. QAC's operation of Queenstown Airport as an aerodrome is subject to the provisions of the Civil Aviation Act 1990 and to the controls imposed on civil aviation by that Act, and the regulations and rules made under it, which include matters relating to safety.

12. QAC is a "lifeline utility" under the Civil Deference Emergency Management Act 2002. Lifeline utilities have a key role in planning and preparing for emergencies, and for response and recovery in the event of an emergency. They must ensure they are able to function to the fullest possible extent, even though this may be at a reduced level, during and after an emergency.[2]

13. QAC is a council-controlled trading organisation (**CCTO**) pursuant to the Local Government Act 2002 (**LGA**). Section 59 of the LGA sets out the principal objectives of a CCTO which include exhibiting a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so.

14. QAC is also a network utility operator under section 166 of the Resource Management Act (**RMA** or **Act**), and an approved requiring authority.

15. QAC is the requiring authority for two designations in the Queenstown Lakes Proposed District Plan (**PDP**):

    (a) Designation 2 - Aerodrome Purposes, the purpose of which is to protect the operational capability of the Airport, while at the same time minimising adverse environmental effects from aircraft noise on the community until at least 2037. The Designation is subject to conditions which include obligations on QAC in respect of noise management and mitigation.

    (b) Designation 4 - Airport Approach and Land Use Controls, the purpose of which is to provide obstacle limitation surfaces around the Airport to ensure the safe operation of aircraft approaching and departing the Airport.

NOISE BOUNDARIES

16. The PDP contains noise boundaries for Queenstown Airport:

[2] Section 60 CDEMA

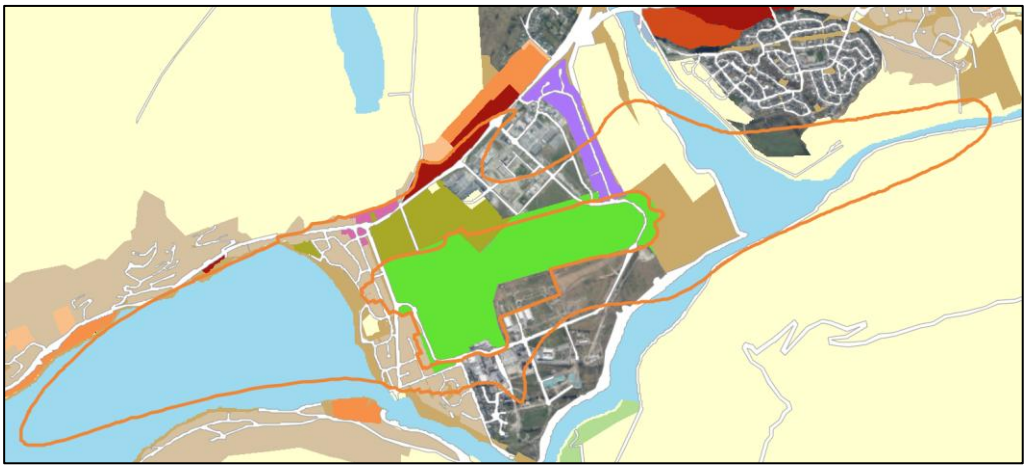
(a) An 'Outer Control Boundary' (**OCB**), which is a based on the day/night sound levels of 55 dBA L_{dn} from predicted future aircraft operations.

(b) An 'Air Noise Boundary (**ANB**), which is a based on the day/night sound levels of 65 dBA L_{dn} from predicted future aircraft operations.

17. The noise boundaries are shown on the PDP planning maps.

18. The ANB applies mostly to QAC owned and designated land and includes (relevantly) some Lower Density Suburban Residential zoned land (**LDSRZ**), west of the Airport. The OCB is larger and includes most of the Frankton LDSRZ, the entirety of the Local Centre Shopping zoned land at Frankton (**LCSZ**) and parts of the Business Mixed Use zoned land (**BMUZ**).

19. A snip from the planning maps, below, shows the general location and extent of the noise boundaries (orange lines).



20. The purpose of the noise boundaries is twofold:

(a) To define the noise limits within which Queenstown Airport must operate;

(b) To define the areas around Queenstown Airport that will be affected by aircraft noise to a degree that a planning response is necessary.

21. The noise boundaries also have relevance to the Aerodrome Purposes Designation (Designation 2), which requires QAC to retrofit acoustic insulation to existing dwellings that are exposed to aircraft noise levels of 60 dB L_{dn} or greater, and additionally, mechanical ventilation for existing dwellings that are exposed to aircraft noise levels of 65 dB L_{dn} or greater, to ensure an internal noise environment of 40 dB L_{dn} is achieved in these dwellings.

22. The New Zealand Standard for Airport Noise Management and Land Use Planning, NZS6805:1992 is the basis for the noise boundaries. They were set through a previous planning process - Plan Change 35 to the Operative District Plan (**ODP**), confirmed by the Environment Court in 2013, and have been carried through to the PDP, which was notified two years later in 2015. Mr Day and Ms Kealey discuss the rationale, formulation and application of the noise boundaries in some detail.

23. It is important to note that the current level of aircraft noise experienced within the noise boundaries does not represent permitted noise levels associated with aircraft movements; the existing noise boundaries provide for development of the airport and growth in aircraft movements and associated noise beyond the current operation.

RECENT GROWTH AND INTENTIONS

24. Having been impacted by COVID-19 for a period, there is now strong year on year growth in operations at Queenstown Airport. Despite this, QAC is for the time being, committed to operating within its existing permitted noise footprint, as defined by the existing aircraft noise boundaries.

25. As noted above, the Airport is not currently operating to the full capacity allowed by the noise boundaries. The noise boundaries allow for the reconfiguration of on airport activities, which could include relocating noise producing activities (such as helicopters) to new locations within the Aerodrome designation, and growth in aircraft movements. This is elaborated on later in these submissions and in the summary evidence of Ms Brook.

26. Contrary to suggestions by some submitters,[3] QAC is not concerned with protecting for as yet, unconsented, unauthorised future activities and growth at Queenstown Airport. QAC's interest in the Variation concerns ensuring that its existing permissions, defined by the existing noise boundaries, can be exercised and are not unduly constrained or compromised by encroaching/intensified incompatible activities. It is concerned within upholding the status quo protection afforded by the existing noise boundaries and the accompanying, much tested policy framework which recognises the regional and national significance of the Airport to local, regional and national economic and social wellbeing.

[3]Evidence of Charlotte Clousten (766) for No, 1 Hansen Rd, City Impact Chrich (775) and Latitude 45 (768), when addressing the Panel at the hearing.

THE VARIATION

27. The Variation is promoted on the basis that it is necessary to implement Policy 5 of the NPS-UD, and its broader directives to ensure a well-functioning urban environment.

28. Policy 5 of the NPS-UD states:

> *"Policy 5: Regional policy statements and district plans applying to tier 2 and 3 urban environments enable heights and density of urban form commensurate with the greater of:*
>
> (a) *the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or*
>
> (b) *relative demand for housing and business use in that location."*

29. The Council's work underpinning the Variation identifies three distinctive nodes at Frankton (the Frankton Local Shopping Centre, Remarkables Park Town Centre and Queenstown Central) as the second most accessible urban area in the District.[4] Part of these zones are located within the noise boundaries for Queenstown Airport. Despite this, the notified Variation does not propose to intensify within the Airport's noise boundaries. This is because the Airport is identified in the NPS-UD and other important statutory planning documents as nationally significant infrastructure, which intensification could compromise.

30. More particularly, the NPS-UD gives some latitude to Tier 1 authorities required to implement its directives where a "qualifying matter" exists[5]. Where a Qualifying Matter exists, a Tier 1 authority may adjust the default intensification rules (such as building heights and densities), if a specific constraint makes higher density inappropriate. NPS-UD clause 3.33 prescribes how this must be done. Qualifying Matters are listed in NPS-UD clause 3.32 and include:

> *"(c) any matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure."*

31. The NPS-UD defines "nationally significant infrastructure" (**NSI**) as:

> *"(h) any airport (but not its ancillary commercial activities) used for regular air transport services by aeroplanes capable of carrying more than 30 passengers".*

[4] Section 32 Report, Appendix 3, Accessibility and Demand Analysis Method Statement, page 27, 7.1.1

[5] NPS-UD Policy 4

32. As already noted, Queenstown Airport is NSI under this definition. It is also NSI and Regionally Significant Infrastructure (**RSI**) under the RPS and PORPS.

