IN THE HIGH COURT OF NEW ZEALAND **CIV 2019-425-112**
INVERCARGILL REGISTRY

I TE KŌTI MATUA O AOTEAROA
WAIHŌPAI ROHE

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

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SYNOPSIS OF SUBMISSIONS FOR APPLICANT

Dated 3 September 2020

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MAY IT PLEASE THE COURT

INTRODUCTION

1. This case is one of the most important cases to come before the Courts dealing with the most important and fundamental aspects of the Local Government Act (**LGA**) and democratic community participation in decision-making under that Act.

2. This case relates to not one but two "strategic assets" of the Queenstown Lakes district, both located in the Wānaka Ward:

    a. Wānaka airport; and

    b. the Wānaka wastewater and sewage treatment plant, located next to Wānaka airport, known as Project Pure.

3. This case is about:

    a. the unlawful transfer of ownership and control of Wānaka Airport from Queenstown Lakes District Council (**QLDC**) to Queenstown Airport Corporation (**QAC**); and

    b. the unlawful transfer of control of the future location and operation of Project Pure, from QLDC to QAC, to make way for QAC's planned runway, on a site combining Wānaka Airport and adjoining land acquired by QAC.

4. There has been a clear breach of the most important statutory prohibitions and protections against such unlawful transfer and of the related mandatory public consultation requirements of the LGA.

5. Under s 97 of the LGA, a decision to transfer either ownership or control of a strategic asset is prohibited unless a decision to do so is explicitly provided for in the Council's long-term plan, and the proposal for the decision was included in a special consultative procedure under the LGA. That consultation must cover the reasons for, nature, and purpose of that transfer. In

the case of neither strategic asset was that provision complied with.

6. Even if it were the case (as some of the Respondents' "spin" belatedly suggests), that QLDC's purpose was only to have QAC provide scheduled commercial services including by jet aircraft to theUpper Clutha communities (as opposed to, as the evidence suggests, a larger pipeline, particularly from Auckland, for projected tourist numbers), that would also be a clear breach of s 97(1)(a) in that it involved significantly altering the intended level of service.

7. The importance of s 97 is emphasized by one of New Zealand's leading academics in the field, Dr Dean Knight:[1]

> This section [section 97] is a central gate-keeping provision. It reinforces the central importance of the long-term plan to a local authority's accountability, planning and decision making by requiring that decisions on the two categories listed cannot be taken unless they are explicitly provided for in the long-term plan.
>
> The importance of this provision is such that any decision made by a local authority in contravention of it would almost certainly be set aside in judicial review proceedings, and could raise issues of individual liability under s 46.

8. In relation to the importance of the long-term plan, Dr Knight has also written:[2]

> The long term plan is the cornerstone of local authority governance. Produced once every triennium and mandatory, a long term plan sets out a local authorities' vision and its proposed activities for the next 10 years. ...
>
> On a year-by-year basis, the long term plan is supported by the annual plan, which translates the 10-year vision into an annual programme with a fiscal appropriation of funds for a local authority. ...
>
> The requirement to adopt a long term council community plan through the special consultative procedure ... provides the

[1] LexisNexis [LGA97.4] Commentary
[2] We the Peoples p296

> community with the opportunity to participate in the agenda-setting process of the local authority.

9. The evidence shows that, by 2016 at the latest, the directors of QAC, with the informal cooperation and agreement of QLDC via certain people within QLDC, such as its previous mayor, and then Mayor Boult and QLDC's Chief Executive, were clearly planning to redevelop, or to work towards developing, Wānaka Airport into a Code C jet capable airport.

10. The evidence also shows that this plan evolved to cope with the significant projected increase in tourist numbers by 2045 which Queenstown Airport was not going to be able to handle, at least not without significant expansion of capacity at that airport.

11. It is important to note that although QAC is a Council-Controlled Trading Organisation (**CCTO**), QAC is not just QLDC by another name. It is not 100% owned by QLDC. QAC is in fact 24.99% owned by a public listed company, Auckland International Airport Limited (**AIAL**).

12. In addition, and importantly, QAC is effectively in a joint venture of its commercial operations of Queenstown and Wānaka Airports with AIAL, via a Strategic Alliance Agreement entered into in November 2016. The whole thrust of the Strategic Alliance Agreement is to promote the continued growth of Queenstown as a destination for tourists, international and domestic, flying in from Auckland.

13. The Applicant (**WSG**) has and represents some 3,500 members, including individual residential ratepayers and many business owners (48.7% of the adult population of Wānaka[3]). WSG is supported by all five resident associations in the Upper Clutha area (Hawea, Luggate, Albert Town, Mt Barker and Cardrona **CB Part 4H, 574, 05956**). All are opposed to a Code C jet capable airport being built on the site of Wānaka Airport.

