

**IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
WAIHŌPAI ROHE**

**CIV 2019-425-000112
[2021] NZHC 852**

UNDER The Judicial Review Procedure Act 2016

BETWEEN WĀNAKA STAKEHOLDERS GROUP
INCORPORATED
Applicant

AND QUEENSTOWN LAKES DISTRICT
COUNCIL
First Respondent

AND QUEENSTOWN AIRPORT
CORPORATION LIMITED
Second Respondent

Hearing: 21-25 September 2020

Appearances: J G Miles QC, R J Hollyman QC, B R Latimour and
N G Lawrence for the Applicant
N M H Whittington and M J Jagusch and A Balme for the First
Respondent
C J Curran and M L Campbell for the Second Respondent

Judgment: 21 April 2021

JUDGMENT OF VAN BOHEMEN J

*This judgment was delivered by me on 21 April 2021 at 3.00pm
Pursuant to Rule 11.5 of the High Court Rules*

.....
Registrar/Deputy Registrar

Solicitors/Counsel:
Richmond Chambers, Auckland
Fyfe Karamaena Solicitors, Wānaka
Meredith Connell, Wellington
Russell McVeagh, Wellington

TABLE OF CONTENTS

	[Para No.]
Introduction	1
Relevant background	11
<i>The parties</i>	11
<i>Wanaka Airport</i>	15
Reports into future management of and operations at Wanaka Airport	20
<i>Astral Report</i>	22
<i>Rationale Report</i>	27
<i>Arup Siting Study</i>	39
<i>Arup Concept of Operations Report</i>	43
The Statement of Proposal	48
The Special Consultative Procedure	59
Other developments prior to finalisation of Lease terms	65
<i>Strategic Alliance Agreement between QAC and Auckland International Airport Ltd</i>	65
<i>Purchases of land adjacent to Wanaka Airport</i>	71
<i>Provision of final Arup Siting Study and Arup Concept of Operations Report</i>	74
<i>QAC initiates public consultation on master plan options for Queenstown Airport</i>	75
Negotiation and finalisation of the Lease	78
<i>The Heads of Terms</i>	78
<i>The Lease</i>	82
Developments following execution of the Lease	86
<i>Media releases / engagement with the public</i>	86
<i>SOI for 2019-2021</i>	89
<i>Requests for copy of lease</i>	92
<i>QAC renews engagement with stakeholders and public on Wanaka master plan</i>	93
<i>SOI for 2020 – 2022</i>	96
<i>Mayor announces pause in airport planning and makes Lease public</i>	99
<i>Further revisions to and discussions of 2020 – 2022 SOI</i>	102
<i>Developments with Project Pure following execution of Lease</i>	107
Relevant provisions of Local Government Act 2002	112
<i>Purpose, role and principles</i>	112
<i>Planning and decision-making</i>	117
<i>The long-term plan</i>	132
<i>Council-controlled organisations and statements of intent</i>	136
Questions for decision	143

What was the Lease intended to achieve?	147
Did the Lease transfer ownership of Wanaka Airport to QAC?	167
<i>Submissions</i>	<i>168</i>
<i>Discussion</i>	<i>171</i>
Did the Lease transfer control of Wanaka Airport to QAC?	177
<i>Submissions</i>	<i>177</i>
<i>Discussion</i>	<i>181</i>
Did the Lease transfer control of Project Pure to QAC?	190
Has QLDC taken a decision to alter significantly the level of service provision at Wanaka Airport?	193
<i>Discussion</i>	<i>198</i>
Did the consultation carried out by QLDC on the basis of the Statement of Proposal comply with the requirements of the LGA?	206
<i>Submissions of QLDC</i>	<i>207</i>
<i>Discussion</i>	<i>208</i>
Was QLDC's decision to enter into the Lease reasonable and take into account all relevant considerations?	223
What relief should be granted?	224
Result	235
Costs	237

Introduction

[1] The Wanaka Stakeholders Group Inc (WSG) has applied to review decisions of the Queenstown Lakes District Council (QLDC) concerning the management and operation of the Wanaka Airport by Queenstown Airport Company Ltd (QAC). WSG considers those decisions mean that QLDC has decided that Wanaka Airport is to be developed as a complementary airport to the Queenstown Airport and used for scheduled air services, including jet services, from Auckland and other New Zealand airports and from some Australian airports. WSG has concerns about the environmental, social and economic consequences of such a development.

[2] The application seeks to review decisions by QLDC to grant QAC a 100 year, perpetually renewable, lease of the land on which Wanaka Airport is situated (the Lease) and, under the Lease, to sell the airport buildings, the runway and associated infrastructure to the QAC, and to grant rights to QAC in relation to the future development of the Wanaka wastewater plant known as Project Pure that is located at the Airport.

[3] WSG alleges that in taking these and related decisions, QLDC did not comply with requirements of the Local Government Act 2002 (LGA). In particular, WSG alleges that:

- (a) The terms of the Lease mean that QLDC has transferred ownership or control of Wanaka Airport and has transferred control of Project Pure without complying with ss 97(1)(b) and 97(2) of the LGA. Those sections require decisions on the transfer of ownership and control of strategic assets such as Wanaka Airport and Project Pure to be explicitly provided for in QLDC's long-term plan.
- (b) The decision to grant the Lease and related decisions by QLDC and the QAC amount to a decision that Wanaka Airport is to be developed into a jet-capable airport and, therefore, to a decision to alter significantly the level of service provision for the significant activity undertaken at the airport without complying with ss 97(1)(a) and 97(2) of the LGA. Those subsections require a decision to alter significantly the level of

service provision for any significant activity to be explicitly provided for in QLDC's long-term plan.

- (c) The decision to enter into the Lease were "significant decisions" within the meaning of s 76(3)(b) of the LGA, and in taking those decisions, QLDC failed to comply with the requirements of ss 76, 77, 78 and 82 of the LGA, which set out the requirements of disclosure and consultation on significant decisions.
- (d) The decision to grant the Lease on the terms provided was unreasonable and failed to take into account relevant considerations.

[4] WSG seeks:

- (a) A declaration that the decisions of QLDC to enter into the Lease and to permit Wanaka Airport to be developed and operated as a dual airport with Queenstown Airport were unlawful;
- (b) A declaration that the Lease and related agreements between QLDC and QAC permitting QAC to develop and operate Wanaka Airport as a dual airport with Queenstown Airport and to accept jet aircraft operations at Wanaka Airport are illegal contracts and of no effect;
- (c) An order restraining QLDC and QAC from taking any steps to develop and operate Wanaka Airport as a dual airport with Queenstown Airport.

[5] QLDC and QAC agree that Wanaka Airport and Project Pure are strategic assets. QLDC and QAC say no decision has been taken to develop Wanaka airport into a jet-capable airport and that, if such a decision was to be taken, the public of Wanaka and the Upper Clutha would be consulted beforehand. They also say that in granting the Lease, QLDC was not transferring ownership or control of the Airport to QAC and was not transferring control of Project Pure to the QAC. They also say that in entering into the Lease, no decision has been taken to alter significantly the level of air services provided at Wanaka Airport.

[6] QLDC and QAC say there has been no transfer of ownership of the Airport because title to the land remains with QLDC. They also say that QLDC retains control of the Airport and of Project Pure because of the powers that QLDC retains under the Lease and because QLDC can direct the QAC through the statement of intent (SOI) that QAC must prepare each year in accordance with the LGA. They say further that any decision to increase the level of air services at Wanaka Airport will be taken only in the context of preparing a master plan for the Airport and that that process is in its early stages. For these reasons, QLDC was under no obligation to include the decision to grant the Lease in its long-term plan.

[7] QLDC and QAC also say that the disclosure and consultation undertaken prior to granting the Lease complied with the requirements of ss 76, 77, 78 and 82 of the LGA. They say that the Statement of Proposal on which the consultation was based identified a long-term Lease to the QAC as QLDC's preferred option for the future management and governance of Wanaka Airport and that is the option to which QLDC and QAC agreed under the Lease. They also deny that the consultation undertaken prior to the granting of the Lease was unreasonable and failed to take into account relevant considerations.

[8] QLDC and QAC say further that, even if the consultation undertaken prior to the conclusion of the Lease did not comply adequately with the LGA's requirements or was unreasonable or failed to take into account relevant considerations, the Lease should not be set aside because of the disruption that would be caused to the QAC and those who have entered into new contractual arrangements with QAC based on the Lease.

[9] This proceeding was commenced prior to the outbreak of the COVID-19 pandemic. All parties accept that the closing of New Zealand's borders and the loss of international tourism as a consequence of the pandemic are likely to mean that no decisions regarding the future of air services into the Queenstown Lakes District will be taken for some time, regardless of the outcome of this proceeding.

[10] The hearing of WSG's application took place after the announcement by Christchurch International Airport Ltd that it had acquired land at Tarras,

approximately 25km from Wanaka Airport, for the purposes of developing a new international airport. That announcement has no bearing on the hearing of WSG's application or this decision. It would seem likely, however, that developments at Tarras will have implications for whatever happens at Wanaka and vice versa.

Relevant background

The parties

[11] WSG is a community group that represents the residents of Wanaka and the Upper Clutha Valley. WSG has approximately 3,500 members which include individual residential ratepayers and business owners. WSG's membership grew substantially after residents became concerned about the possible development of Wanaka Airport.

[12] QLDC is the territorial authority for the Queenstown Lakes District. It has legal title to the land comprising the Wanaka Airport. It also built and operates Project Pure, comprising the wastewater treatment plant and associated disposal fields, which are located on land owned by QLDC within the perimeter of Wanaka Airport.

[13] QAC is a council-controlled organisation (CCO) and a council-controlled trading organisation (CCTO) for the purposes of the LGA. QAC is also an airport authority under the Airport Authorities Act 1966. QAC owns and operates the Queenstown Airport, which, prior to the COVID-19 pandemic, was New Zealand's fourth busiest airport by passenger numbers.

[14] QLDC holds 75.01 per cent of the shares in QAC. Auckland International Airport Ltd (AIAL), the owner and operator of New Zealand's largest airport, holds the remaining 24.99 per cent of the shares in QAC. QAC and AIAL have a Strategic Alliance Agreement under which they have agreed to seek to grow travel, trade and tourism activity at airports they own or manage.

Wanaka Airport

[15] At present, Wanaka Airport is a relatively small facility located on State Highway 6, approximately 10km southeast of Wanaka, 2.5km west of Luggate and

approximately 76km northwest of Queenstown. The airport land comprises approximately 127ha. The Airport has a sealed runway 1,200m in length and a secondary parallel unsealed runway 840m in length that is used primarily by smaller and vintage aircraft.

[16] The main airport assets are the sealed runway, taxiway, apron and carparks. The Airport also has privately-owned hangars and other buildings on leased sites that are used by private aviators and tourism businesses. The Airport is also the home of Warbirds Over Wanaka, which stages biennial airshows at the airport. An area of the Airport is also leased by the United States National Aeronautics and Space Administration (NASA) for its scientific balloon programme.

[17] To date, Wanaka Airport has been used primarily for general aviation, that is non-scheduled air services. Between 2004 and 2013, scheduled air services using smaller aircraft operated out of Wanaka Airport, but these services were discontinued in January 2013, apparently for commercial reasons. The current sealed runway at the Airport does not have the capacity for either narrow body (Code C) jet aircraft or wide body (Code E) jet aircraft.

[18] Since 2007, Project Pure has also been located within the Airport on land separately designated for the purpose of a wastewater treatment plant.

[19] From 2009 to March 2018, QAC operated Wanaka Airport under a Management Services Agreement, under the governance of a committee of QLDC councillors known as the Wanaka Airport Management Committee.

Reports into future management of and operations at Wanaka Airport

[20] Between 2015 and 2017, QLDC and QAC jointly and separately commissioned reports from consultant experts on options for the future management of Wanaka Airport and future operations at the Airport. Those reports took into account likely future developments at Queenstown Airport which, up until the COVID-19 pandemic, had been on a path of sustained growth but which was facing constraints in its further development, in particular, because of constraints on

extending its runway to accommodate wide body jets and the noise boundaries within which it is required to operate.

[21] The relevant reports for the purposes of this proceeding are:

- (a) The Astral Report prepared by Astral Ltd for QLDC and QAC, which considered major issues facing Wanaka Airport and proposals to address them over a 40 to 50-year time horizon;
- (b) The Rationale Report prepared by Rationale Ltd for QLDC after consideration of the Astral Report and which sought to identify a strategic direction or governance model for Wanaka Airport;
- (c) The Arup Siting Study prepared by Arup Ltd for QAC which investigated potential alternative airport sites that could accommodate, either as a new airport in substitution for Queenstown Airport or in a dual airport operation with Queenstown Airport, the forecasted future demand for Queenstown Airport;
- (d) The draft Arup Concept of Operations Report (Arup COP Report) prepared by Arup Ltd for QAC, which was intended to enable QAC to understand the opportunity to accommodate commercial aircraft operations at Wanaka Airport as part of a dual airport operation with Queenstown Airport.