33. While the NPS-UD contains express direction for Tier 1 authorities where a Qualifying Matter exists, it contains no similar direction for Tier 2 authorities (QLDC is a Tier 2 authority). Given the scheme of the NPS-UD, it is logical to infer that Tier 2 authorities are afforded more flexibility in the way they may implement Policy 5/respond to intensifying urban environments commensurate with the greater of accessibility or relative demand and are not constrained by NPS-UD Clause 3.33.

34. This being so, QLDC, in formulating the UIV, has "taken guidance" from the NPS-UD as it applies to Tier 1 authorities and qualifying matters, and has rationally decided that intensifying within the noise boundaries for Queenstown Airport is not appropriate, given the strategic significance of the Airport and the core role it plays in the District's economy. This is explained in the Strategic s42A Report[6] as follows:

"Identified Exclusions and Partial Exclusions to Intensification

7.30 The s32 Report outlines the approach taken for locations where the level of development directed by Policy 5 of the NPS-UD is not suitable due to location specific matters that are a development constraint. In identifying these exclusions, the s32 Report used the NPS-UD criteria for Qualifying Matters for Tier 1 authorities as a guide.

7.31 In summary, the exclusions outlined in the s32 Report are the following:

…

> *(d) Land within the Queenstown Airport Air Noise Boundary (ANB) and Outer Control Boundary (OCB) identified on PDP planning maps (for the purpose of ensuring the efficient operation of nationally significant infrastructure). As outlined in the s32 Report, a partial exclusion was applied to this land, whereby changes to zone provisions were applied to the existing zones located within the ANB and OCB, however no changes were notified to planning maps on land within the ANB and OCB.*

…

7.33 While these constraints are largely informed by the NPS-UD criteria for Qualifying Matters for Tier 1 authorities they also in effect address policy conflicts between the NPS-UD's directive to intensify and PDP's strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the QLD's special qualities. This then in effect ensures continued alignment with the PDP Strategic Directions (PDP Chapter 3), and contributes to achieving a well-functioning urban environment (Policy 1 of the NPSUD)."

35. The reasons for not applying density and height increases within the Airport's noise boundaries are hence founded in the NPS-UD, and the PDP. The notified approach is also (generally) appropriate and necessary to give effect to the ORPS 2019 (and PORPS 2021) which require the protection of Queenstown Airport, as RSI, by

[6] Author, Amy Bowbyes

restricting (or avoiding) the establishment of activities that may result in reverse sensitivity effects[7], and protecting infrastructure corridors – such as the land within the noise boundaries – from activities that are incompatible with the anticipated effects of the Airport, now and for the future[8]. This is addressed in more detail shortly.

36. The section 42A reports do not recommend any alteration to the notified position as it relates to intensification within the Airport's noise boundaries. The economic evidence[9] for the Council neatly summarises the reasoning:

"2.9(e) I support provision for further intensification at a medium or higher density scale in the Frankton area, only if it can be appropriately managed in relation to the Queenstown Airport. Importantly, however, ***I consider that intensification within the Frankton area is only likely to produce net economic benefits if it does not limit the current or future role of the Airport;****"*

"6.39 Several submissions (200, 548, 800) consider that the current restrictions on intensification around Frankton as a result of the airport Outer Control Boundary (OCB) do not appropriately balance the benefits of intensification within this area with the ability to more carefully mitigate risk with the airport. One submission (822) supports the inclusion of land for urban intensification outside of the Air Noise Boundary and the OCB, but opposes any provisions for further intensification that will have any negative impact or adversely affect the Queenstown Airport.

6.40 I agree that medium to higher density development around Frankton would produce economic benefits for urban form ***if the risks in relation to the Airport can be sufficiently managed****. The general Frankton area has developed as a sizeable commercial node within the District, and has increased its relative commercial role within the District's urban structure. This includes as an area of commercial amenity for households and as an employment centre. The commercial role of Frankton is likely to increase further with the level of business development opportunity in this location. I consider that further intensification at a medium to higher density scale would be supported by the commercial amenity (both in terms of household demand and access to employment areas). Recent development patterns indicate that the market is able to sustain higher density development in this location.*

6.41 I also consider that appropriately managed further intensification around Frankton is likely to be economically beneficial through increasing the housing choice in this location. Beyond the recent higher density development within the commercial areas of Frankton, the residential areas are dominated by more expensive larger lower density detached dwellings.

6.42 ***Importantly, however, I consider that intensification within this location is only likely to produce net economic benefits if it does not limit the current or future role and function of the airport. The airport plays a core role within the District's economy and is likely to facilitate a sizeable share of activity within the district's urban environment and surrounding area. Visitor spending sustains a large share of the commercial activity within the District, which is directly reliant on the operation of the airport. I consider that any limitation to the current or future airport activity as a result of proximate future residential intensification may produce a significant net economic cost to the District and surrounding areas.****"*

[7] ORPS 2019 Policy 4.3.5(i). Also, PORPS 2021 Policy EIT-INF-P15
[8] ORPS 2019 Policy 4.3.5(iv)
[9] Evidence of Susan Fairgray, dated 6 June 2025

(emphasis added)

37. QAC generally supports and agrees with the Council's approach, which the Council does not diverge from in its rebuttal evidence. It is appropriate and necessary to ensure that the wider directive of the NPS-UD – achieving a well-functioning urban environment - is met. An urban environment will not function well if critical infrastructure, such as Queenstown Airport, is compromised. It is also necessary and appropriate to give effect to the RPS (and PORPS) and the strategic direction of the PDP. Ms Kealey elaborates on this in her planning evidence[10].

38. The Variation applies only to urban business and residential zones that have been brought into the PDP. Of relevance to QAC interests, these include:

(a) the Lower Density Suburban Residential Zone (LDSRZ)

(b) the Local Centre Shopping Zone land (LCSZ)

(c) the Business Mixed Use Zone (BMUZ).

39. The Variation does not apply to any ODP zones, such as the Frankton Flats A or B Zones (**FFZ**), the Remarkables Park Zone (**RPZ**). This is notwithstanding areas within these zones are identified in the Council's reporting as highly accessible[11] and the Frankton area, which includes the RPZ and Frankton Flats Zones, is otherwise generally supported for intensification, as evidenced from the economic evidence cited above.

THE LAW

40. Ms Scott, for QLDC, has presented submissions on the legal framework within which the Panel must make its decision (which will be known to the Panel in any case).

41. Ms Scott has submitted that the requirement that the PDP give effect to and is prepared and changed in accordance with the NPS-UD is of most relevance to the Variation.[12] However, while the purpose of the Variation is to implement NPS-UD Policy 5, the Panel's inquiry is necessarily broader.

[10] Evidence of Smanatha Kealey, dated 7 July 2024, para 46-54
[11] Refer para 29 above
[12] Legal Submissions for QLDC dated 25 July 2025 at para 5.5

42. The PDP must give effect to the NPS-UD[13] which is undoubtedly of relevance to the Panel's decisions on the Variation, but it must not be overlooked that the PDP must also give effect the ORPS 2019[14]. "Give effect to" indicates a strong and firm obligation to implement and follow the higher level objectives and policies set out in the ORPS. The ORPS 2019 has a comprehensive policy framework requiring protection of RSI from incompatible activities and reverse sensitivity effects.

43. Furthermore, the Panel's decisions on submissions on the Variation must reflect the most appropriate way to achieve the objectives of the PDP, after considering the matters listed in sections 32(1)(b) and 32(2).

44. This policy framework is summarised next and discussed in detail in the evidence of Ms Kealey[15].

POLICY FRAMEWORK

ORPS 2019

45. The ORPS 2019 provides specific policy recognition of infrastructure and acknowledges its importance in providing for the social, economic and cultural wellbeing of people and communities.

