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LAWYERS

17 January 2011

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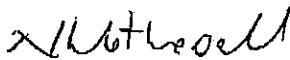
OLDC
18 JAN 2011
QUEENSTOWN

Dear Ms Joiner

Notice of Appeal
Queenstown Airport Corporation Limited v Queenstown Lakes District Council

We act for Queenstown Airport Corporation Limited. We enclose by way of service on the Council a copy of an Appeal filed in the Environment Court at Christchurch today.

Yours faithfully
Lane Neave



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Amanda Dewar/Rebecca Wolt
Partner/Associate

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ENCL

**In the Environment Court
Christchurch Registry**

ENV-2011-CHC-

Between **QUEENSTOWN AIRPORT CORPORATION
LIMITED**

Appellant

And **QUEENSTOWN LAKES DISTRICT COUNCIL**

Respondent

**Notice of Appeal by
Queenstown Airport Corporation Limited**

Dated: 17 January 2011

Lane Neave
LAWYERS

Level 15, PricewaterhouseCoopers Centre
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Solicitor Acting: Amanda Dewar
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To: The Registrar
Environment Court
Christchurch

1. **Queenstown Airport Corporation Limited (QAC)** appeals against part of the decision made by the **Queenstown Lakes District Council (QLDC)** on proposed Plan Change 35 (PC35) to the Operative Queenstown Lakes District Plan (**District Plan**).
2. QAC requested a private plan change which was partially adopted by QLDC (PC35). QAC made a submission and a further submission on PC35.
3. QAC is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. QAC is not directly affected by an effect of the subject of the appeal that:
 - (a) adversely effects the environment; and
 - (b) does not relate to trade competition or the effects of trade competition.
5. QAC received notice of the decision on 12 November 2010.
6. The decision was made by QLDC.
7. **The parts of the decision that QAC is appealing are:**

Chapter 4, District Wide Issues; Objective 7; Implementation Methods

Chapter 7, Residential Areas; Objective 3; Implementation Methods

- (a) the decision to amend the implementation methods to refer to a requirement for sound insulation and mechanical ventilation of buildings generally rather than specifically for non-critical listening environments of buildings;

Chapter 4, District Wide Issues; Objective 7; Explanation and Principal Reasons for Adoption

- (b) The decision to change the wording in paragraphs 3 and 5 of the explanation and principal reasons for adoption to refer to airport

noise as opposed to aircraft noise and referring to buildings being designed to result in an appropriate level airport noise indoors (*'...are designed to result in an appropriate level airport noise indoors'*).

Chapter 4, District Wide Issues; Objective 8

- (c) the decision to alter the objective to include the word 'significantly' as follows:

Manage urban growth issues on land in proximity to Queenstown Airport to ensure that the operational capacity and integrity of the Airport is not significantly compromised now or in the future.

Chapter 4, District Wide Issues, Policy 8.1

- (d) The decision to include Frankton Flats Zone in the Policy.

Chapter 4, District Wide Issues; Objective 8; Implementation Methods; i

- (e) The decision to include the Frankton Flats Zone in the implementation methods and the typographical error of referring to 'provisions' rather than 'provision' in the first sentence of the second paragraph.

*Chapter 7, Queenstown Residential and Visitor Accommodation Areas
7.2.3i Implementation Methods*

- (f) The decision to include new implementation method (c):

(c) A requirement within the Aerodrome Designation for Queenstown Airport Corporation to prepare and implement a noise mitigation plan in consultation with affected property owners for existing buildings within the 60 dB Ldn AANC.

Chapter 4, District Wide Issues, Policy 8.1 and Implementation Methods

Chapter 12 Frankton Flats Zone Standard 12.18.5.2iii.

- (g) the decision not to prohibit activity sensitive to aircraft noise within the Outer Control Boundary in the Frankton Flats Zone.

Chapter 4, District Wide Issues Policy 8.2

Chapter 5, Rural Areas, Policy 7.3

- (h) the decision to change the above policies from:

To discourage plan changes or land use proposals which are promoted or initiated on land within the Outer Control Boundary at Queenstown Airport where there incorporate provision for activity sensitive to aircraft noise on the basis that such activities have the potential to compromise the ongoing operational efficiency of the Airport.

