

In the Matter of the Resource Management Act 1991

And

In the Matter of an appeal under Clause 14 of the First Schedule to the Act

Between Queenstown Airport Corporation Limited

Appellant

And Otago Regional Council

Respondent

Notice of Appeal

Dated: 9 December 2016

To: **The Registrar
Environment Court
Christchurch**

1. Queenstown Airport Corporation (**Appellant**) appeals against decisions of the Otago Regional Council (**Respondent**) on the Proposed Otago Regional Policy Statement (**Proposed RPS**).
2. The Appellant made a submission and further submission on the Proposed RPS.
3. The Appellant is not a trade competitor for the purposes of section 308D of the Act.
4. The Appellant received notice of the decisions on 3 October 2016. The period for filing a notice of appeal was extended until 9 December 2016.
5. The decisions were made by the Respondent.
6. **The decisions appealed, and the reasons for the appeal are as follows:**

(a) **Policy 1.1.2 – Economic Wellbeing**

(i) The decision appealed is as follows:

(A) The inclusion of new Policy 1.1.2 which relates to economic wellbeing.

(ii) The reasons for the appeal are as follows:

(A) The policy was not included in the Proposed RPS as notified.

(B) The policy provides that the economic wellbeing of Otago's people and communities should be provided for "only if" the adverse effects of the use and development of natural and physical resources can be managed to "give effect to" the objectives and policies of the Proposed RPS. The policy does not accord with any requirements stated in the Act and is contrary to section 5.

(C) Development proposals are not required to “give effect” to an RPS. Rather, this is a requirement for councils when preparing their regional and district plans.

(D) This policy fails to recognise the economic benefit and community wellbeing that can be derived from the use and development of natural and physical resources.

(b) **Objective 3.2 – Otago’s significant and highly valued natural resources are identified, and protected or enhanced.**

(i) The decision appealed is as follows:

(A) The rejection of the Appellant’s submission to include reference to “inappropriate” subdivision, use and development in the drafting of the objective.

(ii) The reasons for the appeal are as follows:

(A) The wording of the objective could be construed so as to require that all development within areas identified as significant or highly valued must be prevented or avoided. This is inappropriate, as there are various functional, technical, operational or safety requirements associated with significant infrastructure facilities that may necessitate the siting or undertaking of activities in such areas of the Region.

(B) It is more appropriate that the objective be drafted so as to provide for the consideration of effects and their appropriate management in such locations.

(c) **Policy 3.2.4 – Managing outstanding natural features, landscapes and seascapes**

(i) The decision appealed is as follows:

- (A) The inclusion of this policy, absent substantial amendment.
- (ii) The reasons for the appeal are as follows:
 - (A) The policy inappropriately conflates various Part 2 matters and provisions of the New Zealand Coastal Policy Statement, which results in drafting that is confused and overly onerous.
 - (B) The policy requires a higher level of protection of outstanding natural features and landscapes than is required by section 6 of the Act.
 - (C) The policy may preclude important physical resources such as infrastructure from establishing in areas of outstanding natural value, even though these activities may be appropriate in some instances.
 - (D) The policy has no regard for the scale or significance of adverse effects that ought to be avoided. Rather, it requires the blanket avoidance of adverse effects, even if such are effects are minor, which is inappropriate.
- (d) **Objective 4.3 – Infrastructure is managed and developed in a sustainable way**
 - (i) The decision appealed is as follows:
 - (A) The redrafting of notified Objectives 3.4 and 3.5 to create new Objective 4.3 and the drafting of that new Objective.
 - (ii) The reasons for the appeal are as follows:
 - (A) The objective seeks to control the management and development of infrastructure, which is inappropriate as there are commercial, economic and other imperatives that drive the management and development of such facilities.

(B) The Proposed RPS should instead be concerned to ensure that development, use, operation and maintenance of infrastructure (particularly infrastructure of national or regional significance) is appropriately enabled, and that its related effects are appropriately managed.