46. Policy 4.3.4 is especially relevant. It requires that infrastructure with national or regional significance is *protected* including by:

(a) *Restricting* the establishment of activities that may result in reverse sensitivity effects;

(b) *Avoiding* significant adverse effects on the functional needs of such infrastructure;

(c) Avoiding, remedying or mitigating other adverse effects on the functional needs of such infrastructure;

(d) *Protecting* infrastructure corridors, which includes the Airport's noise boundaries, from activities that are incompatible with the anticipated effects of that infrastructure, now and for the future.

[13] RMA s75(3)(a)
[14] RMA s75(3)(c)
[15] Evidence of Samantha Kealey, dated 7 July 2025, para 103 - 113

47. Also relevant is Policy 4.5.1, which applies to urban growth and development. This policy requires that urban growth and development is provided for in a strategic and coordinated way, including by *restricting* urban growth and development to areas that *avoid* reverse sensitivity effects unless those effects can be adequately managed.

48. The words "protect", "avoid" and "restrict"' are very strong directives.

49. "Avoid" means "do not allow" which, at a methods level, can require prohibition, where remedies normally available under the RMA to address negative effects i.e. remediation, mitigation and/or adaptive management, are not appropriate.[16] The "avoid" directive cannot be diluted by balancing it against other factors or interests when making a decision on the Variation.[17]

50. "Protect" means "preserve": "keep safe from harm or injury" which implies a very strong level of protection, requiring the prevention of activities that could have adverse effects on nationally regionally significant infrastructure, which in this case is Queenstown Airport.

51. "Restrict means "put a limit on", deprive", "restrain" which connotes similar requirements.

52. Together, these provisions set a very strong directive for the protection of Queenstown Airport and mandate a prohibition on new activities that could compromise its effective and efficient operations.

53. Decisions on the Variation must give effect to these provisions.

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[16] *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38 (SC). Principles from King Salmon include: (a) The hierarchy of planning documents required under the RMA and the importance of the higher level documents in directing those that must follow them; (b) That planning documents are intentional documents and mean what they say; (c) That language is important, and wording (and differences in wording) does matter; (d) The need to be precise and careful with words, to create certainty of meaning; (e) That policies, even in higher level documents, can be strong and directive, and then need to be implemented as such; (f) That reconciling the potential for conflicts between different provisions of a planning document is important; (g) More directive objectives and policies carry greater weight than those expressed in less direct terms; (h) Directive objectives and policies to avoid adverse effects should usually be accompanied by restrictive activity status, such as noncomplying or prohibited; (i) When considering higher order documents (such as an RPS) do not refer to Part 2 or undertake a 'balancing' or 'in the round' interpretation of its provisions unless the policy statement does not 'cover the field' in relation to the issues being addressed, or its wording is uncertain or conflicting. Put another way, to the extent the policies of a higher order document (e.g. an RPS) are directive they must be given effect to by a district plan, unless there is a conflict in the higher order document, and only then can the decision maker refer to Part 2.

[17] Ibid

PORPS 2021

54. The RPS 2019, inclusive of the RSI provisions, was made partially operative in March 2021. However, in October 2019, the Minister for the Environment commissioned an investigation whether ORC was on track to adequately perform its functions under the RMA in relation to freshwater management and allocation of resources. The investigation determined that ORC's freshwater management framework would not manage water effectively and was not compliant with the new National Planning Standards. The Minister recommended that the ORC undertake a complete review of the 2019 RPS to address these deficiencies. The ORC notified a new RPS in June 2021 (the PORPS 2021). This included new provisions for RSI. The ORC released decisions on submissions on the PORPS 2021 in March 2024. Aspects of the decision were appealed, including a number of provisions pertaining to RSI. Appeals were mediated in late 2024/early 2025. The mediations resolved almost all appeal points. Draft consent orders have been filed and are presently awaiting the Court's endorsement.

55. Both the decisions and mediated versions of the PORPS 2021 uphold the scheme of the ORPS 2019 as it relates to RSI, albeit the reverse sensitivity provisions are strengthened. Under the PORPS 2021, the efficient and effective operation, maintenance, upgrading and development of RSI and NSI must be *protected*, by (inter alia) *avoiding* activities that *may* result in reverse sensitivity effects[18] (EIT-INF-P15).

56. The Panel must have regard to the PORPS[19].

PDP

57. The PDP contains a regime that recognises the significance of Queenstown Airport and seeks to protect it from reverse sensitivity effects, at both a policy and rule level.

58. Strategic Objective 3.3.6, which applies across the District in all zones (as do all the strategic provisions), recognises that Queenstown Airport makes an important contribution to the prosperity and resilience of the District.

[18] PORPS 2021, EIT-INF-P15
[19] RMA s74(2)(i)

59. Strategic Objective 3.3.24B, requires the *protection* of the Airport (as RSI) by *managing* the adverse effects of incompatible activities. To give effect to the higher order policy direction of the RPS, the management approach that must be adopted for new incompatible activities, where not already enabled, is avoidance.

60. Strategic Policy 4.2.2.1 requires that urban development is integrated with RSI (i.e., the Airport) so that reverse sensitivity effects, which under RMA section 3 includes "potential effects", are *minimised.* "Minimised" means "reduce to the smallest possible degree". Allowing new ASAN within the Airport's noise boundaries does not minimise, but increases, the reverse sensitivity risk. Accordingly, "minimise" should be construed to mean "do not allow" new ASAN where these not already enabled, which is consistent with and gives effect to the higher order RPS policy directive.

61. Strategic Policy 4.2.2.16 requires *protection* of the Airport from reverse sensitivity effects of ASAN via a range of zoning methods. To implement this policy, the existing PDP scheme is that where ASAN are not already enabled in a zone, protection is achieved by prohibiting them. Where ASAN are already enabled in a zone, protection is achieved by limiting the ability to increase or intensify the ASAN use, and to the degree that new ASAN uses are already enabled, requiring acoustic treatment to be fitted. The latter recognises historical zoning permissions[20], and balances these with the need to protect the Airport. (Ms Kealey addresses the existing zoning methods in detail in her evidence.[21])

62. Objective 7.2.2 applies in the LDSRZ and requires that development of ASAN within the Airport's noise boundaries is *limited* in recognition of the amenity (noise) constraints now and also likely in the foreseeable future as a result of the Airport's increasing intensity of operation and use. Policy 7.2.2.1 *discourages* the creation of new sites or infill development for ASAN within the noise boundaries. "Discourage" means "prevent or try to prevent something by showing disapproval or creating difficulties"; "deprive". Together these provisions limit ASAN use within the LDSRZ to current levels and set their face against intensification within the zone.

[20] Which are grandfathered in the PDP, as explained in the evidence of Sam Kealey dated 7 July 2025, at 74, 75, 78, 110, 112, 113

[21] Evidence of Sam Kealey, dated 7 July 2025, at para 112

63. Strategic Policy 4.2.2.17 requires that Critical Listening Environments[22] of all new buildings and alterations and additions to existing buildings containing ASAN within Airport's noise boundaries are designed and built to achieve an appropriate Indoor Design Sound Level[23]. This policy must be read in the wider scheme of the PDP, which seeks to prevent the establishment of ASAN within the noise boundaries, or limit them where historical planning permissions exist.[24] Where historical permissions do exist, new ASAN must be designed and built to achieve a satisfactory internal noise environment, to mitigate known aircraft noise. That is the requirement that arises from this policy, related zone policies[25], and the attendant rules. The policy should not be interpreted to mean that new ASAN can establish or be enabled within the noise boundaries in any zone, provided acoustic treatment is provided. That interpretation would disregard the wider, comprehensive policy scheme for Queenstown Airport just traversed[26].

64. These PDP objectives and policies recognise the importance of Queenstown Airport and require its protection from compromise by incompatible activities, which is to be achieved through a variety of methods, including zonings, limiting the number of ASAN within the noise boundaries, discouraging the creation of new residential sites and infill within the noise boundaries, and minimising, by not increasing, the reverse sensitivity risk.[27]

NPS-Infrastructure

65. New national direction is proposed for infrastructure via a new national policy statement, the National Policy Statement-Infrastructure (**NPS-I**), as part of the current government's wider goal of improving the resource management system.