Astral Report

[22] Richard Pope, the Property Director of QLDC, says that the Astral Report was commissioned in April 2015 to provide an up-to-date basis for making long-term decisions on planning and development for Wanaka Airport. The Report was prepared over seven months in consultation with aviation experts, key stakeholders and a steering group of representatives from QLDC and QAC. A close to final version of the report was presented to a QLDC councillor workshop on 5 April 2016. The final Report was dated 20 April 2016.

[23] The Astral Report noted that the role of Wanaka Airport:

... has been identified as being a complementary and supplementary facility to Queenstown Airport, able to accommodate aircraft spill over from Queenstown which is increasingly likely to occur as Queenstown focuses its capacity on accommodating jet air transport flights. Wanaka could increasingly become the base for general aviation (GA) in the region as well as accommodating scheduled and charter air transport service itself. Scientific aviation activities, such as the NASA balloon programme, may become increasingly important.

[24] The Astral Report recommended that recommencement of scheduled air services should be included in future planning. However, the Report also noted that scheduled services appeared unlikely to resume until Wanaka grew substantially in population or as “hub and spoke” demand emerged for turbo-prop services that could not be accommodated at Queenstown Airport. It said the financial return of such services would be enhanced by the use of 50-seater, turbo-prop aircraft which could operate from the existing runway length, subject to the provision of runway end safety areas, which would be relatively easy to provide. It said turbo-prop aircraft, rather than jets, were best suited to the existing runway length. The Report made no reference to the possibility of scheduled commercial jet services being introduced to Wanaka Airport.

[25] The Astral Report discussed five governance and management models for the Airport and recommended establishing Wanaka Airport as a separate stand-alone CCTO or selling the Airport to QAC. It considered these options as likely to be best in ensuring Wanaka Airport achieved its long-term strategic potential while retaining local control and ownership. None of the options involved a long-term lease to QAC.

[26] The Astral Report was adopted by QLDC at its meeting on 28 April 2016. As recorded in the minutes of that meeting, QLDC resolved to adopt the Report and instructed Council officers to investigate the governance options further and to report back to QLDC as soon as practicable on a preferred governance option for Wanaka Airport.

Rationale Report

[27] Mr Pope says Rationale was engaged to assist with the development and assessment of possible governance and management options. Rationale facilitated three workshops of selected QLDC councillors and staff to develop an indicative business case, and a further Councillor workshop to consider the different modes of management and to agree a preferred option to form the basis of a draft statement of proposal for consultation with stakeholders and the public.

[28] The business case in the Rationale Report aimed to ensure that QLDC had a clear understanding of the investments required to enable Wanaka Airport to deliver the right level of service in a manner consistent with QLDC's broader strategic objectives. In discussing the strategic value of the Airport, the Report adopted the statement in the Astral Report set out at [23] above concerning the complementary and supplementary role of Wanaka Airport to Queenstown Airport. It also noted the constraints on growth of the Queenstown Airport and noted that Wanaka Airport was an obvious proposition to provide an increased level of air services to the region.

[29] The Rationale Report noted that QLDC was a relatively small organisation that had become practised at finding alternative forms of management or governance for assets that fell outside its immediate expertise. It gave, as examples, the establishment of QAC to manage Queenstown Airport, QAC's provision of management services for the Wanaka Airport and Glenorchy Aerodrome, and the granting of a 25-year lease to a campground operator to manage and operate Queenstown's camping grounds, which were also strategic assets.

[30] The Rationale Report said there was "significant potential for growth" at Wanaka Airport which, if planned and managed well, could provide not only increased services to the Wanaka area but also reduce pressure on Queenstown Airport and the potential for a healthy return on investment in the future. It noted that for there to be significant growth in passenger numbers at Wanaka, it was likely that larger aircraft would need to operate in and out of Wanaka and that, under that scenario, investment in Wanaka Airport would be required to ensure compliance with the requirements of the Civil Aviation Authority for such operations.

[31] There was no discussion in the Rationale Report of scheduled jet services being provided at Wanaka Airport.

[32] The Rationale Report said the need for change in the management of Wanaka Airport had been known for some time, that potential options for future growth had been well-outlined in the Astral Report, and that what was needed was a governance structure that would identify in detail, and pursue the best outcome for the Airport and QLDC, both economically and in terms of delivery of air services.

[33] The Report considered the advantages and disadvantages of five shortlisted options that had been selected at the Councillor workshop for further economic analysis. The options were:

- (a) Option One: continuing with the status quo;
- (b) Option Two: continuing with the status quo but with enhanced planning and governance;
- (c) Option Three: a lease to QAC under which the operations, long-term planning and governance of Wanaka Airport would be transferred to QAC via enhanced management services under a long-term lease agreement;
- (d) Option Four: sale of Wanaka Airport to QAC; and
- (e) Option Five: either of Options Three or Four plus the inclusion of Glenorchy Aerodrome as part of a district-wide alignment of air services.

[34] The appraisal period for the five options was 30 years.

[35] The Report recommended Option Three, the advantages of which included that QLDC would receive regular income under the lease and that, as owner of the assets, QLDC would retain ultimate control over the direction of the airport and investment decisions. The reasons included that this option ensured that Queenstown and Wanaka

Airports would be run in a complementary manner, ownership of Wanaka Airport would be retained by QLDC, and control over the future direction of Wanaka Airport would be maintained via lease conditions and the QAC SOI.

[36] There was no discussion in the Report regarding the term of the lease.

[37] At its meeting on 29 September 2016, QLDC considered the final Rationale Report and a draft Statement of Proposal to form the basis of consultation in accordance with the Special Consultative Procedure under the LGA. A report prepared by Mr Pope stated that the preferred option of a long-term lease:

... transfers the operations, long-term planning and governance of Wanaka Airport to QAC. Ultimate ownership remains with the Council. The interest in the Airport granted by the Lease would incentivise QAC to make a significant capital investment in the Airport to improve its profitability. The Council would retain ultimate control of the Airport through mechanisms retained in the Lease and, because QAC is a CCTO, through the Statement of Intent. The involvement of the Council through those means would provide a way in which the Wanaka community could continue to have a say in the future direction of the Airport.

[38] QLDC adopted the Statement of Proposal for consultation on the Wanaka Airport future governance and management model and directed Council officers to report back following completion of the Special Consultative Procedure.

Arup Siting Study

[39] Colin Keel, Chief Executive Officer of QAC, says the Astral Report was prepared while QAC was engaged in developing a master plan for Queenstown Airport. Mr Keel explains that a master plan is not a business plan, investment case or a business strategy. Rather, a master plan provides a conceptual layout for the future growth and development of an airport and typically covers matters such as infrastructure development, noise planning, transport connectivity, land acquisition, and demand. Mr Keel also explains that development of a master plan involves five stages: analysis of demand for air services and the opportunities and constraints of an airport; development of options; engagement with the community; identification of the final option; and implementation.

[40] Mr Keel says that during the master planning process, it had been identified that the Queenstown Airport's ability to accommodate forecast demand out to 2045 within the current airport's land and noise boundaries was constrained by various factors. As a result, in July 2016, QAC requested Arup to investigate potential alternative airport sites that could accommodate the forecasted demand for Queenstown Airport through a high-level siting study for an optional second airport to support operations at Queenstown Airport.

[41] The Arup Siting Study was provided to QAC in April 2017. The Siting Study stated that in order to understand the future airport development opportunities, it considered whether the sites under consideration could accommodate full Code E jet operations and also whether they could accommodate Code C jet operations. After considering all airport sites within a 140km radius of Queenstown, the Study shortlisted two airport sites – Wanaka/Hawea, being the current Wanaka Airport, and Mossburn/Five Rivers – involving three possible options:

- (a) A dual airport operation at Queenstown Airport and Wanaka Airport which assumed Code C aircraft at both airports as well as scheduled flights by turbo-prop aircraft;
- (b) A new airport at Wanaka that could be developed to accommodate Code E aircraft; and
- (c) A new airport at Mossburn/Five Rivers that could also be developed to accommodate Code E aircraft.

[42] The study recommended that the first option, the dual airport operation at Queenstown Airport and Wanaka Airport, should be carried forward, and noted that the existing Wanaka Airport was well-suited to expansion to Code C operations.

Arup Concept of Operations Report

[43] The draft Arup COP Report, which was the only version of the Report put in evidence, was dated 18 May 2017 and was produced shortly after presentation of the final version of the Arup Siting Study. As the Arup COP Report stated and Mr Keel

confirms, the purpose of the Report was to establish at a high level whether Wanaka Airport could accommodate commercial aircraft operations.

[44] The Arup COP Report recorded that the assumptions on which the Concept of Operations was based included:

- (a) The use of Code C jets on a runway of 1,800m, but with the option of extending the runway in the future;
- (b) The initial phase of expansion to 2025 would accommodate approximately 500,000 passengers per annum;
- (c) The second phase of expansion to 2045 would accommodate between 3.2 and 3.5 million passengers per annum.

[45] The Report envisaged a schedule of flights in 2025 that would involve four Code C jet flights per day from Auckland and Australia, as well as four turbo-prop flights from Wellington and Christchurch. It also assumed that by 2045, the aircraft mix serving Wanaka would be 100 per cent jets.¹

[46] The Report identified preferred runway options for both the 2025 and 2045 phases, using the existing runway alignment although, under one option, the runway would be moved 150m to the northeast of the existing runway. The recommended options were for a runway of 1,800m that would accommodate Code C jets.

[47] There was no reference in the Report to Project Pure or the impact of any of the runway options on Project Pure.

The Statement of Proposal

[48] The Statement of Proposal is the proposal on which QLDC consulted the public of the Queenstown District on its proposal to grant a long-term lease of the Wanaka

¹ The particular sentence in the report stated, “The aircraft mix serving Wanaka in 2025 would be 100% jets.”. However, this was an assumption stated under the heading “2045 Schedule”. I infer that “2025” was a typographical error and should have read “2045.”

Airport to QAC. As discussed above, the Statement of Proposal was adopted by QLDC at its meeting on 29 September 2016 when it considered the final version of the Rationale Report. In that respect, the Statement of Proposal reflected QLDC's acceptance of the Rationale Report.

[49] The Statement of Proposal is a brief document. It is headed:

Statement of Proposal

WANAKA AIRPORT – A LONG-TERM LEASE?

[50] On the page headed "SUMMARY", the Statement of Proposal said QLDC was considering options for changing the way Wanaka Airport was managed and governed, and was presenting its preferred option, which was to enter into a long-term lease and management arrangement with QLDC. It also said the lease would be structured to incentivise investment by QAC in Wanaka Airport to enable the Airport to meet the projected growth in the District's air services over the next decade or longer. It also said the proposal was the result of several months of investigations and took into account the current and future needs of the wider Queenstown Lakes district.

[51] On the page headed "Background", the Statement of Proposal said QLDC did not expect the level of day to day operational governance of the Airport would change but the long-term planning and vision would be increased. It also said the level of investment that QLDC was able to put into the Airport was insufficient to achieve the development required over the next decade or more to provide for the expected growth of the airport.

[52] Like the Astral and Rationale Reports, the Statement of Proposal said the future role of Wanaka Airport had been identified as being a complementary and supplementary facility to Queenstown Airport, able to accommodate aircraft spill-over from Queenstown. It went on to state:

Spill-over of general aviation services is increasingly likely to occur as Queenstown focuses its capacity on accommodating jet services, and can drive economic growth in Wanaka.

[53] The Statement of Proposal noted that Wanaka Airport was internationally renowned for the Warbirds Over Wanaka air show and said the Airport could also become “the base for general aviation in the region as well as accommodating scheduled and charter air transport services in its own right.” It also referred to the presence of the NASA balloon programme. The Statement of Proposal had illustrations of both Warbirds over Wanaka aircraft and the NASA balloon operation.

[54] Under the heading “WHAT ARE THE OPTIONS?”, the Statement of Proposal set out the five options discussed in the Rationale Report and summarised the advantages and disadvantages of each. The advantages of Option Three, a Lease to QAC, included that QLDC would receive regular income from the leasing agreement as well as 75.01 per cent of any dividend payments to shareholders, and that QLDC and the community would be able to influence investment decisions and the direction of the airport through the QAC’s SOI and the Letter of Expectation that QLDC can send to QAC.

[55] The Statement of Proposal said QLDC’s preferred option was to enter into a long-term lease and management agreement with QAC. It said this option would transfer long-term planning and governance of Wanaka Airport to QAC, would incentivise QAC to make a significant capital investment in the Airport to improve its profitability, and would require QAC to take a longer-term approach to governance and planning.