14. It must not be thought that the factual position now made evident to the Court by WSG reflects the information or understanding which was ever disclosed or made clear to the

[3] See affidavit of Mark Sinclair at [17].

community in any consultation process conducted in 2016/17 (or since, for that matter).

15. It is important for the Court to understand that it has taken WSG literally thousands of hours to work out what has happened, and that the position before the Court is presented by WSG based on evidence which WSG has pieced together, largely over the last 15 months, as the issues have come to light and concerns have been raised by the community.

16. The adversarial position taken by QLDC (and QAC) from the outset, and in the course of these proceedings, has made it significantly more difficult for WSG to discern the true position. That includes the Respondents, particularly QLDC, disregarding concerns, making false allegations,[4] failing to respond to correspondence, refusing to meet, failing on disclosure/discovery, and unnecessary claims of confidentiality. That behaviour is in breach of the Respondents' duty of candour, discussed in some detail below.[5]

17. No community of comparable size in New Zealand has its own jet capable airport when one already exists little more than an hour away.

18. The Upper Clutha communities were never consulted with clear or accurate information about the likely plan by QAC and some, at least, at QLDC before Wānaka Airport was sold and "leased" to QAC. Redeveloping the airport at Wānaka into a jet capable airport is totally unnecessary, save theoretically, to accommodate the (pre-Covid) projected vast future influx of additional tourists attracted principally to Queenstown.

19. In any event, the cost of such a redevelopment of Wānaka Airport, said to be in the order of NZ$400 million, could not be justified financially unless the resulting redeveloped airport was operating hundreds of commercial jet aircraft movements every week, similar in scale to the operation of Queenstown airport in 2018/2019, pre-Covid. To put that in perspective, Queenstown Airport is the fourth busiest airport in New Zealand (even though it cannot take wide body jet aircraft).

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[4] See affidavit of Mark Sinclair at [119]-[121].
[5] Below, para 153ff. See also affidavit of Andrew Waterworth at [13]-[18].

20. Project Pure is classified under the Council's current significance and engagement policy as a significant strategic asset, and any decisions inhibiting or dictating its future development or location and the substantial costs associated with that are obviously of significance and concern to the Upper Clutha communities and their ratepayers.

SHORT FACTUAL SUMMARY

21. Documents available publicly and/or obtained on discovery show that in 2016/17 significant steps were taken by QAC to pave the way for the substantial extension and rebuilding of Wānaka Airport, to allow for the introduction of scheduled commercial services by jet aircraft. Those steps included:

    a. the expenditure of considerable sums of money on land purchases;

    b. the commissioning of various, undisclosed, expert reports and advice regarding planning for the redevelopment and location of the planned 2.2 km runway; and

    c. entering into a contractual agreement with AIAL to that end.

22. The documents also show that QAC's plans were driven by projected increases in tourist numbers through to 2045, which would be beyond the capacity of Queenstown Airport.

23. The extent of knowledge and understanding of QAC's planning, on the part of QLDC, is a matter which the respondents' affidavit evidence fails to explain. However, the clear inference is that at least the Mayor, Jim Boult, and hence QLDC at Council level was aware from an early stage, and necessarily throughout the 11 months during which the Heads of Terms and the specific terms of the "Memorandum of Lease" were negotiated by him on behalf of QLDC.

24. In November 2016 QAC also entered into a new Strategic Alliance Agreement with Auckland International Airport Limited (**AIAL**), the terms of which brought Wānaka Airport under the umbrella of that agreement. The express joint purpose of that Agreement is to leverage the scale and connectivity of a multi-airport relationship to grow travel, trade and tourism activity <u>at all airports</u> wholly or partially owned or controlled by either of the parties to deliver superior economic growth and superior earnings. In particular, AIAL promotes Queenstown as a destination to overseas tourists, via Auckland Airport, given

that Queenstown Airport itself cannot take wide body jet aircraft.[6]

25. The key formal step to QAC/AIAL achieving that goal of adding Wānaka Airport to the Strategic Alliance was to obtain ownership and/or control of Wānaka Airport. It was already in the process of acquiring significant land adjoining the Airport, necessary for the redevelopment and in particular the runway extension.

26. As it happened, QLDC had in October 2016 commenced an apparently unrelated process, based on two independent reports which it had previously obtained.[7] Those reports recommended a "long-term lease" be granted to QAC to improve QAC's management of Wānaka Airport and to provide incentives for QAC to provide some additional capital investment for modest further development of general aviation at Wānaka Airport. The reports and their recommendations did not suggest, and are inconsistent with, conversion to a Code C jet capable airport for scheduled commercial flights, a development projected to cost some NZ$400 million.