66. The NPS-I is intended to provide national direction for infrastructure development, ensuring consistency in decision-making and supporting long-term planning. Key features include requiring decision-makers to recognise and provide for the functional and operational needs of infrastructure, acknowledging its national

[22] The PDP defines these as "*any space that is regularly used for high quality listening or communication for example principle living areas, bedrooms and classrooms but excludes non-critical listening environments"*
[23] Under the PDP Indoor Design Sound Level "*means 40 dB Ldn in all critical listening environments"*
[24] Ibid, see para 110
[25] For example, LDSRZ Policy 7.2.2.2 and 7.2.2.3, LCSZ Policy 15.2.3.2
[26] Referring here to Ms Clousten's evidence for No, 1 Hansen Rd (766), City Impact Chrich (775) and Latitude 45 (768)
[27] As summarised by Ms Kealey, evidence dated 7 July 2025, paras 108 - 113

significance, and managing potential conflicts with other activities, including reverse sensitivity effects, with an overarching emphasis on enabling and better protecting infrastructure. The concept of reverse sensitivity is recognised and defined, and there is a directive that *the safe, efficient and effective operation, maintenance and upgrade of existing, consented or planned infrastructure is not compromised by the adverse effects of other activities.*[28]

67. The NPS-I would cover Queenstown Airport, if confirmed in its proposed form.

68. While acknowledging that the NPS-I carries no legal weight (and without seeking to give it any weight), it does highlights that that reverse sensitivity effects, including potential effects, are a real risk for infrastructure providers, and signals an intention to recognise and require protection against them at a national policy level.

QAC'S SUBMISSION

69. QAC's submission on the Variation is generally supportive, in so far as the Variation does not seek to intensify residential activities – an ASAN - within the ANB or OCB for Queenstown Airport.

70. While generally supportive of the notified Variation, of the options considered prior to notification, QAC prefers Option 1 - retention of the status quo/no change to provisions that apply within the OCB and ANB - because the QLDC reporting does not quantify the potential ASAN increase under the notified option (if any).

71. QAC opposes submissions that seek to enable new or intensified ASAN within the noise boundaries, including height increases in the LCSZ which would have the effect of enabling additional ASAN (where ASAN are allowed on some sites above ground floor level) and deletion or change of rules that presently prohibit ASAN within the BMUZ OCB.

72. QAC's primary concern is to ensure that existing and planned permitted future operations at Queenstown Airport are not compromised by allowing new and/or intensified noise sensitive activities within the areas around Queenstown Airport that are known to be affected by higher levels of aircraft noise, as demarcated by the aircraft noise boundaries.

[28] NPS-I, Proposed Policy 9

73. This concern arises because noise sensitive activities are known to give rise to a reverse sensitivity risk for noise emitting infrastructure such airports. Increasing the number of noise sensitive activities exposed to aircraft noise inevitably increases the reverse sensitivity risk.

74. For decades, the planning policy of the Council, supported by QAC, has been crafted to carefully prevent intensification of residential activity within the aircraft noise boundaries due to the known adverse effects of the noise and the risk of reverse sensitivity effects (Ms Kealey traverses this in her evidence). The importance of doing so is recognised in the strategic policies of the PDP and required by the higher order provisions of the ORPS 2019, PORPS 2021, as summarised earlier.

75. This established planning policy accords with NZS6805:1992 which promotes an approach whereby all ASAN are prohibited within an Air Noise Boundary or Outer Control Boundary, where this can be practically achieved.

76. The PDP (and ODP) generally adopt the approach recommended by NZS6805:1992, although where historically ASAN have been provided for within the ANB or OCB, the PDP takes a compromise, "grandfathering"[29] approach that recognises and continues to provide for the historic development rights, in so doing endeavouring to balance the future needs of the Airport and the needs and aspirations of the residential community.

77. The grandfathering of existing development rights does not provide a valid basis to depart from the "avoidance" approach enshrined in the PDP for new ASAN, however.

78. The grandfathering is applied in the PDP on a zone-by-zone basis in a strategic and coordinated manner. Allowing submissions that seek to enable new ASAN within the noise boundaries where previously these have been prohibited or limited will cut across the established policy and could result in perverse outcomes for the Airport and, given its reliance on the Airport, the community.

79. Consents granted for a particular purpose under different legislation do not provide a valid basis to depart from the long standing "avoidance" approach

[29] Such as PDP Rule 15.5.5 of the LCSZ, and Rule 7.5.4 of the LDSRZ

enshrined in the policy framework either, and could give rise to the same perverse outcomes.

80. The reverse sensitivity risk that arises from enabling new or intensified ASAN within the noise boundaries cannot be mitigated adequately by mitigation measures, such as acoustic treatment for buildings, and/or no-complaints covenants. These measures have major limitations which have been recognised by the High Court. They would not satisfy the clear policy directive at a PDP and higher level that requires protection of the Airport from the adverse effects of incompatible uses.

81. A further significant concern of QAC is to ensure that the community's health and amenity is not compromised by aircraft noise. The Airport cannot internalise all its noise effects, and the law does not require it to[30]; the PDP and higher order policies[31] recognise that noise will be emitted beyond the Airport's bounds. The aircraft noise boundaries themselves are evidence of this. It would be a poor planning decision to allow new sensitive uses (residential) to establish in an area where it is known their amenity and health will be compromised.

82. These points are elaborated on below.

REVERSE SENSITIVITY

83. QAC cannot internalise all its noise effects, and nor does the law require that.[32] As recognised in the *Ngatarawa Development Trust*[33] case, for an airfield, the complete internalisation of aircraft noise is self-evidently not possible, unless its site area is so vast that neighbours are pushed beyond range. For Queenstown Airport, the PDP noise boundaries signal that noise from aircraft will be experienced by the community beyond the bounds of the Airport, and they authorise that noise. Even so, aircraft noise creates a risk for Queenstown Airport.

84. Reverse sensitivity is one of the most significant planning concerns for airports worldwide, including Queenstown Airport. It is now firmly established as a concept under the RMA. The concept refers to the effects of new sensitive activities, such

[30] See for example, *Ngatarawa Development Trust Ltd v Hastings District Council* EnvC W017/08, 14 April 2008, at [23]
[31] See for example, ORPS 2019 Pol 4.3.5(d) requires the protection of infrastructure corridors, which include areas within the noise boundaries, from activities that are incompatible with the anticipated effects of that infrastructure, now and for the future.
[32] Supra, n30
[33] Ibid

as residential activity, on other existing legitimate (i.e. lawful) activities in their vicinity, particularly if it becomes necessary to restrain those existing activities to accommodate the new sensitive activity.[34]

85. The Court has defined reverse sensitivity in the following way:[35]

> *"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."*
>
> (emphasis added)

86. Reverse sensitivity effects have the potential to impede or limit the operation of airports, manifesting in ways such as curfews, flight track prescriptions, noise charges, and other restrictions on development and growth.[36]

87. Evidently, the Court has recognised reverse sensitivity as a particular type of environment effect. As such, there is a duty to avoid, remedy or mitigate it, to achieve the Act's purpose of sustainable management.[37]

88. It is important to take note that, under the RMA, an "effect" can include a cumulative effect which arises over time, any potential effect of high probability,

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[34] See for example *Auckland Regional Council v Auckland City Council* A10/97

[35] Supra, n30, at [22]. Also see, for example, *Affco New Zealand Ltd v Napier City Council* EnvC W082/04; *Tasti Products Ltd v Auckland Counci*l NZHC 1673(2016) (HC); *Gateway Funeral Services v Whakatane District Council* W5/08, and *Winstone Aggregates v Matamata-Piako DC* W55/2004, referring to 'Reverse Sensitivity – the Common Law Giveth and the RMA Taketh Away'; 1999 3 NZSEL 93

[36] As recognised by the High Court in *Auckland International Airport Limited v Auckland City Council* [2024] NZHC 2058 at [27] and [29] (the **Osterley Way** Decision)

[37] See for example *Winstone Aggregates v Matamata-Piako DC* W55/2004. Also refer section 76(3) of the Act which provides that in making a rule, a territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect, and the purpose in section 5 (s5(2)(c) in particular) which District Plans must achieve pursuant to s72

and any potential effect of low probability which has a high potential impact. Noting this, a reverse sensitivity effect does not need to occur before action, in the form of a planning or policy response, is necessary under the RMA. The *potential* or risk for such an effect to occur is enough. This is recognised in the policy framework against which the Variation must be assessed: RPS Policy 4.35 requires that the establishment of activities that *may* result in reverse sensitivity effects must be restricted.