[56] The Statement of Proposal said QLDC would retain ultimate control of the direction of the Airport through mechanisms contained in the lease and through the Letter of Expectation and SOI processes. It also said the proposed governance approach was similar to that taken by QLDC in respect of the District’s campgrounds where QLDC had leased the campground assets to a third-party operator.

[57] There was no discussion in the Statement of Proposal about the likely length of the lease term, the scale of investment or the level of activity that might result from the change of governance and management. The only indication that jet services might be in prospect was a graphic illustration of a jet coming over a mountain range on the page headed “WHAT IS THE PREFERRED OPTION?”

[58] While, as Mr Pope confirms, the Statement of Proposal followed on from QLDC's approval of the Astral and Rationale Reports, there was no reference to the Astral Report in the Statement of Proposal and only one reference to the Rationale Report – as noted above.

The Special Consultative Procedure

[59] The Statement of Proposal was publicly notified on 8 October 2016 with submissions open for seven weeks – to 25 November 2016. This was a considerably longer period than that one month required under the LGA.² On 10 November 2016, a public information meeting was held in Wanaka. On the same day, a further meeting was held at Wanaka Airport, principally with those who had interests at the Airport.

[60] The Statement of Proposal was the only document on which the Special Consultative Procedure was based, but the evidence shows that residents were aware of the Astral and Rationale Reports of Wanaka and some residents accessed those reports on QLDC's website.

[61] Seventy-eight written submissions were received. Twenty-six submitters made oral submissions at a public hearing on 13 February 2017 by a panel comprising Councillors McLeod (chair), Lawton and Hill.

[62] A report to QLDC for its meeting on 20 April 2017 recorded that the hearing panel had determined that QAC, under a long term lease arrangement with suitable incentives and control by the Council, was best placed to lead the creation of a strategic development plan for Wanaka Airport. The report also recorded that:

The Hearing panel makes that recommendation noting that [the] strategic master plan for the airport will need to accommodate a range of community and commercial requirements including general aviation, recreation, education and engineering functions. It will also need to identify appropriate community engagement and communication programme.

[63] At its meeting on 20 April 2017, QLDC agreed that the future governance and management of the Wanaka Airport would be under a long-term lease to the QAC and

² Section 83(1)(b)(iii).

delegated to the Mayor, Mr Theelen, QLDC's Chief Executive Officer (CEO), Councillor Hill and Councillor McLeod the power to negotiate and execute the lease and to engage with the QAC to make any changes necessary to QAC's SOI.

[64] The minutes of QLDC's meeting record that QLDC members stressed the importance of protecting the interests of existing Wanaka Airport users and of QAC maintaining a strong partnership with the community and agreed these issues should be addressed in the lease terms and the SOI. The minutes also record that Councillor Lawton noted that while the relationship between Council and QAC was currently good, the situation could change over a 33-year lease term.

Other developments prior to finalisation of Lease terms

Strategic Alliance Agreement between QAC and Auckland International Airport Ltd

[65] On 3 November 2016, after the notification of the Statement of Proposal but before the closure of submissions, QAC and AIAL signed a Strategic Alliance Agreement, replacing a similarly named Strategic Alliance Agreement dated 21 March 2011.

[66] The Introduction to the Strategic Alliance Agreement signed on 3 November 2016 recorded that QAC and AIAL were committed to aligning their respective business interests where appropriate to promote passenger growth through the Business and more widely through the airports owned or managed by them.

[67] Clause 1.1 defined the Business to mean the ownership and management of Queenstown Airport and management of Wanaka Airport and the going concerns of the various aeronautical, commercial and property related business activities of QAC.

[68] Clause 2 provided that the Agreement had a term of five years but would be automatically renewed for consecutive periods of five years unless one of the parties had given notice of intention not to renew.

[69] In Clause 3, which set out the Joint Purpose of the Agreement, the parties acknowledged that their primary purpose in entering into the Agreement was to

leverage the scale and connectivity of a multi-airport relationship to grow travel, trade and tourism activity at all airports wholly or partially owned or controlled by either of the parties, to deliver superior economic growth to the communities in which those airports are located and superior growth to each of those airports by steps set out in the clause.

[70] In Clause 4, the parties agreed that in working together to achieve the Joint Purpose, “Stretch Outcomes” set out in Schedule 1 of the Agreement had been identified as “aspirational deliverables for the parties to focus their efforts towards achieving by 30 June 2021.” The parties also agreed to set Annual Objectives to ensure momentum in delivering the Stretch Outcomes.

Purchases of land adjacent to Wanaka Airport

[71] On 9 December 2016, QAC settled the purchase of two parcels of land, totalling 106.5ha, adjacent to the Wanaka Airport for the price of \$6 million. On 23 March 2017, QAC settled the purchase of a further block of land, comprising 43ha, adjacent to the Wanaka Airport for the price of \$6.3 million.

[72] In public statements issued on 13 December and 2 March 2017, the Chair of QAC, John Gilks, confirmed the two purchases. In the first statement, Mr Gilks said the land purchased in December 2016 was critical to any plans for the future of Wanaka Airport and would complement the services provided at Queenstown Airport under a dual airport policy. He also noted that QAC would have preferred to have deferred the purchase until after completion of the QLDC governance review then under way but the QAC had decided to purchase the land when it was put on the market to avoid a situation where private developers might acquire the land for purposes other than future airport development.

[73] In the statement issued on 2 March 2017, Mr Gilks said the second acquisition provided the platform for future growth and development of Wanaka Airport for the long-term. He also said that, similar to the purchase in December 2016, the land bought in March 2017 had become available on the open market and QAC could not afford to take the risk that the land could be secured by private developers, thereby preventing or restricting the long-term development of Wanaka Airport.

Provision of final Arup Siting Study and Arup Concept of Operations Report

[74] As discussed above, in April 2017 the Arup Siting Study was provided to QAC. In May 2017, QAC received the draft Arup COP Report. QLDC says it did not see these reports until after the Lease had been negotiated and agreed with QAC.

QAC initiates public consultation on master plan options for Queenstown Airport

[75] On 29 August 2017, QAC published a paper on master plan options for Queenstown Airport, subtitled “Let’s start talking about tomorrow”. The paper explained that it set out a range of options for how Queenstown Airport could develop and that QAC was gathering views that would be taken into account when finalising the Master Plan.

[76] The paper noted that Queenstown Airport had had 7,277 scheduled airline landings and 1.89 million passenger movements in the year ending 30 June 2017. It also said QAC’s demand forecasting indicated that there would be 25,000 aircraft movements and 3.2 million passenger movements in 2025 and that these figures would grow to 55,000 aircraft movements and 7.1 million passenger movements in 2045. However, the paper also said that QAC considered that 5 million passenger movements per year was more sustainable for Queenstown Airport.

[77] The paper said that, in assessing how the forecast demand could be met, QAC had considered and rejected options for extending the runway at Queenstown Airport to accommodate wide bodied aircraft. Referring to the analysis in and using a diagram from the Arup Siting Study, the paper said QAC had evaluated the option of moving the airport to a new site and had concluded that the development of Queenstown Airport and a dual airport model were more viable. It said QAC intended to pursue the dual complementary airport model with Queenstown and Wanaka airports and that it would work with the community on future development plans for Wanaka Airport once the long-term lease was finalised with QLDC.

Negotiation and finalisation of the Lease

[78] Mr Pope says negotiations on the Lease commenced around June 2017. The negotiations continued through the rest of 2017 and into 2018. The Lease was executed on 8 March 2018.

The Heads of Terms

[79] As part of the negotiating process, on 8 January 2018 QLDC and QAC signed a Heads of Terms agreement that annexed a set of guiding principles and recorded key terms agreed by QLDC and QAC which were to form the basis for updating QAC's SOI and for developing the Lease and associated project documents.

[80] Among the matters agreed in the Heads of Terms were the land value and rental to be paid, the lease term of 100 years and how the Lease could continue beyond that term, the permitted use of the airport and provisions relating to Project Pure. The Heads of Terms also contained an amendment to QAC's then current SOI setting out QAC's commercial vision for Wanaka Airport and matters to be included in the next SOI.

[81] Annexed to the Heads of Terms were the "Wanaka Airport Guidance – Governing Principles". The 11 principles included the following:

1. QLDC and QAC are committed to the development of Wanaka Airport to support district growth and community needs.
2. QLDC and QAC support the operation, management, planning and development of Wanaka Airport by QAC as a key element of an integrated, complementary, district-wide strategy to foster the growth of aviation services.
3. QLDC and QAC acknowledge that the long-term Lease arrangement regarding Wanaka Airport should vest economic control of Wanaka Airport in QAC and its terms should encourage investment in the Airport by QAC.
4. QLDC and QAC agree that the governance model for Wanaka Airport will be effective and similar to the current model in place for Queenstown Airport.
5. QLDC and QAC agree Wanaka Airport should become an economically viable and sustainable business.

The Lease

[82] Key provisions of the Lease are:

- (a) The Lease is of the airport land recorded on the certificates of title specified in the Lease. The certificates of title do not include the land on which Project Pure is located.
- (b) The commencement date is 1 April 2018.
- (c) The Lease term is 100 years but after 100 years the term extends every year by one year unless notice of termination of the “perpetual extension arrangement” is given 30 years in advance, with the earliest date for such notice being the 70th anniversary of the commencement date.
- (d) The rent for the first 100 years is a lump sum payment of \$11.3 million, being the freehold market value of the land as at 1 March 2018 discounted by five per cent, as agreed in the Heads of Terms. The rent was paid on 3 April 2018. The rent after 100 years is to be agreed by the parties or determined in accordance with a procedure set out in the Lease.
- (e) The buildings and other improvements on the land, which include the runway, taxiway, apron, roads and carparks, are sold to QAC, on an as is where is basis, at their depreciated replacement value as at the commencement date.
- (f) The permitted use of the leased premises is an airport and ancillary or related activities and events and such other activities as QAC reasonably determines, provided the ancillary and related activities and events are permitted under the District Plan or QAC has obtained any necessary resource consents, and will not interfere, in QAC’s reasonable opinion, with the safe and efficient operation of the airport. QAC must also ensure the airport land is not used for any use, activity

or event that is not in the contemplation of QAC's SOI insofar as the SOI relates to the development and operation of Wanaka Airport.

- (g) In addition, QAC may not use the airport land other than for the permitted use without the prior written permission of QLDC.
- (h) QAC is responsible for all rates, taxes, charges and impositions in respect of the land and buildings, irrespective of their ownership; QAC is to be the ratepayer for the purposes of the Local Government (Rating) Act 2002; and QAC is to pay all charges in respect of all services, utilities and amenities supplied to or used by QAC on the land and in the buildings.
- (i) QAC is responsible for all future development of the Wanaka Airport and, except in specified situations, QLDC's consent is not required provided QAC has obtained all necessary building and resource consents and complied with those consents and other regulatory requirements. The specified situations are:
 - (i) During the final 10 years of the Lease term, QLDC's consent is required for capital expenditure on buildings that are part of the "core aeronautical activities" (as that term is defined) at the airport and exceeds \$10 million, adjusted for movement in the Consumer Price Index since the Commencement Date;
 - (ii) Where land adjoining or surrounding the airport land is developed or acquired for the purpose of core aeronautical activities, in which case the Lease sets out the rights and obligations of QLDC and QAC with respect to the land and any buildings and improvements.
- (j) At the expiry of the Lease term, QLDC must pay QAC compensation for all buildings and other improvements on the land provided there is an operating airport at the time.

- (k) QAC may assign the whole of its interest in the Lease or sublet parts of the Airport land only with the prior written consent of QLDC. QLDC may not unreasonably withhold or delay that consent if the assignee or sublessee is respectable, responsible, solvent and suitable, but may require QAC to demonstrate to QLDC's satisfaction that the proposed assignee or sublessee is respectable, responsible, suitably qualified, of sound financial standing and intending to use the land for the permitted use specified in the Lease. However, QAC may sublet or licence any part of the land without QLDC's consent where the permitted use under the sublease or license is consistent with the permitted use under the Lease and the sublease or license does not extend beyond the term of the Lease. Even so, QLDC's consent is required if the sublease or license is longer than 35 years and involves any core aeronautical activities.

- (l) If QAC fails to fulfil any of its obligations under the Lease, QLDC may pursue damages, specific performance and any other rights and remedies provided at law, except that it may not terminate the Lease unless QAC has gone into liquidation, is wound up or dissolved, has abandoned Wanaka Airport or has persistently, flagrantly or wilfully neglected to carry out its obligations under the Lease and such neglect has a material adverse effect on the operation of Wanaka Airport.