To:

To incorporate airport noise mitigation controls for activity sensitive to aircraft noise enabled by any plan changes or land use proposals for land within the Outer Control Boundary at Queenstown Airport.

Chapter 5, Rural Areas, Policy 3.6

- (i) The decision not to amend policy 3.6 of Chapter 5 to ensure it does not apply to Queenstown Airport.

Chapter 5, Rural Areas, Policy 7.4

- (j) the decision to delete policy 7.4 of Chapter 5 (Rural Areas);

Rural Areas Zone Standards 5.3.5.2;

Residential Zone Standards 7.5.5.3vi; 7.5.6.3viii;

Business and Industrial Zone Standard 11.3.5.2iii;

Remarkables Park Zone Standard 12.11.5.2iv

- (k) The decision to amend the above Zone Standards:

- (a) ***Within the Air Noise Boundary (ANB) – New and altered buildings containing an activity sensitive to aircraft noise shall be designed to achieve an internal design sound level of 40 dB Ldn, based on the 2037 noise contours, at the same time as meeting the ventilation requirements in Table 2 of Appendix***

13. Compliance can either be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level, or by adoption of the constructions in Table 1 of Appendix 13 and installation of mechanical ventilation to achieve the requirements in Table 2 of Appendix 13.

- (b) **Within the Outer Control Boundary (OCB)** - New and altered buildings containing an activity sensitive to aircraft noise shall be designed to achieve an internal design sound level of 40 dB Ldn, based on the 2037 noise contours, at the same time as meeting the ventilation requirements in Table 2 of Appendix 13. Compliance can either be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level, or by installation of mechanical ventilation to achieve the requirements in Table 2 of Appendix 13.

Section D, Definitions

- (l) The decision to amend the definition of Activity Sensitive to Aircraft Noise:

Activity Sensitive to Aircraft Noise (ASAN) – means any residential activity, visitor accommodation activity, community activity and day care facility activity, but excludes activity in police stations, fire stations, courthouses, probation and detention centres, government and local government offices.

- (m) The use of the phrase 2037 Noise Contours when no definition has been included in the decision.

8. The reasons for the appeal are:

- (a) In its present form the decision:
- (i) fails to promote sustainable management (section 5);

- (ii) fails to sustain the potential of a physical resource (the Airport) to meet the reasonably foreseeable needs of future generations (section 5(2)(a));
 - (iii) fails to have particular regard to section 7, in particular subsections (b) (the efficient use and development of natural and physical resources), (c) (maintenance and enhancement of amenity values), (f) (maintenance and enhancement of the quality of the environment) and (g) (finite characteristics of natural and physical resources);
 - (iv) fails to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district, including the emission of noise (section 31);
 - (v) the objectives proposed by PC35 are not the most appropriate way to achieve the purpose of the Act;
 - (vi) the policies, rules and other methods in PC35 are not the most appropriate for achieving the objectives;
- (b) Without derogating from the generality of the above, the particular reasons for the appeal include (but are not limited to):

(i) *Chapter 4, District Wide Issues; Objective 7; Implementation Methods*

Chapter 7, Residential Areas; Objective 3; Implementation Methods

The decision amends the implementation methods of objective 7 of District Wide Issues and Objective 3 of Residential Areas refer to a requirement for sound insulation and mechanical ventilation of all buildings. Sound insulation and mechanical ventilation should not be required in parts of buildings that are not considered habitable rooms, such as the bathroom, laundry or hallway. The notified version of the Plan Change specified that sound insulation and

mechanical ventilation should be applied to critical listening environments only.

(ii) *Chapter 4, District Wide Issues; Objective 7; Explanation and Principal Reasons for Adoption*

Paragraph 3 of the explanation and principal reasons for adoption states that sound insulation and mechanical ventilation will be required to some properties to mitigate the effects of airport noise. The sound insulation and mechanical ventilation is required to mitigate the effects of noise from aircraft rather than general airport noise.

The wording in the fifth paragraph of the explanation and principal reasons for adoption is unclear and should be improved.