89. The concept of reverse sensitivity has been accepted by the Courts as a significant resource management concern, which must be effectively managed to protect existing activities from unjustified complaints. Complaints can be the first sign of a groundswell of opposition that can chip away at a lawfully established activity.[38] The Court has said: [39]

"*Reverse sensitivity is sensitivity not to environmental impact, but to* ***complaint*** *about environmental impact. Reverse sensitivity exists where an established use produces adverse effects and a new use is proposed for nearby land. It is the legal vulnerability of the established activity to objection from the new use*."

(emphasis added)

90. Residential use has been recognised as the great source of complaint and reverse sensitivity risk. In *Ngatarawa Development Trust Limited v Hastings District* the Court stated[40]:

"It is inevitable that some lawful activities will at times be unable to totally internalise their effects and the law does not require that. This is generally understood by those who choose to bring themselves within range of an effect emitting activity. ***But residential occupiers in particular may have a different view and it is they who have the greatest potential to generate reverse sensitivity effects****."*

(emphasis added)

91. The PDP defines reverse sensitivity as follows:

"…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."

92. The PDP definition is consistent with the judicial interpretation. While the definition refers to "***existing*** *lawfully established activities*", the concept is not

[38] As recognised in *Auckland RC v Auckland CC* (1997) 3 ELRNZ 54; [1997] NZRMA 205 (EnvC)
[39] *Osterly Way* (HC) at [27], citing *Taranaki Energy Watch Inc v South Taranaki District Council* [2018] NZEnvC 227 at [19] referring to Bruce Pardy and Janine Kerr "Reverse Sensitivity — The Common Law Giveth and the RMA Taketh Away" (1999) 3 NZJEL 93
[40] Supra, n30, at [25]

static or fixed in time. The word "existing" clarifies that the activity at risk of a reverse sensitivity effect must be established prior to the new activity that gives rise to the risk. The word "existing" does not constrain the emitting activity to its existing level or operation.[41] Indeed, all airports are expected to grow and morph.

93. The existing activity here is the Airport – as it lawfully operates today, and as it may lawfully do so in the future. In this instance, lawful future activities include development and growth of the existing Airport activity, as touched on earlier. To elaborate, helicopter activities at Queenstown Airport will soon be moved from their existing location, south of the main runway and terminal, to a location north of the main runway, to improve airspace and operational efficiency and enable a planned terminal expansion. Ms Brook details this, and other planned changes to current operations, in her evidence[42]. The relocation of helicopters is permitted under the Aerodrome Purposes designation and can occur while complying with the Airport's current noise boundaries. That being so, the relocation of helicopters will inevitably bring the helicopter noise closer to the BMUZ and LSCZ zones to the north of Queenstown Airport. Helicopter noise can be more annoying than other types of aircraft noise and the relocation of helicopter activities could lead to an increased risk of complaint about aircraft noise from people newly exposed to it.

94. By way of further illustration, in the year just gone, there were over 2.6M passengers through Queenstown Airport, with 18,865 scheduled aircraft movements, 29,853 helicopter movements, and 16,254 fixed wing (general aviation) movements. Growth forecasts are that by 2032, these numbers will increase to 3.2M passengers, 22,112 scheduled flights and 43,000 non-scheduled flights (helicopter and general aviation movements combined)[43]. This growth can occur while complying with the existing noise boundaries, however the increase in aircraft activity will give rise to an increase in noise, or increase in the occurrence and regularity of noise (through increased movements), which some the community may find annoying and complain about.

[41] See for example, *Ngatarawa Development Trust Limited*, n30 and para 85 above, which identifies the "stifling of growth" as a reverse sensitivity effect.
[42] Evidence of Melissa Brook, dated 4 July 2025, paras 41 - 45
[43] Queenstown Airport Master plan December 2023

95. Changes in existing operations, even if permitted, can cause annoyance and give rise to complaint from the community, and lead to pressure to change or curtail such activities. Mr Day gives specific examples of where this has occurred.[44]

96. Amenity conflicts are most prevalent where there is a high rate of land use change, particularly where the population of an area is increasing or changing, with people moving into the area holding different amenity values and expectations. Allowing the establishment of new or intensification of existing noise sensitive receivers within the Airport's noise boundaries will ultimately increase the number of people exposed to aircraft noise. Exposing a greater number of people to aircraft noise inevitably gives rise to an increased risk of complaint about Airport activities and aircraft noise, and consequently, an increased reverse sensitivity risk.

97. In terms of the applicable policy framework, if the reverse sensitivity risk is increased, it is not being minimised or avoided. Nor is the Airport, as RSI, protected.

98. If the operation of the Airport is compromised or curtailed and projected growth cannot be accommodated, then this could compromise the attractiveness of Queenstown as a destination for airlines, which could result in the curtailment of aircraft activity over time. Given the Airport's core role in the District and Region, this would likely have a significant effect on the essential underpinnings of (at least) the Queenstown economy and community wellbeing.

MITIGATION OPTIONS

Acoustic treatment

99. Some submitters have suggested that intensification within the OCB is appropriate, provided suitable indoor noise levels can be achieved, through acoustic insulation for example.

100. Mr Day addresses this extensively in his evidence[45]. His evidence is that sound insulation is on its own insufficient to mitigate the effects aircraft noise, referencing data that indicates that even where satisfactory internal noise levels are achieved, between a quarter and one half of the ordinary population will be

[44] Evidence of Chris Day, 11 July 2025, discussion at 99 – 121, see the Auckland Airport example at 118 in particular
[45] Evidence of Chris Day, 4 July 2025, para 89 – 97

"highly annoyed" by aircraft noise nonetheless.[46] This high level of annoyance inevitably gives rise to a high risk of complaint. The greater the number of highly annoyed people, the greater the risk of complaint.

101. Mr Day's evidence is that even with acoustic insulation, windows must be kept closed in order to achieve a satisfactory internal noise environment, particularly at night. This can result in an unsatisfactory level of fresh air, causing residents to open windows, resulting in an unsatisfactory internal noise environment. This can impact their amenity, and lead to an increased risk of complaint.

102. Mr Day explains that, significantly, sound insulation does not deal with the outdoor noise environment which is integral to the New Zealand lifestyle and broader wellbeing. Some submitters[47] have argued that there are existing public spaces in the OCB where communal gatherings and enjoyment of outdoor space is encouraged, ostensibly accepting that aircraft noise cannot be mitigated when outdoors, and that outdoor amenity of new ASAN , if enabled as they seek, will be compromised. This argument overlooks the fact that these public areas are not "ASAN" for the reason that they are not used by the same persons regularly, but are rather used on an intermittent, casual and transient basis. Contrast this with residences, where the same persons are present in the ASAN day-in and day-out, where they recuperate and rest. The length and regularity of exposure to aircraft noise in public spaces and outdoor areas of residence is critically different. The comparison with public spaces is invalid.

103. Given the above, acoustic treatment of buildings within the noise boundaries is not a satisfactory planning response to address the effects of aircraft noise on affected residents, or to minimise reverse sensitivity risk. Minimizing the number of people affected by aircraft noise by restricting existing and not allowing new residential development with the Airport's noise boundaries is the most effective and appropriate form of minimising reverse sensitivity risk and ensuring a reasonable level of amenity for occupants, both indoors and outdoors, is achieved.

[46] Evidence of Chris Day, 4 July 2025, para 90
[47] Per Ms Clousten's evidence for No.1 Hansen Road (766), City Impact Church (775) and Latitude 45 (768)

Covenants

104. No-complaints covenants are often touted as part of the answer to mitigating the effects of aircraft noise on sensitive receivers and reverse sensitivity risk for the Airport, and they have been promoted by some submitters on the Variation as a method by which the effects of aircraft noise and reverse sensitivity risk can be addressed so that new ASAN can be enabled within the Airport's noise boundaries.