(e) **Policy 4.3.1 – Managing infrastructure activities**

(i) The decision appealed is as follows:

(A) The policy wording to “manage infrastructure activities” and the requirement to achieve, contemporaneously, all of the outcomes specified in the policy.

(ii) The reasons for the appeal are as follows:

(A) The policy seeks to manage infrastructure activities, rather than the effects of such activities, which is inappropriate. The management of infrastructure activities is ultimately driven by commercial, economic and other imperatives, not all of which are resource management related, nor give rise to relevant effects.

(B) The requirement in the policy to achieve, contemporaneously, all of the outcomes specified in sub-clauses (a) – (g) is inappropriate as there are inherent conflicts between the sub-clauses and it may be impossible and unnecessary to achieve all of the specified outcomes in any given case.

(C) The policy does not allow for a broad range of matters to be considered and assessed on balance when considering infrastructure development proposals.

(f) **Policy 4.3.3 – Adverse effects of nationally and regionally significant infrastructure**

(i) The decisions appealed are as follows:

(A) The requirement in the policy to “minimise adverse effects” of infrastructure, in particular by giving preference to avoiding their location in the areas specified in the policy.

(B) The hierarchy for managing the effects of infrastructure, as stated in the policy.

(ii) The reasons for the appeal are as follows:

(A) Given the strategic importance of national and regional infrastructure the management regime stated in the policy is neither necessary nor appropriate.

(B) The hierarchy as to the management of effects established by the policy does not recognise that there may be locational, technical, operational and/or functional constraints associated with the siting of infrastructure.

(C) The requirement to avoid the location of infrastructure in areas of significance as the first preference for managing effects is overly onerous.

(g) **Objectives and policies**

(i) The decision appealed is as follows:

(A) The rejection of the Appellant’s submission to include a new objective and associated policy that recognise the significant contribution airports make to the economic, social and cultural wellbeing of the Region.

(ii) The reasons for the appeal are as follows:

- (A) Airports are significant contributors to the Region's economy, particularly Queenstown Airport, where tourism facilitated by the Airport is a significant contributor to the District's and Region's economy.
- (B) The Region's airports play a vital role in the success of a modern economy. They act as a gateway for residents, visitors and business travellers, and provide and facilitate national and international connections to the Region.
- (C) Queenstown Airport in particular is infrastructure that is of significant, strategic and national importance, which should be better and more appropriately recognised in the Proposed RPS.
- (D) The resource management issues facing airports are unique, and this also needs to be better and more appropriately recognised and provided for in the Proposed RPS.

(h) **Policy 4.6.9 – Contaminated Land**

- (i) The decision appealed is as follows:
 - (A) The inclusion of the policy in the Proposed RPS.
- (ii) The reasons for the appeal are as follows:
 - (A) The policy is vague, unenforceable and inappropriate.
 - (B) Certain airport activities (for example, fuel areas) are included on the Ministry for the Environment's Hazardous Activities and Industries List. The use of hazardous substances within an airport could result in airport sites being classified as contaminated land and, by virtue of the policy, give rise to a requirement that they be avoided. This would have significant adverse implications for the

operation of airports and the benefits they provide to the Region, and is inappropriate.

(i) **Policy 5.2.3 – Managing historic heritage**

(i) The decision appealed is as follows:

(A) The hierarchy established by Policy 5.2.3 with respect to avoiding, remedying or mitigating adverse effects on areas and places of historic heritage.

(ii) The reasons for the appeal are as follows:

(A) The policy goes beyond the requirements of section 6(f) of the Act.

(B) This policy may constrain the development of significant infrastructure in that it fails to provide for the remedying or mitigation of potentially adverse effects as an appropriate management response to historic heritage issues.

(j) **Policy 5.3.3 – Distribution of commercial activities**

(i) The decision appealed is as follows:

(A) The focus within the policy on the central business district.

(ii) The reasons for the appeal are as follows:

(A) The policy fails to recognise the role of airports as key economic centres and inappropriately focuses on central business districts. The focus of the policy is too narrow in this regard.