(iii) *Chapter 4, District Wide Issues, Objective 8*

The notified Objective 8 required urban growth issues on land around Queenstown Airport to be managed so that the operational capacity and integrity of the Airport is not compromised now or in the future. The decision has amended the objective to ensure the Airport is not 'significantly' compromised now or in the future.

Queenstown Airport is a significant strategic asset to the Otago Region and is one of the country's fastest growing airports. Plan Change 35 was initiated to protect the on-going capacity and integrity of this asset by providing for future growth and introducing and strengthening the objective and policy framework of the District Plan to avoid inappropriate land uses around the Airport. The inclusion of the word 'significantly' introduces an element of subjectivity and undermines the ability of the objective to protect the operational capacity and integrity of the Airport.

(iv) *Chapter 4, District Wide Issues, Policy 8.1*

Policy 8.2 provides for acoustic mitigation of all new and altered buildings containing ASAN's in the Frankton Flats Zone. This is inconsistent with the QAC appeal to make ASANs prohibited in the Frankton Flats Zone.

(v) *Chapter 4, District Wide Issues; Objective 8; Implementation Methods; i*

Implementation Method i relates to the provision of rules, standards and ventilation construction tables to ensure new buildings in specified zones are designed to mitigate against the effects of aircraft noise. The decision to include Frankton Flats Zone in this implementation method is inconsistent with the QAC appeal to make ASANs a prohibited activity in the Frankton Flats Zone.

There is a typographical error in the first sentence of the second paragraph of implementation method i. It should refer to 'provision' rather than 'provisions'.

(vi) *Chapter 7, Queenstown Residential and Visitor Accommodation Areas 7.2.3i Implementation Method (c)*

Implementation method (c) requires a noise mitigation plan to be prepared in consultation with affected property owners in the 60dB Ldn AANC. QAC is required by a condition of the Aerodrome Purposes to prepare a noise mitigation plan as part of the Airport noise management plan. This implementation method is unnecessary and is inconsistent with earlier implementation methods for the Residential Zone.

(vii) *Chapter 4, District Wide Issues, Policy 8.1 and Implementation Methods*

Chapter 12 Frankton Flats Zone Standard 12.18.5.2iii.

The Frankton Flats Zone provides for a mix of urban uses, although residential activity other than managerial

accommodation is non-complying. The notified version of Plan Change 35 included land use controls to prohibit new Activity Sensitive to Aircraft Noise (ASANs) in the OCB within the Frankton Flats Zone. In formulating the approach, QAC took the view that the Zone provided sufficient scope for non-ASAN activity to be developed within the OCB and that ASANs could be developed beyond the OCB.

QAC accepts that ASANs in the form of visitor accommodation have already been consented in the Zone within the OCB but does not consider that this should justify the development of further ASANs, in particular residential accommodation, which could result in reverse-sensitivity effects on Queenstown Airport.

(viii) *Chapter 4, District Wide Issues, Policy 8.2*

Chapter 5, Rural Areas, Policy 7.3

Plan Change 35 provides for a managed approach to land use around Queenstown Airport. Where the District Plan already enables ASANs within a zone, Plan Change 35 generally seeks to continue to enable such development with mitigation as appropriate. In the Rural and Industrial Zones the District Plan prohibits new activity sensitive to aircraft noise. Plan Change 35 continues this approach. This 'grandfathering' approach is based on the premise that the best form of protection available to avoid reverse sensitivity concerns is to avoid development "coming to the effect" in the first place.

Policy 8.2 of Chapter 4 and 7.3 of Chapter 5 of the notified Plan Change 35 were included to ensure that plan changes are not promoted to enable ASANs in areas where they are prohibited. The decision version of policies 8.2 and 7.3 are contrary to other policies and create the potential for a circular argument, which could undermine the basic principle of avoiding the development of ASAN's in the OCB.

(ix) *Chapter 5, Rural Areas, Policy 3.6*

Policy 3.6 requires the acoustic insulation of buildings containing ASANs within an airport Outer Control Boundary. ASANs are not permitted within the Outer Control Boundary at Queenstown Airport therefore this policy is unnecessary and may cause confusion.

(x) *Chapter 5, Rural Areas, Policy 7.4*

Policy 7.4 of Chapter 5 of the notified Plan Change 35 requires acoustic mitigation of any existing ASAN's in the Rural Zone that are proposed to be altered or extended. This policy is required to ensure the effects of Aircraft noise are appropriately mitigated.