105. No-complaints covenants are private legal instruments that can operate in parallel with the district plan to control the use of land.

106. Covenants have many significant limitations and are not an appropriate planning method by which to allow increased residential densities within the noise boundaries for Queenstown Airport, however.

107. While a legally available tool (provided they are entered into voluntarily)[48], the Environment Court has cautioned that *"…taking away the capacity of those suffering noise issues to object does not take away the adverse effect that is the source of the conflict"*[49]

108. In other words, no-complaints covenants are ineffective at avoiding, remedying or mitigating adverse effects. Nothing becomes quieter, less smelly, or otherwise less unpleasant simply because a covenant exists.[50]

109. They are also ineffective at preventing the community from becoming annoyed about aircraft noise and protecting the community's amenity and wellbeing. A council is required to consider and address such matters when preparing a district plan.[51]

110. Owners and occupiers of properties subject to no-complaints covenant may not be aware of the covenant and make a complaint in contravention of it, or they may be aware of the covenant and chose to complain despite it.

111. The covenant will apply only to the owner of the property. It is unclear how such a covenant could operate to prevent complaint by the tenants actually affected by

[48] *South Pacific Tyres New Zealand Ltd v Powerland (New Zealand)* [2009] NZRMA 58
[49] *Gibbston Vines Ltd v QLDC* [2019] NZEnvC 115 at paragraph [154]. Also see *AJ and VF Barr Family Trust v Whakatane District Council* [2023] NZEnvC 27 at [115]. And *Ngatarawa*
[50] Supra, n30, at [27]
[51] RMA section 76(3)

the aircraft noise. The High Court raised this as a concern in *Auckland International Airport Ltd v Auckland Council*[52] where it expressed scepticism about the effectiveness of no-complaints covenants to mitigate adverse effects where the social housing development would be occupied by tenants who will be the people actually affected by aircraft noise.

112. The most common means of enforcing a covenant is by applying to the District or High Court for an injunction. An injunction is essentially a court order preventing a party from doing something. An application for an injunction will have little utility where a complaint is already made. Damages may be an alternative remedy to an injunction, however, before they will be awarded by the Court, the plaintiff is required to prove that it has suffered a loss as a result of the breach. Loss from a single breach of a no-complaints covenant in favour of QAC (by a complaint by a single Homeowner) may, in many instances, be difficult to establish or quantify.

113. The costs of pursuing an injunction or damages via a formal Court process are not insignificant, and the process is not quick. The costs of taking action against a single breach (homeowner) may outweigh the benefit to QAC.

114. A council monitoring and enforcement officer has no way of knowing if a complainant is subject to a no-complaints covenant and is obliged to respond in any event. It would be difficult for the Council to ignore any complaints made in contravention of a no-complaints covenant in favour of the Airport, given its responsibilities under the RMA.

115. It is difficult to conceive of how a requirement for a no complaints covenant – which must be entered into voluntarily by a homeowner, could be regulated by the PDP.

116. At best, a no-complaints covenant puts a homeowner on notice that they are purchasing a property in an area affected by aircraft noise, but it may or may not act as a deterrent against complaint. Ms Brook's evidence[53] is that despite non-object covenants in favour of QAC that precluded residents objecting to a proposal to expand operations at Queenstown Airport, large numbers of residents objected to the expansion plans, which, along with other factors, caused QAC to abandon them. This was in circumstances where the original developer of the residential

[52] [2024] NZHC 2058, at [106]
[53] Evidence of Melissa Brook, dated 4 July 2025, para 58 - 61

area volunteered the covenants to secure the residential development rights. This serves to highlight the limited utility of covenants.

117. No-complaint covenants are an available tool, but they are not a panacea for reverse sensitivity risk.[54] Given their limitations, they should not be the primary method to mitigate reverse sensitivity risk and should only be used (in combination with other measures) when there is no better available alternative.

118. Here, there is a better available alternative, namely, restricting the establishment of new ASAN in areas affected aircraft noise, where complaint about noise and corresponding reverse sensitivity effects on the Airport is a real risk.

119. Restricting, by not enabling new or intensified ASAN within the noise boundaries, is consistent with the applicable higher order policy framework that has been detailed earlier in these submissions. Allowing new ASAN within the OCB subject to a requirement for no-complaints covenants is not, because the risk of complaint and a corresponding reverse sensitivity effect would remain.

120. Covenants would not address amenity or health effects.

AMENITY AND HEALTH EFFECTS

121. The daytime[55] noise limits in the PDP are 50dB $L_{Aeq(15min)}$ for all residential zones, while the nighttime noise limit is 40 dB $L_{Aeq(15min)}$. The Purpose Statement for Chapter 36 – Noise, where these noise limits are set out, indicates that the noise limits are set to preserve a reasonable level of amenity.[56] Mr Day's evidence explains that the residential zone noise limits are comparable to 50 dB L_{dn}.[57]

122. The OCB depicts the areas where aircraft noise will exceed 55 dB L_{dn}. Noise at this level is greater than what the PDP indicates is reasonable for a residential environment, and it will undoubtedly affect amenity, particularly when compared with the PDP zone noise limits. There is no sound logic or planning basis to allow more ASAN/people in an area where it is known that their amenity will be compromised by aircraft noise, particularly where there are better options elsewhere (a point elaborated on later).

[54] Supra, n30, at [27]
[55] 8am – 8pm
[56] PDP, Chapter 36 - Noise, Purpose statement
[57] Evidence of Chris Day, dated 4 July 2025, at 87 - 88

123. Annoyance effects are amenity effects, which, in addition to potential reverse sensitivity effects, have in the past been the primary consideration when setting policy for the provision or otherwise of ASAN within an OCB, amenity effects being relevant under RMA section 7. However, recent research demonstrates that annoyance gives rise to not just effects on amenity, but health effects too. The research suggests that that annoyance is not just irritation and an amenity effect; it is a chronic stress response with measurable health consequences. It triggers:

(a) Physiological stress reactions (elevated blood pressure, heart rate, stress hormone release).

(b) Psychological strain (irritability, anxiety, depression).

(c) Increased risk of cardiovascular disease via sustained stress and inflammation.

124. Mr Day explains this further[58].

125. Adverse effects on health are a relevant consideration under RMA s76(3), s32(2) and the stated purpose of sustainable management in section 5.

126. The risk of health effects only amplifies the point made in paragraph 122, above: there is no logic or sound planning basis to allow more ASAN/people in an area where it is known that their health may be compromised by aircraft noise.

NO.1 HANSEN ROAD WORKER ACCOMMODATION

127. QAC acknowledges that the No.1 Hansen Road site (Submitter 766) has a number of consents that allow a large number of ASAN – worker accommodation- to establish within the OCB[59]. QAC understands that some submitters seek to draw from or rely on these consents as a basis or justification for enabling new or intensified ASAN within the Airport's noise boundaries, particularly in the BMUZ and LCSZ.

[58] Ibid, para 44 – 48

[59] This is referenced in the lay evidence of Chris Hansen, for the Hansen Family Trust (Submitter 766) as justification to increase building heights in the LCSZ, which would have the effect of allowing a greater number of ASAN on some LCSZ sites, where ASAN are permitted above ground level.

128. QAC's position is that these resource consents do not justify a change to the zoning of land (from LCSZ to BMUZ) or applicable rules (e.g., deletion of BMUZ Rule 16.4.9, and height increases in the LCSZ) to further enable ASAN within the OCB.

129. Significantly, the consents were mostly granted under different legislation – the Covid -19 Recovery (Fast Track Consenting) Act 2020 (**FTCA**), which has a different purpose and legal requirements. The purpose of the FTCA is to:

> *"to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources."*

130. Under the FTCA, there is no requirement for public or limited notification of consent applications, but comment from certain groups must be sought. QAC was invited to comment on the worker accommodation proposal and did so, opposing it for a variety of reasons, not least of which was reverse sensitivity risk. Ms Brook will explain this further in her evidence summary.

131. The decision was to allow the application, notwithstanding QAC's opposition. There was no right of appeal available to QAC.