27. QLDC purported to conduct a Special Consultative Procedure in accordance with the Local Government Act proposing such a long-term lease on the basis of the two independent reports it had received. However, that consultation was wholly inappropriate for the "Memorandum of Lease" which was ultimately given to QAC in March 2018.

28. In April 2017, following that consultative process, QLDC resolved to grant a lease to QAC and delegated to its Mayor (and others) authority to negotiate and conclude such a lease and to make changes necessary to QAC's Statement of Intent (**SOI**) to incorporate the Council's expectations of governance of Wānaka Airport.

29. The negotiation of the "lease" took until March 2018. The "lease" however was kept secret from the public until

[6] Other important aspects of the Strategic Alliance Agreement with AIAL, affecting QLDC's actual and potential control of QAC, are summarised in the affidavit of Wayne Hudson, and discussed further below.
[7] The Rationale Report and the Astral Report.

September 2019, and only finally publicly disclosed by Mayor Boult under pressure from concerned voters in the Wānaka ward, including WSG and its members, during the 2019 local body elections. This proceeding was issued in October 2019.

30. The terms of the so-called "Memorandum of Lease" went well beyond what was contemplated or anticipated in the 2016/17 consultative procedure. The "Memorandum of Lease" included the following key provisions:

    a. It was a sale of <u>all</u> buildings and improvements on the land (specifically including the runway, taxiway, apron and all buildings);

    b. It was a lease only of what remained (the underlying land) for a 100-year minimum period;

    c. The "rent", fully paid in advance, is expressly calculated by reference to the value of the land, and there is no provision for any further rental payments or rent reviews for the next 100 years;

    d. The lease is perpetually renewed, unless notice is given. However, the minimum notice period is 30 years and notice cannot be given until year 70 (2088).

31. The changes agreed to QAC's Statement of Intent[8] also went well beyond what was contemplated by QLDC, agreeing among other things, to give QAC "economic control" of Wānaka Airport.

32. As former Councillor Ella Lawton describes it, referring to the above terms (in an affidavit filed by WSG, and the only affidavit filed by any Councillor, past or present, on this point):

> 4 I am absolutely clear that from my point of view a lease on such terms was not discussed with the Council. This "lease" is nothing like what I understood to be the arrangement we as a Council were contemplating and agreeing to in principle in April 2017.
>
> 5 Given that the rent is prepaid and at the value of the land, to all intents and purposes, this is a sale not a lease. As I

[8] Recorded in the "Heads of Terms" document signed in January 2018

> have previously said, a sale of Wānaka Airport (WA) had no support. I would not have agreed to a sale of all improvements i.e. an outright sale of everything at the airport except the bare underlying land.
>
> 6 Nor was there support or Council agreement to give QAC "economic control" of WA, as set out in the Heads of Terms, particularly when Clause 8 of the lease allows QAC to carry out future development of WA without QLDC's consent.

33. In addition, and importantly, when finally made public in September 2019, the “Lease” was discovered to contain significant provisions, never previously publicly mentioned or discussed during the consultative procedure or otherwise, which give QAC power to require QLDC to relocate Project Pure or deny consent to future development of Project Pure, closer to QAC’s designated “planned” extended Code C jet capable runway.

34. Former Councillor Ella Lawton:

> 12 Clause 12 of the Lease gives QAC the right to move Project Pure.
>
> 13 To the best of my memory Project Pure was not at all part of the discussion in relation to the lease of the airport.
>
> 14 I refer to Clause 12 of the Lease. At no stage of the community consultation process that I conducted and at no stage of any related Council discussion about leasing WA to QAC was there any discussion of QLDC agreeing to such a term in the proposed lease to QAC. I certainly was part of no Council decision to do so, nor do I believe that such a decision was authorised or intended by Council in April 2017 when Council delegated the task of negotiating the lease to Mayor Boult, the CE, Mike Theelan, and Councillors Hill and Mcleod.
>
> 15 I am aware, and was of course aware in 2016/2017, that "Project Pure" is the name for the relatively new sewage and wastewater treatment plant for Wānaka and other Upper Clutha communities located on Council owned land adjoining WA. Project Pure is and was an expensive piece of essential infrastructure for these communities. It is a "Strategic Asset" of QLDC covered by provisions in QLDC's Long Term Plan.

At the time I was aware of plans to connect Luggate and tentatively Cardrona, to Project Pure but plans for Hawea had not been tabled at Council.

16 Had anyone suggested to me in 2017 that any lease to QAC would include giving a right to QAC to dictate or control the future location of Project Pure I would have immediately asked two questions:

(a) why such a right should be given to QAC?

(b) what were the implications of such a right, including not just financial implications for the community but also all the community consultation obligations that would arise before Council could agree to any such thing?