[83] In addition, the Lease contains specific provisions concerning Project Pure. Under those provisions:

- (a) QLDC may continue to operate Project Pure without interference from QAC and may access the Project Pure site across identified accessways;

- (b) QLDC acknowledges that at the Commencement Date Project Pure is close to QAC's "planned runway" for Wanaka Airport and that to ensure that the continued operation of Project Pure will not detrimentally affect QAC's ability to develop Wanaka Airport in the future:

- (i) QLDC will not carry out any future development of Project Pure, including any expansion of its capacity in its current location, without obtaining QAC's prior written consent which may not be unreasonably withheld or delayed;
- (ii) QLDC accepts that it would be reasonable for QAC to withhold consent if QLDC were proposing to develop closer to QAC's "planned runway" or to develop buildings of a height greater than the existing Project Pure buildings and plant as at Commencement Date, or if QLDC's proposed development conflicts with any regulatory or operational requirement of Wanaka Airport;
- (iii) QAC may, by written notice of at least three years, require QLDC to relocate Project Pure. This notice can be given:
 - (1) In the case of the disposal fields, at any time after the second anniversary of the Commencement Date (1 April 2020);
 - (2) For the remainder of Project Pure, at any time after the fifth anniversary of the Commencement Date (1 April 2023);
- (iv) QAC will bear all of the costs of relocation except that if QLDC has increased the capacity of Project Pure since the Commencement Date, QLDC must bear a share of the relocation costs in proportion to that increase in capacity.

[84] The Lease also contains an acknowledgement by the parties that QAC is a CCTO subject to governance under the LGA and records that nothing in the Lease will prejudice the statutory rights and obligations in pt 5 of the LGA while those rights and obligations apply to those parties.

[85] The final version of the Lease was not referred back to the full Council for approval before execution or for information following execution.

Developments following execution of the Lease

Media releases / engagement with the public

[86] On 21 March 2018, a media release in Airport News advised that QLDC had confirmed that it had finalised the terms of a long-term lease for Wanaka Airport with QAC. The media release said the Lease commenced on 1 April 2018 for a 100-year period, excluded the land containing Project Pure, and did not affect or vary the terms of current lessees at the Airport. The release quoted Mr Keel as saying the Lease provided QAC with confidence to invest in, plan and develop the Airport as important infrastructure for regional aviation growth.

[87] On 1 May 2018, a media release in Airport News said members of the Wanaka and Upper Clutha communities were encouraged to join in the conversation on the future of Wanaka Airport to help with the Airport's future development, and that a series of interactive community and stakeholder engagement sessions were being held on 21 and 22 May. The media release also advised that an interactive on-line tool would be available as another way for people to give feedback.

[88] Those sessions went ahead as scheduled. The results of those sessions and other public engagement were recorded in what Mr Keel describes as an internal QAC document entitled Wanaka Airport 2045 Visioning – Community Engagement May and June 2018. The document indicated next steps as including the preparation of a master plan for Wanaka Airport which would be released in draft at the end of 2019.

SOI for 2019-2021

[89] On 28 June 2018, QLDC received the draft QAC SOI for 2019 – 2021.³ QLDC proposed no changes to the SOI.

[90] The SOI noted that in 2017 QLDC had determined that QAC would be awarded a long-term lease for the management and development of Wanaka Airport and that the 100-year Lease commenced on 1 April 2018.

³ Statements of intent are adopted annually and cover the three-year period from 1 July in the year of adoption to 30 June three years after adoption. Thus, the SOI that became final on 30 June 2018 ran from 1 July 2018 to 30 June 2021.

[91] The SOI incorporated, as the Wanaka Guiding Principles, nine of the 11 Guiding Principles as agreed in the Heads of Terms and set out a Wanaka Strategy. The strategy included the objective of developing a master plan for Wanaka Airport with input from the community, which would provide a spatial framework for the airport's future. The strategy set performance targets of September 2019 for completion of the draft master plan and June 2020 for completion for community engagement on the master plan.

Requests for copy of lease

[92] On 1 April 2019, Noel Williams, who is a Wanaka resident and member of the WSG, applied under the Local Government Official Information and Meetings Act 1987 for a copy of the Lease. This request was declined by QLDC on the grounds that release of the Lease would be likely to unreasonably prejudice the commercial position of QAC and QLDC's ability to carry out commercial activities. Similar requests from other WSG members for copies of the lease were also declined.

QAC renews engagement with stakeholders and public on Wanaka master plan

[93] On 29 April 2019, QAC issued a media statement headed "Master plan update and engagement opportunities" in which it described the opportunities available to the community and to stakeholders to provide feedback to the master planning process. Under the heading "Current Thinking", the release stated:

QAC is developing a dual airport model for Queenstown and Wanaka airports ("two airports, one airport company") which will provide infrastructure to enable sustainable air services to the Southern Lakes region across both airports. The master plans will show how the two airports will work together with gradual, phased development out to 2045. While there is still more work to be done, we'd like to share our thinking to date on the master plan for Wanaka Airport.

[94] The release then listed a series of points, a number of which related to the re-introduction of scheduled air services to Wanaka. The release said QAC was planning to develop a regional airport at Wanaka to support scheduled domestic services using turbo-prop and narrow-body jet aircraft, "beginning with a handful of such services and for several years thereafter". The release said QAC was not planning to accommodate wide-body jets or a large international airport at Wanaka.

[95] Also, on 29 April 2019, then QAC Chair, Prue Flacks, and Mr Keel hosted a briefing session for invited stakeholders at which they also outlined QAC's current thinking as set out in the media release. In the course of his presentation, Mr Keel indicated that QAC had estimated that it would invest of the order of \$300 – \$400 million in Wanaka Airport over the next 25 years.

SOI for 2020 – 2022

[96] On 27 June 2019, QLDC received the draft SOI for 2020 – 2022 which had been prepared by QAC. This draft was a development of a draft prepared initially in February 2019 and had been revised to take account of discussions at a workshop held in April 2019 involving QLDC councillors and members of QAC's Board and management.

[97] In a section headed "Situational Overview", the draft summarised steps taken to date with the development of master plans for Queenstown and Wanaka Airports and stated that QAC aimed to bring the long-term planning for Queenstown and Wanaka airports together to present a dual airport model ("two airports, one company"). In a section headed "Forward Planning", it was stated:

At Wanaka Airport, the proposed master plan approach supports the development of a regional airport to enable scheduled domestic services from approximately 2025. We expect a handful of such services operated by turbo-prop and narrow-body jet aircraft at the start and for several years thereafter in line with demand. The planning approach is consistent with QLDC's aspiration to have scheduled services reintroduced at Wanaka Airport through the long-term lease to QAC. ...

[98] Despite the revisions made to the earlier draft, the minutes of QLDC's meeting on 27 June 2019 record that there was extensive discussion of the revised draft and that a number of members were critical of the SOI and advised of their intention to vote against the motion. In the event, in a motion carried by a majority of councillors, QLDC resolved to receive the SOI subject to:

- (a) QLDC drawing to QAC's attention that QLDC remained concerned at the content of the SOI that addressed the future development of Queenstown and Wanaka Airports, notwithstanding the master planning processes under way; and

- (b) QLDC seeking further discussions with QAC to seek further changes to the SOI.

Mayor announces pause in airport planning and makes Lease public

[99] On 8 August 2019, at a public meeting of QLDC, the Mayor, Jim Boulton, announced that QLDC was taking a fresh approach to future airport development. The Mayor referred to the level of community concern over possible developments at Queenstown and Wanaka Airports and said that QLDC would be undertaking a number of items of work, including:

- (a) Ensuring that demand forecasts for the airports were aligned to projected growth forecasts for the district through the district-wide spatial plan which was being undertaken by QLDC in partnership with central government;
- (b) Undertaking a wide-ranging Economic Impact Assessment to understand the full economic effect of the airports and their role in supporting the well-being of the district and the region;
- (c) Undertaking comprehensive Social Impact Assessments for both the Queenstown and Wanaka communities to understand the social impact of further developments at the airports.

[100] The Mayor advised that until the work he had announced was completed, councillors would not consider or accept any change to the Queenstown Airport noise boundaries and that further work on the development of commercial services at Wanaka Airport was on hold, with the exception of the above assessments.

[101] Shortly afterwards, the Mayor directed that the Lease should be made available to the public.

Further revisions to and discussions of 2020 – 2022 SOI

[102] In August 2019, the QAC Board and QLDC considered a revised draft of the SOI for 2020 – 2022. Despite amendments made to the draft by QAC, including removal of any references to the “dual airport” model or the introduction of scheduled jet services to Wanaka, a motion proposing that QLDC agree the SOI was lost.

[103] On 13 September 2019, Ms Flacks issued a media statement in response to concerns raised about a lack of consultation on future development plans for Wanaka Airport and said that QAC had not at any time put out a formal proposal or plan for the future development of the Airport.

[104] On 25 October 2019, WSG filed the present proceeding.

[105] On 11 November 2019, QLDC announced the appointment of consultants, Martin Jenkins, to carry out the economic and social impact assessments referred to in the Mayor’s announcement on 8 August 2019.

[106] On 6 December 2019, the Mayor and the Chair of QAC issued a joint position statement on behalf of QLDC and QAC in which they said that although the 2020 – 2022 SOI remained unresolved between them, QLDC had agreed to approve the 2020 – 2022 SOI in order not to delay preparation of the work on the 2021 – 2023 SOI. QAC said that until such time as that SOI was agreed by QLDC, QAC would not undertake various specified activities without the express approval of its shareholders. The activities included expansion of the noise boundaries at Queenstown Airport and the introduction of scheduled passenger flights at Wanaka Airport.

Developments with Project Pure following execution of Lease

[107] Peter Hansby, General Manager Property and Infrastructure at QLDC, says in his affidavit that QLDC had been planning to upgrade Project Pure to address capacity and resilience issues at the facility. The preferred solution for the upgrade was the construction of a third sequencing batch reactor (SBR) tank to increase the flow and load capacity.

[108] Since April 2019, a Project Control Group and an Engineering Challenge Group established within QLDC considered options for the siting of the third SBR tank adjacent to the existing plant. One of the considerations affecting the siting of the tank was the need to obtain QAC's consent to the proposed upgrade in accordance with the Lease.

[109] Mr Hansby says the preferred site identified by the Project Control Group was on the southwestern side of, and adjacent to the present facility because it fitted within the designation of the site and appeared to be the most economic. However, that location was also between the present facility and the current sealed runway. In July 2019, QAC advised QLDC that in order to maintain potential future airport development options it would be imprudent for QAC to consent to any expansion of Project Pure to the southwest of the existing facility and encouraged QLDC to explore alternative options, including on land owned by QAC to the northeast of the existing facility. That position was reaffirmed on 9 October 2019 in an email from Rachel Tregidga, General Manager Property and Planning, following a meeting of QLDC and QAC management staff.

[110] The October 2019 meeting agreed that QLDC should investigate upgrade options that did not require development of land closer to the existing and the proposed future runway of Wanaka Airport, but noted the constraints of the existing designation, property boundaries and the expected cost escalation that would result from options not contiguous with the existing facility. It appears the proposed future runway was that recommended in the Arup COP Report, namely 150m to the northeast of the existing runway.

[111] In December 2019, QLDC presented its preferred option which would involve installing the new SBR tank directly adjacent to the existing plant on the north-eastern side. The site was within the boundary of QLDC's land and required only a minor adjustment to the existing designation.

Relevant provisions of Local Government Act 2002

Purpose, role and principles

[112] Section 3 of the LGA states that the purpose of the Act:

... is to provide for democratic and effective local government that recognises the diversity of New Zealand communities; and, to that end, this Act—

- (a) states the purpose of local government; and
- (b) provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and
- (c) promotes the accountability of local authorities to their communities; and
- (d) provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach.

[113] Section 5 defines “activity” to mean goods or services provides by or on behalf of a local authority or a CCTO.

[114] Section 10 provides that the purpose of local government is to enable democratic local decision-making and action by, and on behalf of, communities, and to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

[115] Section 14 sets out principles in accordance with which local authorities must act. These include that a local authority should conduct its business in an open, transparent, and democratically accountable manner, and give effect to its identified priorities and desired outcomes in an efficient and effective manner. The principles also include that a local authority should make itself aware of and should have regard to the views of all of its communities, and that, when making a decision, the local authority should take account of the diversity of the community and its interests, the interests of future as well as current communities, and the likely impact of any decision on the social, economic, environmental and cultural well-being of present and future communities.

[116] Section 39 of the LGA sets out governance principles in accordance with which local authorities must act. These include that a local authority should ensure that the governance structures are effective, open and transparent.

Planning and decision-making

[117] Part 6 of the LGA is headed Planning, decision-making and accountability; sub-pt 1 deals with planning and decision-making.