132. In allowing the worker accommodation proposal, the FTCA Panel found that the effect on QAC would be less than minor, given the particular conditions imposed. These included the acoustic treatment of buildings to ensure low internal levels of aircraft noise (25 dB L_{dn}), and *Augier* conditions requiring the registration of a no-complaint covenant in favour of QAC and a covenant requiring the acoustic attenuation in the building to be retained.

133. The FTCA Panel found that noise in outdoor living areas would be higher than desirable for a residential area and would give rise to adverse effects, but that these would be limited to annoyance and some disruption of outdoor activities such as socialising and passive recreation, and that residents would not have high expectations for outdoor amenity given the site's location and other environmental noise (e.g., road noise).[60] The FTCA Panel was not presented with any evidence on health effects.

[60] FTCA decision, at [180] – [186] https://www.epa.govt.nz/fast-track-consenting/referred-projects/hansen-road/the-decision/

134. The FTCA Panel very deliberately and carefully considered whether a grant for consent under the FTCA would set a precedent for future planning process, such as this Variation. In its decision, the Panel emphasised that a grant of consent would not set a precedent because the unique characteristics of the site would distinguish it from others, including from other forms of residential development within the OCB, finding specifically, that :[61]

(a) "The Proposal is not a typical full time residential, or owner/occupier model, but a medium (seasonal) to longer term rental accommodation for local workers

(b) There are no other Local Shopping Centre Zone sites within the OCB of this scale

(c) The OCB passes through the site, such that the development spans the OCB line, ensuring the accommodation is at the far limit of the OCB; and

(d) The FTCA has been repealed, so no other developments (that have not already been lodged) can benefit from the purpose of that legislation i.e. they cannot benefit from the overarching purpose of urgently promoting employment to support New Zealand's recovery from the economic and social impacts of COVID-19 or from supporting the certainty of ongoing investment across New Zealand."

135. It is QAC's position that the FTCA decision should be approached with considerable caution presently. This is because:

(a) The proposal was decided under different legislation, with a different purpose.

(b) The proposal concerned worker accommodation, which, while ASAN, is likely to be less sensitive to airport noise than permanent residential activity, as the workers may only be in town for a few months to work on a particular project and then they move on to the next project possibly out of Queenstown. In contrast, permanent residents, which would be enabled within the OCB if the submitter relief is allowed, experience the noise for longer, so are more likely to complain as it becomes their permanent home and they may be living there for many years.

(c) There was an inability to present to the Panel fulsome evidence on all important issues, and the evidence that was presented was unable to be tested in the usual way, given the FastTrack nature of the process.

(d) While a factor contributing to the FTCA Panel's decision, no-complaints covenants are of very limited utility to address reverse sensitive risk, for

[61] Ibid, [327]-[330]

the reasons outlined earlier. They do not address amenity and health effects.

(e) While a factor contributing to the FTCA Panel's decision, acoustic treatment of buildings does not adequately address reverse sensitivity risk in the OCB, for the reasons explained by Mr Day and summarised earlier, including that it does not address outdoor amenity.

(f) The FTCA Panel was express and deliberate in its emphasis that the decision to allow the proposal should not be taken to set a precedent and is distinguishable from other proposals due to the legislative, site and design factors, as well as the nature of the proposal (worker accommodation).

136. Since the FTCA decision was made, the High Court has considered, in an unrelated proceeding, the extent to which acoustic treatment of buildings and no-complaints covenants can mitigate reverse sensitivity risk for an airport, and has rejected the validity of very similar reasoning to that given by the FTCA Panel: *Auckland International Airport Ltd v Auckland Council*[62] (the **Osterley Way Decision**).

137. The *Osterley Way* Decision concerned an application for judicial review of a decision by Auckland Council to grant on a non-notified basis a social housing development located within the noise boundaries for Auckland Airport. The High Court found that:

(a) reverse sensitivity effects can arise from outdoor noise exposure, which is not addressed by acoustic treatment of buildings.

(b) A no-complaints covenant would be unlikely to sufficiently address reverse sensitivity risk, because it would apply to the property owner rather than the occupant affected by the noise (social housing tenants).

(c) While a lower level of amenity could be expected in a zone generally, where that lower level of amenity results from aircraft noise, an airport is vulnerable to reverse sensitivity effects and that vulnerability cannot be ignored because there are other sources of noise in the environment or

[62] [2024] NZHC 2058, (2024) 26 ELRNZ 34

because the minimum requirements of acoustic treatment are complied with.

(d) The cumulative effect of aircraft noise on residents and whether the necessity to keep windows closed because of aircraft noise will cause annoyance are relevant considerations.

138. A more detail summary of the High Court decision is contained in **Appendix A**.

139. While addressing a different factual and policy context, the reasoning in the Osterley Way Decision contradicts that given by the FTCA Panel. Direct comparisons cans be drawn between the Osterley Way scenario and the present. To the extent that it decides matters of general principle, the Osterley Way Decision is binding on this Panel. The FTCA decision is not.

140. In summary, the FTCA decision should not bear on the outcome of decisions on this Variation.

HEIGHT INCREASES IN THE BMUZ (OLS)

141. QAC opposes the notified height increase in the BMUZ, and submissions that seek further height increases in the zone.

142. Parts of the BMUZ are under the Obstacle Limitation Surfaces (**OLS**) for Queenstown Airport, as shown in the Figure below:

143. OLS are a fundamental requirement in civil aviation to ensure the safety of aircraft operations by defining the airspace that must be free of obstacles. They are legally

defined by rules, such as Civil Aviation Rule Part 77 and Part 139, and require airport operators to implement controls and restrictions on structures and land use around an aerodrome to prevent them from encroaching on critical areas for aircraft approaching, departing, and manoeuvring. Put simply, the OLS protect the airspace around Queenstown Airport for safety reasons. They project up and out from the main and cross wind runway at the Airport.

144. The OLS for the cross-wind runway at Queenstown Airport is in places at a height of approximately only 25m above the BMUZ (this height is measured from Airport datum, so if the BMUZ ground is higher than the Airport ground, the OLS will sit at a lower height above the BMUZ). If building height is increased from the current 12 metres to 16 metres (as notified) or 24 metres (as some submitters seeks) there is a risk that the OLS will be penetrated by a future building or during construction of a future building (e.g., by cranes), which would give rise to a serious safety risk for aircraft and for those constructing and using the buildings.

145. The OLS are designated (Designation 4) and technically no person may penetrate them without QAC's prior written approval. However, the OLS are complex and poorly understood by plan users, and they are often overlooked at the time of consenting. Plan administration and consenting therefore requires diligent oversight by QAC.

146. Accordingly, while designated, it is preferable and appropriate to recognise the presence of the OLS at a rule level, by not allowing building heights that risk penetrating the surfaces.

SUMMARY AND CONCLUSION

147. QAC acknowledges the need for a range of appropriate housing solutions in the Queenstown Lakes District and its obligations to implement the NPS-UD. However, allowing new or intensified ASAN within the Airport's noise boundaries is not appropriate given the strategic importance of the Queenstown Airport to the Queenstown Lakes District, and the potential for reverse sensitivity effects on the Airport and adverse effects on future occupants to arise.

148. Allowing intensive residential development within an area known to be adversely affected by airport noise is likely to result in annoyance to the people moving into this environment. Annoyance is an amenity effect that must be accounted for in

decisions on the Variation. Effects on residents is not limited to annoyance, however. Exposure to aircraft noise at OCB levels gives rise to adverse health effects. Allowing a large number of people to move into an area where their health may be adversely affected runs counter to the purpose of the RMA.

149. Allowing intensive residential development within an area known to be adversely affected by airport noise increases the risk of complaints about the noise. The Court has acknowledged that complaints can give rise to reverse sensitivity risk, and they can cause an Airport to change or curtail its operations in response to complaint. Such changes can result in less efficient operations and make the Airport less attractive to airlines, resulting in curtailment of activity over time. In the Queenstown context, curtailment of Airport activity could result in very significant adverse effects for the community, given the core role the Airport plays in the District's economy, and the vital national and international connections it provides for the community. While reverse sensitivity issues may be viewed as the inevitable consequence of urban growth and expanding residential development, it is essential that they are addressed as part of the planning process, and they must be accounted for in decisions on the Variation.