(B) It is inappropriate to encourage growth and development of commercial activities within the central business district only.

7. **The provisions identified above are appealed for the further reasons that:**

(a) They are not the most appropriate way to achieve the purpose of the Act;

- (b) They do not achieve integrated management of the natural and physical resources of the Region; and
- (c) They do not address actual and potential effects of the use, development or protection of natural and physical resources of regional significance.

8. The Appellant seeks the following relief:

- (a) That Policy 1.1.2 be deleted.
- (b) That Objective 3.2 be amended as follows:

Otago's significant and highly valued natural resources are identified, and protected ~~or enhanced~~ from inappropriate subdivision, use or development.

- (c) That Policy 3.2.4 be deleted or amended so as to address the Appellant's concerns, as stated in this notice.
- (d) That Objective 4.3 be deleted.
- (e) That Policy 4.3.1 be deleted, or amended so as to provide for the development of infrastructure where the adverse effects on the environment can be appropriately managed, and/or where the development will give rise to benefits on a local, regional or national scale.
- (f) That Policy 4.3.3 be deleted, or amended to address the Appellant's concerns, as stated in this notice.
- (g) That the following objective and policy (or with similar or like effect) be included in the Proposed RPS:

New Objective:

Recognise the benefits of enabling people and communities to provide for their social, economic and cultural wellbeing and health and safety and to provide for infrastructure which is Regionally Significant.

New Policy:

Enable the development, maintenance, upgrading and expansion, of Regionally Significant infrastructure in appropriate locations throughout the region.

- (h) That Policy 4.6.9 be deleted.
- (i) That Policy 5.2.3 be deleted, or amended as follows:
To recognise and provide for the protection of historic heritage resource of the region from inappropriate subdivision, use and development by:
 - a. Identifying and assessing the significance of the historic heritage resources within the region;
 - b. Having regard to any relevant entry in the Historic Places register in the process of identifying and assessing the historic heritage resource;
 - c. Considering historic heritage items, places, or areas of significance or importance to communities in the process of identifying and assessing the historic heritage resource;
 - d. Recognising that knowledge about some historic heritage may be culturally sensitive and support protection of those areas through the maintenance of silent files held by local authorities;
 - e. Recognise that there may be sites of historic heritage which are unknown and having appropriate accidental discovery protocols in place to manage the discovery of such features
- (j) That Policy 5.3.3 be amended as follows:
Manage the distribution of commercial activities in larger urban areas, to maintain the vibrancy of the central business district and town centres and support local commercial needs, by all of the following:
 - a. *Enabling a wide variety of commercial, social and cultural activities in appropriate locations ~~the central business district;~~*
 - b. *Encouraging the adaptive reuse of existing buildings;*
 - c. ~~*Avoiding unplanned extension of commercial activities that has significant adverse effects on the central business district and town centres, including on the efficient use of infrastructure, employment and services;*~~
 - d. *Enabling smaller town centres to service local community needs.*
- (k) Or, as alternative relief to that stated in (a) – (j) above, the relief stated in the Appellant’s submission and further submission;
- (l) Or, as further alternative relief to that stated above, that the Proposed RPS be amended in a similar or such other way as may be appropriate to address the matters raised in this notice;
- (m) And, any consequential changes, amendments or decisions that may be required to address the matters raised in this notice;
- (n) And/or, such other relief as the Court considers appropriate.

9. Copies of the following documents are **attached** to this appeal:
- (a) The Appellant's submission and further submission (**Annexure A**);
 - (b) The relevant parts of the Respondent's decisions (**Annexure B**); and
 - (c) A list of the names and addresses of the persons to be served with a copy of this notice of appeal (**Annexure C**).



Queenstown Airport Corporation Limited

By its solicitors and authorised agents

Lane Neave: per. R M Wolt

Date: 9 December 2016

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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.

To become a party to the appeal, you must,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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 or service 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 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 in Auckland, Wellington, or Christchurch.