[118] Section 76AA sets out the obligations on a local authority concerning its significance and engagement policy. Subsection (1) requires every local authority to adopt a policy setting out its general approach to determining the significance of proposals and decisions in relation to issues, assets and other matters. Subsection (2) provides that the purpose of the policy is:

- (a) to enable the local authority and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities; and
- (b) to provide clarity about how and when communities can expect to be engaged in decisions about different issues, assets, or other matters; and
- (c) to inform the local authority from the beginning of a decision-making process about—
 - (i) the extent of any public engagement that is expected before a particular decision is made; and
 - (ii) the form or type of engagement required.

[119] “Significance” is defined in s 5 to mean:

... the degree of importance of the issue, proposal, decision, or matter, as assessed by the local authority, in terms of its likely impact on, and likely consequences for,—

- (a) the current and future social, economic, environmental, or cultural well-being of the district or region:
- (b) any persons who are likely to be particularly affected by, or interested in, the issue, proposal, decision, or matter:
- (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.

[120] Section 76AA(3) requires that the policy adopted under s76AA(1) must list the assets considered by the local authority to be strategic assets. Section 5 defines “strategic asset” to mean an asset or group of assets that the local authority needs to retain if it is to maintain its capacity to achieve or promote any outcome that the local authority determines to be important to the current or future well-being of the community. The definition also provides that any shares in an airport company within the meaning of the Airport Authorities Act are a strategic asset.

[121] Sections 76 – 81 deal with decision-making. Section 76 provides:

- (1) Every decision made by a local authority must be made in accordance with such of the provisions of sections 77, 78, 80, 81, and 82 as are applicable.
- (2) Subsection (1) is subject, in relation to compliance with sections 77 and 78, to the judgments made by the local authority under section 79.
- (3) A local authority—
 - (a) must ensure that, subject to subsection (2), its decision-making processes promote compliance with subsection (1); and
 - (b) in the case of a significant decision, must ensure, before the decision is made, that subsection (1) has been appropriately observed.
- ...
- (6) This section and the sections applied by this section do not limit any duty or obligation imposed on a local authority by any other enactment.

[122] Under s 77, a local authority must, in the course of the decision-making process, seek to identify all reasonably practicable options for the achievement of the objective of a decision and assess the options in terms of their advantages and disadvantages.

[123] Section 78(1) requires a local authority, in the course of its decision-making, to give consideration to the views and preferences of persons likely to be affected by or to have an interest in the matter under consideration.

[124] Section 79(1) provides that it is the responsibility of a local authority to make, in its discretion, judgements:

- (a) about how to achieve compliance with sections 77 and 78 that is largely in proportion to the significance of the matters affected by the decision as determined in accordance with the policy under section 76AA; and
- (b) about, in particular,—
 - (i) the extent to which different options are to be identified and assessed; and
 - (ii) the degree to which benefits and costs are to be quantified; and
 - (iii) the extent and detail of the information to be considered; and
 - (iv) the extent and nature of any written record to be kept of the manner in which it has complied with those sections.

[125] Section 79(2) provides that in making the judgments under s 79(1), a local authority must have regard to the significance of all relevant matters and, in addition, to:

- (a) the principles set out in section 14; and
- (b) the extent of the local authority's resources; and
- (c) the extent to which the nature of a decision, or the circumstances in which a decision is taken, allow the local authority scope and opportunity to consider a range of options or the views and preferences of other persons.

[126] Section 82(1) provides that consultation that a local authority undertakes in relation to any decision must be undertaken in accordance with the following principles:

- (a) that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons:
- (b) that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the local authority to present their views to the local authority:
- (c) that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local

authority concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented:

- (d) that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons:
- (e) that the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration:
- (f) that persons who present views to the local authority should have access to a clear record or description of relevant decisions made by the local authority and explanatory material relating to the decisions, which may include, for example, reports relating to the matter that were considered before the decisions were made.

[127] Section 82(3) provides that the principles in s 82(1) are to be observed by a local authority in such manner as a local authority considers, in its discretion, to be appropriate in any particular instance. However, s 82(4) provides that in exercising its discretion under s 82(3), a local authority must have regard to the requirements of s 78 and, among other things to:

- (b) the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in, the decision or matter are known to the local authority; and
- (c) the nature and significance of the decision or matter, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision or matter.

[128] Section 82A provides that a local authority must, for the purposes of s 82(1)(a) and (c), make the following publicly available:

- (a) the proposal and the reasons for the proposal; and
- (b) an analysis of the reasonably practicable options, including the proposal, identified under section 77(1); and
- (c) if a plan or policy or similar document is proposed to be adopted, a draft of the proposed plan, policy, or other document; and
- (d) if a plan or policy or similar document is proposed to be amended, details of the proposed changes to the plan, policy, or other document.

[129] Section 83 sets out the special consultative procedure which the LGA requires must be used in specified circumstances and which a local authority may choose to adopt if it considers this appropriate, having regard to s 79. The section requires that a local authority must prepare and adopt a statement of proposal and, if the local authority considers it appropriate, a summary of the information in the statement of proposal, which summary must comply with s 83AA.

[130] Among other things, s 83AA provides that a summary of the information contained in a statement of proposal must be a fair representation of the major matters in the statement of proposal.

[131] Section 87 provides that where a local authority chooses to use the special consultative procedure, the statement of proposal must include a statement of the reasons for the proposal, an analysis of the reasonably practicable options, including the proposal identified under s 77(1), and any other information the local authority identifies as relevant.

The long-term plan

[132] Section 93 provides that a local authority must, at all times, have a long-term plan and must use the special consultative procedure in adopting a long-term plan.

[133] Section 93(6) provides that the purpose of a long-term plan is to:

- (a) describe the activities of the local authority; and
- (b) describe the community outcomes of the local authority's district or region; and
- (c) provide integrated decision-making and co-ordination of the resources of the local authority; and
- (d) provide a long-term focus for the decisions and activities of the local authority; and
- (e) provide a basis for accountability of the local authority to the community.

[134] Section 93(7) requires a local authority to include in its long-term plan the information prescribed in pt 1 of sch 10. Among the matters specified in pt 1 of sch 10 are:

- (a) The community outcomes a local authority aims to achieve in order to promote the social, economic, environmental, and cultural well-being of its district or region;
- (b) The activities, that is, the goods and services the local authority intends to provide and any significant negative effects an activity may have on the social, economic, environmental, or cultural well-being of the local community;
- (c) The intended levels of service provision and performance targets and measures.

[135] Section 97(1) provides that this section applies to a decision to alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of a local authority (s 97(1)(a)) and to a decision to transfer the ownership or control of a strategic asset to or from a local authority (s 97(1)(b)). Section 97(2) provides that a local authority must not make such a decision unless the decision is explicitly provided for in its long-term plan, and the proposal to provide for the decision was included in a consultation document in accordance with s 93E.

Council-controlled organisations and statements of intent

[136] Part 5 of the LGA deals with CCOs. In accordance with s 6, CCOs are companies in which one or more local authorities hold or control shares carrying 50 per cent or more of the voting rights or have the right to appoint 50 per cent or more of the directors of the company.

[137] Section 6(1) provides that CCTOs are CCOs that operate a trading enterprise for the purpose of making a profit.

[138] Section 59 provides that the principal objective of a CCO is to:

- (a) achieve the objectives of its shareholders, both commercial and non-commercial, as specified in the statement of intent; and
- (b) be a good employer; and
- (c) exhibit 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; and
- (d) if the council-controlled organisation is a council-controlled trading organisation, conduct its affairs in accordance with sound business practice.

[139] Section 60 requires all decisions relating to the operation of a council-controlled organisation to be made by or under the authority of its board in accordance with its SOI and its constitution.

[140] Section 64(1) requires every CCO to prepare and adopt a SOI in accordance with pt 1 of sch 8. Subsection (2) provides that the purpose of a SOI is to:

- (a) state publicly the activities and intentions of the council-controlled organisation for the year and the objectives to which those activities will contribute; and
- (b) provide an opportunity for shareholders to influence the direction of the organisation; and
- (c) provide a basis for the accountability of the directors to their shareholders for the performance of the organisation.

[141] Section 65(2) requires a local authority to agree to a SOI as soon as practicable after it has been delivered to it or, if it does not agree, to take all practicable steps under cl 6 of sch 8 to require the SOI to be modified.

[142] Schedule 8 sets out the process by which the board of a CCO prepares its SOI each year, engages with its parent authority and delivers the final version of the SOI, having considered any comments from the local authority. The schedule also sets out the process by which the local authority may, by resolution, require the board of a CCO to modify its SOI as set out in the resolution.

Questions for decision

[143] It is common ground that:

- (a) Wanaka Airport and Project Pure are listed as strategic assets in the Significance and Engagement Policy adopted by QLDC in accordance with s 76AA of the LGA;
- (b) Because Wanaka Airport and Project Pure are strategic assets, if there has been a transfer of ownership of the Airport or a transfer of control of the Airport or of Project Pure, a decision to make such a transfer could have been made only if it had been explicitly provided for in QLDC's long-term plan and no such decision has been provided for in QLDC's long-term plan;
- (c) If QLDC had decided to alter significantly the level of service provision at Wanaka Airport, such a decision could only have been made if it had been explicitly provided for in QLDC's long-term plan and no such decision has been provided for in QLDC's long-term plan.

[144] Given that uncontested background, the questions for decision are:

- (a) Did the Lease transfer ownership or control of Wanaka Airport to QAC?
- (b) Did the Lease transfer control of Project Pure to QAC?
- (c) In entering into the Lease, has QLDC taken a decision to alter significantly the level of service provision at Wanaka Airport?
- (d) Did the consultation carried out by QLDC on the basis of the Statement of Proposal prior to entering into the Lease comply with the requirements of the LGA?
- (e) Was QLDC's decision to enter into the Lease reasonable and did QLDC take into account all relevant considerations?

[145] Most of those questions turn on the nature of the Lease, what it achieved and what it was intended to achieve and whether, in both of those respects, the Lease was consistent with the consultation undertaken on the basis of the Statement of Proposal.

[146] Before considering the questions, therefore, it is appropriate to consider the evidence on the negotiation of the Lease and what the Lease was intended to achieve.

What was the Lease intended to achieve?

[147] The Lease is far from being a standard lease. Its terms are bespoke and have clearly been developed specifically for this particular lease. The lease term of 100 years is long, covering three generations of the residents of Wanaka and the Upper Clutha Valley, if a generation is measured at 30 years. The Lease's renewal and termination provisions are unusual. Notice of termination takes effect only after 30 years and cannot be given before year 70. The Lease limits QLDC's ability to terminate the Lease in the event of non-performance by QAC and QLDC's rights as landlord during the operation of the lease are severely restricted. In addition, the Lease gives QAC the power to withhold consent to any expansion of Project Pure and even to require Project Pure's relocation.

[148] It is self-evident that the terms of the Lease have been the subject of considerable attention and must have taken some considerable period to develop and to negotiate by those involved. Yet the evidence of QLDC and QAC on the negotiation of the Lease and the purposes it was intended to achieve is sparse.

[149] The affidavits of Michael Theelen and Mr Keel provide the only evidence of those directly involved in the negotiations of the Lease. The affidavits of Mr Pope and Mr Hansby also make limited reference to the negotiation of the Lease but provide little detail. An affidavit by John Schellekens, a specialist property adviser, provides some broader context on the adoption of long term leases.

[150] Mr Theelan says that at no time since he became CEO in 2016 has QLDC formally made a decision to introduce jet aircraft services into Wanaka and to the best of his knowledge no such decision was made before he became CEO. Mr Theelen also says he does not agree with any suggestion that the Council has made a decision

by stealth or that, by granting the Lease to QAC, QLDC has effectively made a decision as to the future development of Wanaka Airport. Rather, Mr Theelen says, the decision to lease was about how the airport was best managed.

[151] Mr Theelen refers to the consultation process undertaken on the basis of the Statement of Proposal but makes no reference to the Astral or Rationale Reports or to the statements in those reports about the expected future development of Wanaka Airport. Nor does he refer to any discussions with QAC about its expectations for the future development of Wanaka Airport following QAC's receipt of the Arup Siting Study and the Arup COP Report in April and May 2017 just as negotiations on the Lease were getting under way.

[152] Mr Theelan says that QLDC put in place, through the Lease, a devolved governance structure that enables scheduled services to be reintroduced at Wanaka Airport in the future, if appropriate, but that what kind of commercial passenger services, who would operate them, where such services would fly to and from, how frequently and over what period of time they might be introduced all remain uncertain. Mr Theelan also says that the Lease put the development of future options and the creation of a master plan for the Airport into the hands of QAC which has expertise in these matters and which QLDC does not have.