(xi) *Rural Areas Zone Standards 5.3.5.2;*

Residential Zone Standards 7.5.5.3vi; 7.5.6.3viii;

Business and Industrial Zone Standard 11.3.5.2iii;

Remarkables Park Zone Standard 12.11.5.2iv

The rewording could cause confusion as to when mechanical is required. The wording of the decision could be read such that mechanical ventilation is only a requirement where a building is constructed in accordance with the tables in Appendix 13 of the District Plan and not when an alternative design has been certified by a person suitably qualified in acoustics.

(xii) *Section D, Definitions*

The decision amends the definition of ASAN's by deleting the words '*including all outdoor spaces associated with any education facility*'. The inclusion of these words was intended to clarify that school sports fields and playgrounds are considered to be ASANs. While the definition of community facility includes 'land and buildings' it excludes recreational activities. This could result in uncertainty over

whether or not sports fields and playgrounds are community facilities.

The 2037 Noise Contours are referred to throughout the decision. These should be defined in the District Plan and any reference to 2037 Noise Contours should be in capital letters.

9. **QAC seeks the following relief:**

Chapter 4, District Wide Issues; Objective 7; Implementation Methods

Chapter 7, Residential Areas; Objective 3; Implementation Methods

- (a) That the Plan Change is amended to clarify that sound insulation and mechanical ventilation is only required for all critical listening environments.

Chapter 4, District Wide Issues; Objective 7; Explanation and Principal Reasons for Adoption

- (b) That the word 'airport' in the second sentence of Chapter 4, Objective 7, Explanation and Principal Reasons for Adoption is replaced with the following or similar:

It is recognised that the anticipated growth in operations at Queenstown Airport will necessitate sound insulation and mechanical ventilation works to some existing, new or altered buildings in order to mitigate the effects of airport aircraft noise.

That the last paragraph of Chapter 4, Objective 7, Explanation and Principal Reasons for Adoption is replaced with the following or similar:

The noise boundaries are also necessary to ensure new noise sensitive development does not occur in inappropriate locations, and new and altered buildings are designed to achieve result in an appropriate internal sound level from aircraft noise level ~~airport noise indoors~~.

Chapter 4, District Wide Issues, Objective 8

- (c) That the word 'significantly' is deleted from objective 8 as follows:

Manage urban growth issues on land in proximity to Queenstown Airport to ensure that the operational capacity and integrity of the Airport is not significantly compromised now or in the future.

- (d) *Chapter 4, District Wide Issues, Policy 8.1*

That reference to Frankton Flats Zone is deleted from the Policy:

To prohibit all new activity sensitive to aircraft noise within the Rural, Business and Industrial Zones located within the Outer Control Boundary at Queenstown Airport.

To ensure that all new and altered buildings containing activity sensitive to aircraft noise located in the existing Residential zones, ~~Frankton Flats and Remarkables Park Special Zones~~ within the Queenstown Airport Outer Control Boundary are designed and built to achieve an internal design sound level of 40 dB Ldn, based on the 2037 noise contours.

Chapter 4, District Wide Issues; Objective 8; Implementation Methods i

- (e) That implementation methods i of District Wide Objective 8 is amended as follows or similar:

The provision of rules to prohibit or otherwise control activity sensitive to aircraft noise in the Rural, Residential, Industrial, ~~Frankton Flats~~, Airport Mixed-Use and Remarkables Park zones.

Where appropriate the provisions of rules, standards and sound insulation and ventilation construction tables to ensure new buildings for any activity sensitive to aircraft noise in the Outer

Control Boundary in the Residential Zone and Frankton Flats and Remarkables Park Special Zones are designed to achieve an internal design sound level of 40 dB Ldn, based on the 2037 noise contours.

Chapter 7, Queenstown Residential and Visitor Accommodation Areas 7.2.3i Implementation Method (c)

- (f) That implementation method (c) of 7.2.3i is deleted:

~~*(c) A requirement within the Aerodrome Designation for Queenstown Airport Corporation to prepare and implement a noise mitigation plan in consultation with affected property owners for existing buildings within the 60 dB Ldn AANC.*~~

- (g) That ASAN's are prohibited within the OCB in the Frankton Flats Zone and consequently Zone Standard 12.18.5.2iii is deleted.