150. The further enablement of ASAN within the Airport's noise boundaries would run counter to many decades of carefully crafted planning policy for the Frankton urban area whereby residential densities have not been allowed to increase in order to protect the ongoing operation of Queenstown Airport and the health and amenity of future residents. More significantly, it would fail to implement the higher order policy directives for Queenstown Airport as RSI and NSI. The policy framework under which the Variation must be assessed requires *protection* of Queenstown Airport. Protection is not achieved if reverse sensitivity risk is increased.

151. When evaluating the most appropriate way to achieve the applicable objectives, the inquiry is wider than NPS-UD Policy 5. To give effect to the NPS-UD, the decision on the Variation must promote an urban environment that functions well. Given the significance of the Airport to the community, a decision that risks compromising the effective and efficient operations of the Airport and adversely affects a greater number of people's amenity and health, is unlikely to be one that functions well.

152. In so far as it does not enable new or intensified ASAN within the noise boundaries for Queenstown Airport, the notified Variation is generally sound. Submissions made by and evidence presented for submitters seeking to allow new or intensified ASAN within the noise boundaries do not provide a compelling basis to depart from the notified proposal. Acoustic treatment and no-complaints covenants do not adequately address reverse sensitivity risk, or the effect that aircraft noise at OCB levels will have on people's health and amenity.

153. Submitters argue that intensification in the noise boundaries is appropriate given the boundaries apply to land at Frankton that the Council has assessed is highly accessible. However, there is land at Frankton outside the noise boundaries which the Council's reporting identifies as equally accessible, including land within the RPZ and FFA and B Zones. To the extent that intensification at Frankton is appropriate, these areas, where the Airport constraint is not present, are likely more appropriate candidates. These areas could qualify for intensification under NPS-UD Policy 5 in a way that does not run counter to the very clear higher order policy directives for NSI and RSI, or risk compromising the regionally and nationally significant Airport operations. Unfortunately, the suitability of intensifying in these accessible areas cannot be assessed by the Panel, as they are ODP zones that fall outside the scope of the Variation.

154. While intensification within the Airport's noise boundaries may provide additional housing, it is unclear to what degree. Regardless, it would not promote sustainable management as it risks compromising the regionally and nationally significant airport infrastructure and disenabling the economic and social wellbeing of the wider community.

155. Retaining the existing PDP regime within the ANB and OCB for Queenstown Airport is effective and the most appropriate approach as continues to provide for the existing development rights of residents within these areas, while not increasing the potential for reverse sensitivity effects on the Airport, and while providing for people's health and amenity. It will allow QAC to continue to operate the regionally and nationally significant infrastructure of Queenstown Airport effectively and efficiently, providing for the social and economic wellbeing of the wider community.

156. All too often the experience in New Zealand (and off-shore) is that insufficient foresight has been applied to the protection of significant assets such as airports,

meaning unwise land use decisions are taken to allow sensitive uses to encroach on the footprint of impact created by such facilities. While compromise is often necessary, recognition that facilities such as airports emit noise that can be annoying for and adversely impact some is important in informing land use planning decisions. The best form of protection available to avoid reverse sensitivity effects, and to provide for people's health and amenity, is to avoid development "coming to the effect" in the first place.

R Wolt

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APPENDIX A

***Auckland International Airport Limited v Auckland City Council* [2024] NZHC 2058**

The Osterley Way Decision

157. The Osterley Way Decision concerned an application for judicial review of a decision by the Auckland City Council to grant resource on a non-notified basis to Kainga Ora for an intensive housing development located at Osterley, Manukau. The development site was located under the main flight path for Auckland Airport and within the 'Moderate Aircraft Noise Area' (**MANA**) where aircraft noise levels of between 60 dB and 65 dB L_{dn} are anticipated. The MANA is part of an airport noise overlay in the Auckland Unitary Plan that is intended to protect the airport from reverse sensitivity effects and to avoid or mitigate the adverse effects of aircraft noise on residential and other ASAN. It contains objectives, policies and rules to manage density and the design of new ASAN with the area. Within the MANA, new ASAN require consent as a discretionary activity.

158. Auckland Airport was not consulted about or notified of the application and pursued an application to review the decision to grant the proposal on a non-notified basis. One of the errors argued by Auckland Airport was that the Auckland Coty Council erred by misconstruing the requirements of the MANA and proceeding on the basis that acoustic insulation was sufficient to remedy adverse effects.

159. The Council and Kāinga Ora both argued that compliance with acoustic standards set out in the AUP prescribing acoustic insulation requirements was adequate to mitigate reverse sensitivity effects on Auckland Airport, and that no further consideration needed to be given to the effects of reverse sensitivity if the acoustic standards were met.

160. With regard to outdoor areas within the development, the Council had assessed the effect of aircraft noise on residents using such areas as less than minor on the basis at any given time only a small proportion of residents would be outdoors; apartment balconies would be shielded on multiple sides and by the building itself for a large proportion of overflights; and the number of people expected to be outdoors in a location where an overflight was a distinctly audible event in the context of other ambient noise was expected to be low. Reference was also made

to the fact that the MANA overlay was registered as a covenant on the certificate of title and LIM so buyers would be aware of the presence of aircraft noise. The notification decision stated the following:

> *"In terms of on-going noise effects, notably reverse sensitivity effects from surrounding activities upon the residents within the proposed apartment building, it is considered that the proposal comprises extensive acoustic design measures, including cladding and window design specifications and heating and ventilation requirements …such that windows and doors can be closed if required whilst maintaining a high level of internal amenity for residents. These measures will ensure reverse sensitivity effects are mitigated".*

161. One of the specific questions the High Court as required to consider was whether, in construing the requirements of the MANA overlay, reverse sensitivity effects were to be considered beyond ensuring compliance with applicable acoustic standards for developments. That is, whether compliance with acoustic standards was the sole mechanism by which reverse sensitivity effects were intended to be remedied or mitigated in the MANA.

162. The Court found that the MANA overlay requires avoidance of residential development unless the adverse effects of aircraft noise, including reverse sensitivity effects, are adequately remedied or mitigated, and that the interpretation most consistent with the objectives of the Overlay is that the acoustic insulation standards are a minimum requirement without which the activity is non-complying, but compliance does not necessarily remedy or mitigate reverse sensitivity effects created by large-scale residential developments within the MANA.

163. In determining the application the High Court acknowledged the concept of reverse sensitivity and that reverse sensitivity effects have the potential to impede of limit the operation airports, manifesting in ways such as curfews and other restrictions on development and growth. [63] The High Court also acknowledged evidence for Auckland Airport that the more people who live under flight paths, the more potential for complaint about the operation of the airport.[64]

164. Furthermore, that while a lower level of amenity could be expected in the zone generally, where that lower level of amenity results from aircraft noise, Auckland Airport is vulnerable to reverse sensitivity effects and that vulnerability cannot be

[63] Ibid, at [27] and [29]
[64] Ibid, at [30]

ignored because there are other sources of noise in the environment or because the minimum requirements of acoustic treatment are complied with.[65]

165. Moreover, that while the notification decision referred to existing noise levels in the zone, it failed to consider the cumulative effect of aircraft noise on residents and made no reference to the whether the necessity to keep windows closed because of aircraft noise will create annoyance and, if so to what extent.[66]

166. The High Court emphasised the importance of notifying the person potentially affected by reverse sensitivity effects, noting that a failure to notify inevitably creates a risk that a decision maker proceeds with inadequate information. The Court stated at [94]:

> *"… in respect of reverse sensitivity effects in particular,* ***an operator of an activity will often be best placed to assess the impact of reverse sensitivity effects on future operations****. This will obviously be affected by the complexity of the operation. In the case of Auckland Airport, the operation is both complex and nationally significant".*
>
> (emphasis added)

167. The Court considered that the threshold for adverse effects requiring notification is very low which is consistent with the natural justice implications of non-notification.

168. Ultimately the Court found that Auckland Airport should have been notified of the proposed 16-storey development within the Airport's Moderate Aircraft Noise Area Overlay. The decision to grant consent on a non-notified basis was set aside and the matter remitted to the Council to consider afresh, with a direction that the matter should be considered by planning officers not involved in previous decisions.

[65] Ibid, at [75]
[66] Ibid, at [85]