[153] Mr Theelan says it is not unusual for councils to enter into long-term leases of 100 years. However, he provides no examples to substantiate that assertion other than a reference to another, unspecified, pre-paid lease, which he says is of similar duration, that was recently entered into by QLDC. Nor does he refer to examples of other leases where the landlord is precluded from terminating the lease for cause except in limited circumstances.

[154] Mr Theelan says that granting a lease of this duration gives QAC time to ensure that development of the Airport can take place at an appropriate speed and to enable QAC to make an adequate commercial return on any significant investment. He provides no information, however, about the assumptions which underlie the Lease, which was negotiated by the Mayor, two counsellors and himself and which was not referred back to the full Council for endorsement or for information.

[155] Mr Keel says the Lease was negotiated on commercial terms and that both the QAC and QLDC took independent advice. Mr Keel also asserts that a lease of 100 years duration is not unusual in the context of substantial infrastructure and that leases of shorter duration would make it impractical to invest in the asset given the nature of airport infrastructure. He too, however, provides no examples of similar leases in the airport or wider infrastructure context and provides no information about the assumptions that underlie the negotiation of the Lease.

[156] Mr Keel refers to the Astral Report and the Arup Siting Study and the roles those reports played in the development of QAC's planning on how projected growth in air travel to Queenstown would be accommodated, including QAC's master planning processes. He does not, however, link those reports or QAC's planning processes in any way with the negotiation on the Lease other than to say that the reference to the "planned runway" in the Project Pure clauses did not mean that any decisions had been taken on runway development options.

[157] Mr Schellekens gives evidence of three pre-paid leases in which he had personally been involved and which concerned two health-care related developments and a shopping centre. Mr Schellekens also provides a summary history of ground leases in New Zealand and examples of recent new long term leases for retirement villages and residential and commercial developments around the Auckland waterfront. None of the examples concern airports and airport development.

[158] In his affidavit, Mr Pope provides a brief summary of steps taken in the negotiation process and annexes copies of the Heads of Terms, the Lease and the two accompanying side letters which were signed when the Lease was executed. As noted above, the Heads of Terms annexed the Wanaka Airport Guidance – Governing Principles. However, these are framed in broad terms that give little information about whether QLDC and QAC had any common understanding about the future development of Wanaka Airport beyond the airport being an element of "an integrated, complementary, district-wide strategy to foster the growth of aviation services" and that the Lease should vest economic control of Wanaka Airport in QAC and its terms should encourage investment in the Airport by QAC.

[159] In summary, the evidence of the witnesses for QLDC and QAC provides little information to explain how it was that the Lease was agreed containing terms that are highly specific, far-reaching and, in a number of respects, unusual.

[160] It strains credulity to accept that such terms would have been agreed in a commercial negotiation without a shared understanding on both sides of the negotiation about how Wanaka Airport was intended to be developed. The Lease was negotiated over a period when QAC had just received the Arup Siting Study and the Arup COP Report, which recommended the development of Wanaka as a “dual airport” that was to be complementary to Queenstown airport and would be used for scheduled jet services.

[161] In August 2017, while the Lease was being negotiated, QAC informed the public that it intended to pursue the dual complementary airport model with Queenstown and Wanaka airports. The fact that the Lease enabled the development of Wanaka Airport as a dual airport complementary to Queenstown Airport and capable of accommodating scheduled jet services as recommended in the Arup Siting Study and the Arup COP Report was confirmed in the master planning document QAC released to the public the year after the Lease negotiations had been concluded. Further confirmation that the Lease was intended to enable scheduled jet services into Wanaka Airport is provided in the draft SOI for 2020 – 2022 which QAC delivered to QLDC in June 2019.

[162] Yet, even though it is clear from the evidence that the development of Wanaka Airport as a dual airport capable of accommodating jet services into Wanaka had been recommended as the negotiations on the Lease began, had been signalled as part of QAC’s intended direction was the Lease was being negotiated, and was pursued by QAC after the Lease had been executed, none of the witnesses for QLDC or QAC refers to such considerations in their evidence about the Lease. According to their evidence, the Lease was concerned only with management and governance. It would appear from that evidence, therefore, that the expected nature and scale of the future development of the Airport played little if any part in the negotiation over the Lease terms. Given the far-reaching and unusual nature of the Lease terms, I consider that unlikely.

[163] In these respects, QLDC and QAC have not provided the Court with the information that it would have expected to have received regarding the negotiation of the Lease, having regard to the observations of Woodhouse and Cooke JJ in *Fiordland Venison Ltd v Minister of Agriculture and Fisheries* that:⁴

... administrative law is not a formal or technical field, but one in which it is vital for the Court to be as fully informed as reasonably possible of the facts and issues as they presented themselves at the time to the authority whose decision is under review.

[164] I do not consider it necessary to decide whether, as submitted by counsel for WSG, the gaps in the evidence of QLDC and QAC amount to a breach of a duty of candour, as discussed by Lord Donaldson MR in *R v Lancashire County Council, ex parte Huddleston*⁵ and by Keane J in *Bain v Minister of Justice*,⁶ by not conducting the proceeding “with all cards upwards on the table.” As Mr Curran, counsel for QAC, submits, in the New Zealand context, the duty of candour arises particularly in relation to disclosure. Mr Curran says that in this proceeding, Dunningham J made orders providing for a form for tailored discovery, and no issue was taken before me concerning compliance by QLDC and QAC.

[165] Nonetheless, given the lack of evidence about the purposes to be achieved by the Lease, the Court must draw inferences from the evidence before it. I address below the inferences to be drawn in relation to the specific claims made by WSG. For now, it is sufficient to record that I am satisfied from the terms of the Lease and the circumstances in which the Lease was negotiated that the Lease was agreed by the QLDC negotiating team and QAC in the expectation that Wanaka Airport was to be developed as a complementary airport to Queenstown Airport and would accommodate at least Code C jet aircraft, and that the Lease was intended to enable that level of development.

[166] I accept, however, that no decisions had been taken at that time on how that development was to be undertaken or on the level of passenger services that would be

⁴ *Fiordland Venison Ltd v Minister of Agriculture and Fisheries* [1978] 2 NZLR 341 (CA) at 346

⁵ *R v Lancashire County Council, ex parte Huddleston* [1986] 2 All ER 941 (CA) at 945.

⁶ *Bain v Minister of Justice* [2013] NZHC 2123, (2013) 21 PRNZ 625 at [29] – [43].

provided at the Airport as a consequence of that redevelopment. Those were matters to be addressed through the master planning process.

Did the Lease transfer ownership of Wanaka Airport to QAC?

[167] Counsel agree that the phrase “ownership or control” as used in s 97(1) of the LGA is to be interpreted disjunctively; that is, that the section applies whether there is a transfer of ownership or a transfer of control. I agree that the section distinguishes between the two concepts of ownership and control. For that reason, I consider separately whether there has been a transfer of ownership and a transfer of control of Wanaka Airport. As discussed below, however, the meaning of the terms “ownership” and “control” must also be considered in relation to each other, particularly with reference to what is meant by “control.”

Submissions

[168] Mr Miles and Mr Hollyman, counsel for WSG, submit that in entering into the Lease with QAC, QLDC transferred substantial ownership of the Airport because it sold the runway, taxiway, apron, roads, carparks and buildings that make up a material part of the strategic asset that is the Wanaka Airport and because it transferred the rights to possess, operate and develop the Airport for at least 100 years and, potentially, much longer.

[169] Counsel for WSG submit that the clear purpose of s 97 is to prohibit councils from transferring ownership of strategic assets unless they follow the process prescribed by s 97, namely by taking such decisions only in the context of the council’s long-term plan and only in accordance with the consultation requirements that apply to the long-term plan. They submit that the purpose of the section would be defeated if a Council could bypass the prohibition in the section requirements of s 97 by retaining a small part of the ownership rights over an asset.

[170] Mr Whittington, counsel for QLDC, and Mr Curran, counsel for QAC, submit that there has been no transfer of ownership of Wanaka Airport because title to the land that makes up the Airport has not been transferred.

Discussion

[171] I agree that the purpose of s 97 is to ensure that councils do not dispose of strategic assets without going through the requirements in LGA for the adoption of the long-term plan, including the more prescriptive consultation requirements set out in s 93E. I also agree that the Lease transferred *legal* ownership of the things that make the land an airport – the runway, taxiway, apron, roads, carpark and buildings – and has transferred *effective* ownership of the land for 100 years and potentially much longer.

[172] While QLDC has rights in relation to QAC's SOI, those rights derive from the LGA as a consequence of QLDC's majority shareholding in QAC and would apply equally if the land had been sold to QAC.

[173] Given the extent of the transfer of rights and responsibilities over an asset that is both a strategic asset and an infrastructure asset, and having regard to the purpose of a long-term plan as set out in s 93(6) of the LGA and the information to be included in a long-term plan as required by pt 1 of sch 10, it would have been appropriate for the decision to make such a transfer to have been included in QLDC's long-term plan, regardless of the requirements of s 97. The services provided at the Airport, the expected outcomes for the community, the implications for service delivery and the transfer of rights over a significant infrastructure asset are all matters that fall for inclusion in the long-term plan in accordance with pt 1 of sch 10.

[174] However, the fact that it would have been appropriate for such a decision to have been included in the long-term plan does not make the taking of the decision outside the context of the long-term plan unlawful unless there has been a transfer of ownership or control.

[175] The Lease undoubtedly transferred substantial or effective ownership of Wanaka Airport to QAC for a very long time. However, the language of s 97 is clear. It speaks only of "ownership". I consider that "ownership" in this context must mean legal ownership. While, as argued by counsel for WSG, ownership connotes a bundle of rights and the Lease transferred a significant proportion of those rights to QAC,

ownership of an asset, especially land, is not finally transferred unless freehold title is transferred.

[176] I consider that transfer of ownership must mean a transfer of all of the essential elements that make up the asset being transferred. While the runway, taxiway, apron and carparks are what make the land an airport, without the land there can be no airport. Therefore, I conclude that because freehold title to the land, which is the essential requirement for the airport, remains with QLDC, the Lease did not transfer ownership of Wanaka Airport to QLDC.

Did the Lease transfer control of Wanaka Airport to QAC?

Submissions

[177] Counsel for WSG submit that there has clearly been a substantial transfer of control over the Airport through the Lease and that the extent of the transfer is reinforced by the fact that AIAL owns 24.99 per cent of the shares in QAC and can exercise substantial management control and decision-making over QAC under the Strategic Alliance Agreement.

[178] Mr Whittington for QLDC submits that because QAC is a CCO, the entry into a long-term lease of a Council-owned asset cannot be a transfer of control for the purposes of s 97(1) because “control” determines the nature of the relationship between QLDC and QAC. That is, by transferring an asset QLDC controls to an organisation QLDC controls, QLDC is not transferring “control” of the asset away from itself.

[179] Mr Whittington argues that the Lease does not transfer control of the Airport to QAC because, although QAC is now responsible for operational management, planning and economic management, QLDC continues to own the Airport land and retains “ultimate control” over the strategic direction of the Airport via the SOI process. That control through the SOI is reinforced by the terms of the Lease which requires that the airport land not be used for any use, activity or event not in the contemplation of QAC’s SOI. Any failure to follow the SOI in that respect could be enforced by a claim for specific performance. In addition, QLDC’s rights as 75.01 per

cent shareholder give it the ability not only to require QAC to modify its SOI but also to remove Board members if they do not appropriately give effect to a QLDC requirement to modify its SOI.

[180] Mr Curran for QAC submits that “control” in s 97 is concerned with overall control of the asset and not with operational decision-making. Section 97 is concerned with the alienation of strategic assets from a local authority’s portfolio and the Lease does not do that. The Lease expressly emphasises the ultimate control that the SOI process gives QLDC over the Airport, both through the requirement that QAC must ensure that the land is not used for any use, activity or event not within the contemplation of the SOI, and the express acknowledgment that the Lease does not prejudice the rights and obligations of QLDC and QAC under the LGA.

Discussion

[181] The LGA does not define “control” and I am informed by counsel that there are no relevant decisions on what constitutes a transfer of control under s 97. Unsurprisingly, the Shorter Oxford English Dictionary contains a number of definitions of “control”. The first is: “The act or power of directing or regulating; command, regulating influence”.⁷ I consider that the word “control” is used in that sense in s 97 of the LGA.

[182] I agree with Mr Curran that s 97 is concerned with the alienation of strategic assets and that “control” must be interpreted in that context. I consider that in using the term “ownership or control” Parliament intended the section to apply to situations where ownership of a strategic asset is to be transferred and situations where a local authority has retained ownership of a strategic asset but intends to transfer the power to operate and to decide the future use and direction of that asset. In any such case, the transfer of control is unlikely to be absolute because a right of ownership is likely always to carry with it some right of ultimate recourse on the part of the local authority. Accordingly, I do not accept that for the section to apply, the transfer of control must have been absolute in the sense of transferring “ultimate” control. For that reason, I agree with counsel for WSG that some modifier or adjective is needed to give that part

⁷ *Shorter Oxford English Dictionary* (6th ed, Oxford University Press, Oxford, 2007).

of the section some meaning. Unlike “ownership”, which has a precise meaning, “control” is a more relative term which takes its meaning from the context in which it is used.