- (h) That Policy 8.2 of Chapter 4 and 7.3 of Chapter 5 of the notified Plan Change 35 are reinstated.

To discourage plan changes or land use proposals which are promoted or initiated on land within the Outer Control Boundary at Queenstown Airport where these incorporate provisions for activity sensitive to aircraft noise on the basis that such activities have the potential to compromise the ongoing operational efficiency of the Airport.

- (i) Policy 3.6 of Chapter 5 be amended as follows or similar:

To require acoustic insulation of buildings containing activities sensitive to aircraft noise located within Wanaka an a Airport's Outer Control Boundary

- (j) Policy 7.4 of Chapter 5 of the notified Plan Change 35 is reinstated.

To require acoustic insulation and mechanical ventilation of alterations or additions to existing buildings located in the Outer Control Boundary for Queenstown Airport that contain any new activity sensitive to aircraft noise or where an existing building is being altered or added to on land within the Outer Control

Boundary of Queenstown Airport to achieve and indoor sound level of 40dB Ldn. Calculations shall be based on the 2037 Noise Contours.

- (k) That Zone Standards 5.3.5.2; 7.5.5.3vi; 7.5.6.3viii; 11.3.5.2iii; 12.11.5.2iv are reworded as follows:

(a) **Within the Air Noise Boundary (ANB)** - Alterations and additions to existing buildings containing an activity sensitive to aircraft noise shall be designed to achieve an internal design sound level of 40 dB Ldn, based on the 2037 noise contours, at the same time as meeting the ventilation requirements in Table 2 of Appendix 13. ~~Compliance can either be~~ shall be demonstrated by installation of mechanical ventilation to achieve the requirements in Table 2 of Appendix 13 and by either, submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will not exceed the internal design sound level, or by the adoption of the constructions in Table 1 of Appendix 13 ~~and installation of mechanical ventilation to achieve the requirements in Table 2 of Appendix 13.~~

(b) **Within the Outer Control Boundary (OCB)** - Alterations and additions to existing buildings containing an activity sensitive to aircraft noise shall be designed to achieve an internal design sound level of 40 dB Ldn, based on the 2037 noise contours, at the same time as ~~meeting the ventilation requirements in~~ providing ventilation with openable windows or where required with the mechanical ventilation specified in Table 2 of Appendix 13. ~~Compliance can either be~~ shall be demonstrated by either, installation of mechanical ventilation to achieve the requirements in Table 2 of Appendix 13 or by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will not exceed the internal design sound level with the windows open ~~or by installation of mechanical ventilation to achieve the requirements in Table 2 of Appendix 13.~~

- (l) The definition of ASAN should be reinstated to the definition in the notified version of Plan Change 35:

Activity Sensitive to Aircraft Noise (ASAN) – means any Residential Activity, Visitor Accommodation, Community Activity and Day Care Facility including all outdoor spaces associated with any education facility but excludes police stations, fire stations, courthouses, probation and detention centres, government and local government offices.

A definition of 2037 Noise Contours as follows or similar should be included and all references to 2037 noise contours should be change to 2037 Noise Contours:

2037 Noise Contours: means the predicted airport noise contours for Queenstown Airport for the year 2037 in 1 dB increments from 70 dB Ldn to 55 dB Ldn inclusive. Note: These contours shall be available from the Council and in the Airport Noise Management Plan.

- (m) Such further or other relief or other consequential amendments that are considered appropriate and necessary by the Court to give effect to the matters of concern set out in this Notice of Appeal.

10. QAC attaches the following documents to this notice:

- (a) a copy of QAC's submission marked **A**;
- (b) a copy of the relevant decision marked **B**;
- (c) a list of names and addresses of persons to be served with a copy of this notice marked **C**.

QUEENSTOWN AIRPORT CORPORATION LIMITED

by its solicitors and
authorised agents **LANE NEAVE**

Per:



Amanda Dewar

Date: 17 January 2011

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Advice to recipients of copy of notice of appeal*How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and further submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington, or Christchurch.