[183] I consider that Parliament must have intended the section to apply in situations where a local authority intends to transfer substantial and effective control over a strategic asset even if it intends to retain ownership of that asset. I have concluded that this is what QLDC has done with the Wanaka Airport under the Lease.

[184] The Lease gives QAC much more than responsibility for operational management, long-term planning and governance – which were terms used in the Statement of Proposal. The Lease certainly gives QAC “economic control” of the Airport, as was envisaged in the Heads of Terms. For most practical purposes, the Lease also gives QAC legal control of the Airport. The breadth of the powers transferred to QAC, the limitations in the Lease on QLDC’s right to consent to actions that QAC may propose to undertake and the constraints on QLDC’s rights of enforcement mean that, provided QAC continues to use the Airport as an airport, for at least 90 years QAC has effectively the same rights it would have had if QLDC had transferred ownership of the Airport to QAC.⁸ In doing so, QLDC has transferred to QAC the power to direct, regulate and command the use and future direction of the Airport.

[185] For these reasons, I consider QLDC has transferred effective control of the Airport sufficient to trigger the requirement in s 97 of the LGA that such a transfer must take place only in the context of the long-term plan.

[186] The fact that QLDC can exercise indirect control over QAC through the SOI process does not alter my conclusion. There can be no argument that s 97 would have applied if QLDC had transferred ownership of the Airport to QAC outright. Yet, QLDC would still have had the same rights of indirect control over QAC in that situation. It does not make sense, therefore, that considerations that do not affect the

⁸ During the final 10 years of the Lease term, QLDC’s consent is required for capital expenditure on buildings that are part of the “core aeronautical activities” at the airport and exceeds \$10 million.

application of the section in a transfer of ownership situation should somehow preclude the operation of the section when the transfer is of substantial and effective control rather than ownership. Otherwise, the section would never apply where the transfer of less than outright ownership was to a council-controlled organisation. The Lease contains a contractual recognition of the SOI process and the rights and responsibilities of QLDC and QAC under that process. The Lease's contractual recognition of QLDC's rights under the LGA does not alter that assessment.

[187] For these reasons, I do not consider the Privy Council's decision in *New Zealand Maori Council v Attorney-General*⁹ to be of direct application to this decision. The issue before the Privy Council was not whether the proposed restructuring of broadcasting amounted to a transfer of control of the broadcasting assets but whether the restructuring would mean that the Crown would be unable to give effect to its obligation under s 9 of the State-Owned Enterprises Act 1986 not to act in a manner inconsistent with the principles of the Treaty of Waitangi. The Privy Council observed that the obligation was not absolute and unqualified.¹⁰ It held that the Crown's retention of indirect control of the state-owned enterprises that were to receive the assets was sufficient to ensure the Crown was able to give effect to the obligation under s 9, which operated indirectly in relation to the issues in that case.¹¹ By contrast, s 97 of the LGA operates very directly in relation to the issues in the present case and imposes a specific obligation on local authorities not to transfer control of strategic assets other than through the long-term plan process. I do not consider that the retention of indirect control through the SOI process enables a local authority to avoid that obligation where the transfer is as substantial as in this case.

[188] I recognise that QLDC has a super majority of shares in QAC and can replace the QAC Board if QLDC is not happy with the current or future direction of QAC. This gives QLDC ultimate control over QAC. However, for the reasons I have given, I do not consider that s 97(1)(b) applies only to situations where there has been a transfer of ultimate control. I do not consider the Strategic Alliance Agreement between AIAL and QAC relevant to a transfer between QLDC and QAC.

⁹ *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC).

¹⁰ At 517.

¹¹ At 520.

[189] For all these reasons, I am satisfied that QLDC has transferred substantial and effective control over Wanaka Airport to QAC through the Lease, and that, in effecting that transfer, QLDC failed to comply with s 97 of the LGA.

Did the Lease transfer control of Project Pure to QAC?

[190] The Lease does not affect the day to day operation of Project Pure which is located on land owned by QLDC. The Lease recognises that QLDC has the right to operate the plant without interference from QAC. QAC's rights under the Lease with respect to Project Pure are substantial and unusual. It can reasonably refuse to consent to the development of the plant and can require the removal of the disposal fields and the plant itself.

[191] The extent of those rights, which derive from QAC's rights over the Airport, confirms the extent of the transfer of control over the Airport. They also give QAC the ability to control, in the sense of influence, the future development of the plant (as it has already done) and the location of the plant. But those powers do not give QAC the power to operate the plant or to direct or regulate the operation of the plant. However, QAC exercises its powers in relation to Project Pure, even if it requires the relocation of the plant, there will be no alienation of ownership or operational control of the plant away from QLDC such as to engage s 97 of the LGA.

[192] For these reasons, I am satisfied that QLDC has not transferred control over Project Pure to QAC under the Lease.

Has QLDC taken a decision to alter significantly the level of service provision at Wanaka Airport?

[193] This aspect of WSG's claim is premised on the proposition that QAC and QLDC have already decided that Wanaka Airport is to be developed into a jet-capable airport and have therefore decided to increase significantly the level of air services provided at Wanaka Airport.

[194] Counsel for WSG say that this decision is inherent in the unusual and far-reaching nature of the terms of the Lease. They say the Lease has created conditions

that make it almost inevitable that scheduled air services, including jet services, will be undertaken at Wanaka airport. They refer to the use of the term “planned runway” in the clauses of the Lease concerning Project Pure, the discussions between QLDC and QAC to ensure that the proposed expansion of the treatment plant did not impinge on that runway and the fact that the planned runway appears to align with that recommended in the Arup COP report which envisages the use of the runway for jet operations.

[195] Counsel for WSG also refer to the forecast demand for air services for the Southern Lakes region acknowledged by Mr Keel, the assumptions of growth in the Arup Siting Study and the ARUP COP Study, the “dual airport” concept recommended in the Arup Siting Study as the preferred option for accommodating that growth, and the references to the projected growth in the paper on master plan options for Queenstown Airport published by QAC on 29 April 2017. They also refer to QAC’s purchases of significant parcels of land adjacent to Wanaka Airport and to the fact that the Strategic Alliance Agreement signed by QAC and AIAL in November 2016 included Wanaka Airport and identified Stretch Outcomes that could only be achieved by a significant increase in scheduled air services.

[196] Mr Whittington for QLDC says that QLDC’s decision to enter into the Lease with QAC was made expressly on the basis that future development at Wanaka Airport would be the subject of a master-planning exercise to be undertaken by QAC and that the level of service provided at the Airport after the Lease had been concluded was exactly the same as that provided before the Lease.

[197] Mr Curran for QAC says QAC could not have made any decisions on development options by the time the Lease was executed April 2017. At that point, QAC had received only “high level” planning documents such as the Astral Report, the Arup Siting Study and the Arup COP Report which were part of a lengthy planning and development process and provided no adequate basis for final decisions. He also refers to the steps taken by QAC after the execution of the Lease as demonstrating that QAC has still not made a decision in relation to the development, expansion and operation of Wanaka Airport to accommodate Code C jet aircraft.

Discussion

[198] It is apparent from the evidence given on behalf of WSG, as well as from the submissions made by counsel, that many in the WSG are convinced that QLDC and QAC have already decided to redevelop Wanaka Airport into a jet-capable airport, that that is reflected in the terms of the Lease, and that the positions taken by QLDC and QAC publicly and at the hearing have been designed to obscure that fact.

[199] I understand that WSG and its members have been frustrated that QLDC has provided little detail about the negotiation of the Lease. As I discuss further below, I consider that the Lease that emerged from the negotiating process was significantly different from what was envisaged at the time the Statement of Proposal was prepared and from that on which QLDC carried out its consultation process.

[200] However, the Court must base its decision on the evidence and the facts proved by that evidence. Moreover, the issue for the Court in this aspect of WSG's claim is not whether QLDC and QAC have taken a decision to redevelop Wanaka Airport into a jet-capable airport but whether QLDC has decided to increase air services at Wanaka Airport such that it was required to take that decision only in the context of its long-term plan.

[201] When the question is framed that way, the questions of what may have been agreed in the negotiations over the Lease and what QAC may or may not have said as part of its consultations over the Queenstown Airport assume less significance.

[202] As stated above, I am satisfied that by the time QLDC and QAC signed the Lease in April 2018 the QLDC negotiating team and QAC had a common expectation that Wanaka Airport was to be developed into a jet capable airport and the Lease was intended to enable that level of development. However, I am also satisfied that that intention was at a high level and had not been developed to the point that QLDC and QAC could know in detail when scheduled air services, including jet services, would be provided and at what level. Those were questions to be addressed in the master planning process that was to follow.

[203] It is clear from the requirements of ss 77(1), 93(6), 93B, 93C and 93E of the LGA that, before a proposal to alter significantly the intended level of service provision can be included in the long term plan, a local authority must be able to state:

- (a) The community outcomes intended to be achieved (s 93(6)(b)); and
- (b) The details of the proposed decision, the reasons for the proposed decision and the reasonably practicable options for the achievement of the objective of the decision (ss 93E and 77(1)).

[204] I am satisfied that, at the time the Lease was concluded, QLDC and QAC had not made decisions about the intended redevelopment of Wanaka Airport in sufficient detail to have enabled QLDC to have complied with those requirements. In particular, QLDC and QAC did not know when and at what level scheduled air services, including jet services, could start because those were questions to be considered in the master planning process.

[205] For these reasons, I am satisfied that, when concluding the Lease, QLDC and QAC had not taken a decision to increase air services at Wanaka Airport in the sense required by s 93(2) to trigger the requirement to include such a decision in QLDC's long term plan.

Did the consultation carried out by QLDC on the basis of the Statement of Proposal comply with the requirements of the LGA?

[206] WSG says that, in carrying out its consultation on the basis of the Statement of Proposal, QLDC failed to comply with the requirements of the LGA in the following respects:

- (a) QLDC failed to identify and disclose accurately the objective it was seeking to achieve as required by s 77(1)(a) of the LGA. WSG says that intention was to transfer sufficient control of Wanaka Airport to QAC to enable QAC to redevelop the Airport so it could be operated in the same way QAC operates Queenstown Airport.

- (b) QLDC did not consider, as required by s 78(1) of the LGA, the views and preferences of persons likely to be affected or to have an interest in the question, namely the people of Wanaka and the communities of the Upper Clutha Valley the majority of whom, WSG alleges, would be opposed to QLDC's real intention.

- (c) QLDC did not, as required by s 14 of the LGA, conduct its business in an open transparent and democratically accountable manner and with a view to the community interests set out in that section when it made the judgements required by s 79 of the LGA about how to achieve compliance with ss 77 and 78. WSG says that QLDC breached its obligations under these sections when it accepted and approved a Statement of Proposal which contained inadequate, ambiguous and misleading information about the decision that QLDC intended to make and did make.

Submissions of QLDC

[207] Mr Whittington says that QLDC appropriately complied with the general consultation requirements in the LGA. It treated the question as having high significance and used the special consultative procedure, it gave ample time for the public to make submissions and plenty of information about the scope and nature of the decision which was limited to governance and management arrangements, and it engaged directly with Airport stakeholders and Wanaka residents. Mr Whittington also argues that QLDC has a broad discretion about how to carry out consultation and submits that it appropriately observed the relevant principles.

Discussion

[208] I do not accept that the Lease can be explained and justified simply on the basis that the recommended option in the Statement of Proposal was a long term lease and that the Lease was a long term lease. The term "long-term lease" is not a term of art or of law. It takes its meaning from its context and the context in the present case was set by the Statement of Proposal and the Astral and Rationale Reports that led to the development of the Statement of Proposal. The Statement of Proposal, in turn, must

have regard to the purpose of the LGA, namely the provision of democratic and effective local government that promotes the accountability of QLDC to its local communities, and the principle that QLDC should conduct its business in an open, transparent, and democratically accountable manner, as well as with regard to the specific requirements of pt 6, sub-pt 1.

[209] For present purposes it is enough to note the following:

- (a) Sections 83(1) and 83AA(a) require that a statement of proposal be prepared if the special consultative procedure is to be used and that the summary of information contained in the statement of proposal be a fair representation of the major matters in the statement of proposal;
- (b) Section 77(1)(a) and (b) requires that a local authority seek to identify all reasonably practicable options for achieving the objective of the decision being proposed and assesses the options in terms of their advantages and disadvantages;
- (c) Section 82(1) requires that consultation is in accordance with certain principles including that persons who will or may be affected by a decision are provided with reasonable access to relevant information, are given clear information concerning the purpose of the consultation and the scope of decisions to be taken and have reasonable access to explanatory material relating to the decisions, including reports considered before the decisions were made.

[210] Having regard to these requirements, it is relevant that:

- (a) The “Summary” and “Background” sections of the Statement of Proposal referred to projected growth in the District’s air services and to development required to provide for the expected growth of Wanaka Airport “over the next decade or longer.”

- (b) The “Future Growth” section of the Statement of Proposal stated that the future role of Wanaka Airport had been identified as being a complementary and supplementary facility to Queenstown Airport able to accommodate “spill-over” from Queenstown Airport. It also stated that spill-over of general aviation services was increasingly likely to occur as Queenstown focused its capacity on accommodating jet services.

[211] The clear import of these sections was that the Statement of Proposal was looking at developments “over the next decade or longer”, and that Wanaka Airport’s role was primarily in accommodating spill-over, that is, not jet services, from Queenstown while Queenstown focused on jet services. Those sections of the Statement of Proposal establish the context for the governance and management options being put forward for consideration.

[212] There was nothing in those sections of the Statement of Proposal that gave any hint, let alone provided a fair representation, that QLDC may be contemplating a governance and management option that would determine the future of Wanaka Airport for the next 100 years or longer or that that future would include scheduled jet services.

[213] The section of the Statement of Proposal that described the five options under consideration did not indicate any timeframe or duration for those options. However, the description of the disadvantages of Option 4: sale to QAC, stated that QLDC would lose substantial control over the direction of the Airport and investment decisions. In my view, that conveyed a clear message to the public that the preferred Option 3: lease to QAC, would not be the practical equivalent of a sale for those being consulted. That is, QLDC was not proposing to assign control of Wanaka Airport for their lifetimes and perhaps for their children’s lifetime and beyond. Yet, that is what the Lease has effectively achieved.

[214] The section headed “What is the preferred option?” referred to the financial modelling undertaken by Rationale as part of its business case analysis. It also stated

that, as a governance approach, the lease option was similar to that used for QLDC's camping grounds which were leased to a single operator.

[215] The Rationale analysis was undertaken on the understanding set out in the Astral Report and in the Rationale Report, namely that Wanaka Airport's role was complementary and supplementary to Queenstown Airport, able to accommodate aircraft spill-over as Queenstown Airport focused on jet air transport, such that Wanaka could increasingly be the base for general aviation as well as accommodating scheduled charter air transport services itself. The clear message from the reference to the Rationale analysis was that the lease option was intended to facilitate development at the level indicated in the Astral and Rationale Reports. In addition, because both the Astral and Rationale Reports were, as Mr Pope's evidence confirms, reports that were considered by QLDC in preparing the Statement of Proposal, they should have been and were available to submitters and could properly be taken as indicating the scope of the Statement of Proposal.

[216] Because the Statement of Proposal and the Rationale Report referred to the camping ground lease, which was for 25 years, as an example of a similar governance arrangement to that proposed for the proposed lease of Wanaka Airport, and because Rationale used a 30 year appraisal period for its assessment of the options, it would have been reasonable for potential submitters to have understood that an initial lease term of about 30 years was in contemplation, particularly in the absence of any other indication of the likely duration of the lease of the Airport. That was certainly Councillor Lawton's expectation as the minutes of QLDC's meeting on 20 April 2017 recorded.

[217] I consider it also relevant that the hearing panel's report to the Council of 20 April 2017, which was written at the end of the consultation process, identified "general aviation, recreation, education and engineering functions" among the range of community and commercial requirements that would need to be accommodated in the future master planning for Wanaka Airport but made no reference to jet services. I consider that if the panel had known at that time that the introduction of scheduled jet service was a serious possibility, they would have included jet services in that list of community and commercial requirements. Jet services would have imposed the

most significant commercial requirements and would have had the most significant implications for the community.

[218] For all these reasons, I am satisfied that the proposed decision on which QLDC consulted the people of its district in the Statement of Proposal was a decision to grant QAC a long term lease of approximately 30 years' duration to enable a level of development of Wanaka Airport of the scale and intensity envisaged in the Astral and Rationale Reports. That is, to be a supplementary and complementary facility to Queenstown Airport by taking spill-over from Queenstown, and to become the base for general aviation as well as accommodating scheduled and charter air transport services. As envisaged in the Astral Report, the anticipated scheduled services were to be turbo-prop aircraft, rather than jets, because of the runway length.

[219] From the evidence before me, I conclude that at the time the Statement of Proposal was prepared and issued for consultation, there was no expectation on the part of QLDC that Wanaka Airport was to be redeveloped to allow for Code C jet aircraft or that a lease of 100 plus years would be granted to QAC for that purpose. It follows that QLDC did not consult the people of the District on such a proposal. I consider it likely that it was only after the consultation had concluded and the negotiations with QAC on the lease commenced that the QLDC negotiating team became aware of the greater scope of the opportunity that could be realised. There is no direct evidence on this point. As already discussed, the evidence filed on behalf of QLDC and QAC did not address the intended purposes of the Lease. In any event, whenever QLDC became aware of the opportunity for Wanaka Airport to be developed into a jet capable airport, that opportunity was not the proposal on which QLDC consulted the community.

[220] It follows that QLDC did not consult the people of its district on the decision that it took to grant the Lease to QAC. The Lease went considerably beyond the scope of the Statement of Proposal. That decision was a significant decision concerning a strategic asset. As a consequence, the decision that QLDC took to grant the lease was unlawful because it was not taken in accordance with the requirements of the LGA. In particular, the summary of information contained in the Statement of Proposal did not fairly represent the major matters of the decision taken by QDLC when it granted

the Lease, namely that it would be a lease that would transfer effective control of the Airport to QAC for 100 years or more.

[221] The alternative interpretation, that it had always been QLDC's intention to grant such a far-reaching lease to QAC, would have been no more lawful. That would have meant that QLDC deliberately failed to disclose to its community the full extent of the decision it had intended to take. Despite the suspicions of the WSG that that indeed had been QLDC's intention, I do not consider that was the case.

[222] For these reasons, I am satisfied that QLDC did not comply with the requirements of the LGA when it granted the Lease to QAC and that, as a consequence, the decision to grant the Lease was unlawful.

Was QLDC's decision to enter into the Lease reasonable and take into account all relevant considerations?

[223] This cause of action was pleaded as an alternative if I found that the consultation carried out by QLDC had complied with the requirements of the LGA. Because I have found that the consultation did not comply with those requirements, it is not necessary to consider whether a consultation that otherwise complied with the requirements of the LGA could still be impugned for unreasonableness or failure to consider relevant considerations.

What relief should be granted?

[224] WSG seeks declarations that QLDC's decision to enter into the Lease was unlawful and that the Lease and associated arrangements were illegal and of no effect. It also seeks an order restraining QDLC and QAC from taking any steps to develop and operate Wanaka Airport as a dual capable airport with Queenstown Airport.

[225] WSG is entitled to the first declaration which follows from my findings above. The other two forms of relief sought are more problematic.

[226] QLDC and QAC submit that even if I find the process that led to the granting of the Lease failed to comply with the requirements of the LGA, I should not set the

Lease aside because of the disruption that would be caused to QAC and those who have entered into arrangements with QAC on the basis of the Lease.

[227] Mr Keel says that if the Lease is set aside, it would have implications for the approximately 90 subleases which QAC has concluded with tenants at Wanaka Airport and in which QAC invested considerable resources when putting the new arrangements in place. Mr Keel notes that the sublessees will have made business decisions based on those new arrangements. Mr Keel also says that if the lease is set aside, the significant investment that QAC has already made by way of direct investment in the operations centre, in engaging with the community and in progressing the draft master plan will have been wasted.

[228] Mr Pope says that if the Lease is set aside, QLDC would have to resume its role as landlord of the ground leases at Wanaka Airport which would mean it would have to engage in a costly and time-consuming process of negotiating an assignment of the leases negotiated between QAC and the tenants. Mr Pope also says that because QLDC does not have the in-house expertise to manage the Airport directly, it would probably have to negotiate a new contract with QAC to manage the Airport over the short or long term. That evidence does not, however, take into consideration the public law implications of a finding that a decision by QLDC with respect to one of its strategic assets was unlawful because it was not taken in accordance with the LGA.

[229] It is clear from the purpose and the provisions of the LGA that major decisions taken by a local authority with respect to its strategic assets must be taken only after a process in which the community has been consulted openly and transparently in accordance the LGA. QLDC has failed to meet that essential requirement. If the Lease is not set aside, the public's ability to have a say in the future uses of the Airport over the next 100 plus years would be limited.

[230] While QAC has said it would consult the public as part of the master planning process, it is clear from Mr Keel's description of that process that the public consultation envisaged is an opportunity to provide feedback on the draft master plan, after the technical work and consideration of options have been completed and a draft master plan, including preferred options, has been prepared. While it is

understandable that QAC would want to consult at the point that it has developed its preferred options, it is also likely that the scope for influencing the proposed decision will be limited, given the investment of time and money that will have already been made in developing the preferred options. Such a consultation will also be at QAC's discretion and outside of the LGA's process. I do not consider that to be an appropriate result following a failure by QDLC to comply with the LGA. For that reason, I have concluded the Lease should be set aside.

[231] I acknowledge that there will be disruption to the sublessees if the Lease is set aside. I also recognise that setting aside the Lease will cause inconvenience and an increased administrative burden for QAC and QLDC in the short-term. Given that QAC managed the Airport for QDLC for approximately 10 years prior to the execution of the Lease, however, they are well placed to deal with those matters.

[232] I do not accept that the investment that QAC has made in the operations centre, in engaging with the community and in progressing the draft master plan will necessarily have been wasted. My decision means only that the Lease granted by QLDC to QAC on the basis of the consultation on the Statement of Proposal should be set aside. It does not preclude QDLC from initiating a fresh consultation, including by amending its long-term plan, on a proposal to grant a new lease or other long term arrangement to QAC to develop and operate Wanaka Airport, including as a jet capable airport, if there continues to be a need for increased air services into the District.

[233] My decision does not call into question the projections on which QAC based its master planning for Queenstown Airport or the analysis in the Arup Siting Study and the Arup COP Report of how the demand forecasted in those projections might be accommodated. If there continues to be a case for meeting that demand by the development of Wanaka Airport, it is open to QDLC and QAC to pursue that option, provided they do so in accordance with the requirements of the LGA.

[234] It is also for that reason that I do not propose to make an order restraining QDLC and QAC from taking any steps to develop and operate Wanaka Airport as a dual capable airport with Queenstown Airport as requested by WSG.

Result

[235] For all the above reasons, I find that:

- (a) In granting the lease dated 8 March 2018 by which the Queenstown Lakes District Council granted a long term lease of Wanaka Airport to the Queenstown Airport Company, the Queenstown Lakes District Council:
 - (i) Did not transfer ownership of Wanaka Airport to the Queenstown Airport Company;
 - (ii) Did not transfer control of the wastewater treatment plant, Project Pure, to the Queenstown Airport Company,
 - (iii) Did not take a decision to alter significantly the level of service provision at Wanaka Airport; and so
 - (iv) Did not act inconsistently with the requirements of ss 97(1) and (2) of the Local Government Act 2002 that such decisions may be taken only in the context of the Queenstown Lakes District Council's long-term plan.

- (b) However, in granting the lease of Wanaka Airport to the Queenstown Airport Company following a consultation process based on the Statement of Proposal adopted by the Queenstown Lakes District Council on 29 September 2016, the Queenstown Lakes District Council:
 - (i) Transferred control of Wanaka Airport to the Queenstown Airport Company and, in so doing, did not comply with the requirements of ss 97(1) and 97(2) of the Local Government Act 2002 that such a decision may be taken only in the context of the Queenstown Lakes District Council's long-term plan; and

- (ii) Did not comply with the requirements of Part 6, subpart 1 of the Local Government Act 2002 because the decision to grant the lease to the Queenstown Airport Company was not a fair reflection of what was proposed in the Statement of Proposal on which the Queenstown Lakes District Council carried out its consultation process prior to granting the lease.

[236] Accordingly, I make the following declarations:

- (a) The Queenstown Lakes District Council's decision to grant the lease of Wanaka Airport to the Queenstown Airport Company was unlawful;
- (b) The lease is set aside and is of no legal effect.

Costs

[237] The Wanaka Stakeholders Group is entitled to costs on a category 2B basis. If the parties are unable to agree costs, they may submit memoranda of no more than five pages.

[238] Any memorandum by the Wanaka Stakeholders Group should be filed and served by 19 May 2021. Memoranda by the Queenstown Lakes District Council and the Queenstown Airport Company should be filed and served by 9 June 2021.

G J van Bohemen J