THE EVIDENCE BEFORE THE COURT

35. It is a singular aspect of this case that the respondents have not filed affidavit evidence from any of the decision makers in this matter.

36. QLDC has not filed any affidavit evidence from Mayor Boult, the principal Council representative who negotiated the "Lease" and amendments later incorporated into QAC's Statements of Intent, and who has been the sole spokesperson on behalf of QLDC on these issues throughout. Nor have QLDC filed evidence from any other past or present Councillor. In the circumstances that can only be described as extraordinary.

37. QAC has not filed any affidavit evidence from any members, past or present, of its Board of Directors; nor from any representative of AIAL (which has, as noted, not only a 24.99% shareholding in QAC, but a significant role in relation to QAC's business including Wānaka Airport).

38. (For its part, WSG has supporting affidavits from two former Councillors: Ella Lawton and Aaron Heath. Their evidence is not challenged by evidence from any other Councillor.)

39. The failure to file affidavits from any of the decision makers is unexplained and extraordinary, given the decisions that are in issue, and the duty of candour that lies upon public bodies in judicial review proceedings such as the present. Those principles are addressed later in these the submissions.

KEY FACTUAL OUTLINE

Wānaka Airport

40. In 2016 Wānaka Airport was (and still is today) as described in paragraphs 10, 11 and 12 of the Amended Statement of Claim (ASOC). Importantly, it was and remains a general aviation airport managed by QAC. General aviation means aircraft other than scheduled commercial services. The Airport is also the venue for events such as Warbirds over Wānaka, and also the location of scientific research by NASA (space balloon programme).

41. For about nine years, up until 2013, Air NZ had, via a subsidiary, operated a very modest scheduled regional service with daily flights on smaller turboprop aircraft carrying up to 19 passengers between Wānaka and Christchurch. This service was discontinued due to lack of patronage and profitability.

    - *SOP (CB Part 4E, 287, 04221); affidavits of Terry Hetherington; Michael Ross; Mark Sinclair*

42. The Statement of Proposal (**CB Part 4E, 287, 04221**) described Wānaka Airport as follows:

> "Wānaka Airport is already internationally renowned for the bi-annual Warbirds over Wānaka air show but it could also become the base for general aviation in the region as well as accommodating scheduled and charter air transport service in its own right.
>
> Scientific aviation activities, such as the NASA balloon programme, may become increasingly important and provide additional opportunities for growth to the wider district.
>
> Future growth at the airport could well require the purchase of additional land at the current site and development of the existing site to provide further space for ground leases. The Council has received requests for additional ground spaces to rent, which Wānaka Airport currentlv cannot accommodate, due to space restrictions."

43. The airport for the Queenstown Lakes District (the District) for scheduled commercial domestic services to and from the District, in both turboprop and narrow-body jet aircraft such as 737s and A320s, has always been and still is Queenstown Airport. Queenstown Airport also takes narrow-body jet aircraft international flights from the eastern seaboard of Australia. These have ceased at present due to the Covid-19 pandemic.

44. Wānaka Airport cannot currently take commercial jet aircraft.

45. The issues about the future of Wānaka Airport are matters of major significance for the Upper Clutha communities.

    - *SOP (CB Part 4E, 287, 04221); affidavits of Terry Hetherington; Michael Ross; Mark Sinclair*

46. QAC has decided to develop Wānaka Airport into a Code C airport. A Code C airport is one which can take aircraft up to the size of narrow-body jet aircraft with a wingspan of up to 36 metres, such as Boeing 737 series and Airbus A320s.

    - *Refer affidavit of Terry Hetherington at [5]* [9]

47. Wānaka Airport does not currently have the capability, either in length or runway strength. The maximum size of aircraft it can support is a 50-seater turboprop plane such as the Bombardier Q300, as flown by Air Nelson and, until recently, Jetstar New Zealand, into regional airports throughout New Zealand.

48. If QLDC/QAC were to develop Wānaka Airport for more general aviation and private jet aircraft overflow from Queenstown Airport and the return of some scheduled turboprop services, as was suggested in the SOP and in the Astral and Rationale reports, there would be no need to develop a new Code C runway at Wānaka Airport at a cost of some $300-400 million.

49. The existing 1200-metre long runway could easily be extended by 300 to 400 metres, in order to further accommodate private jets and regional turboprop aircraft. Such a modest extension would permit ATR 72 turboprop aircraft with a seating capacity of 70 passengers and some of the larger private corporate jets

[9] A description of Code C can be found at pages 9 and 10 of the document entitled, "Wānaka Airport Land Use and Planning Report", 21 March 2013 (**CB642**)

to use Wānaka Airport, thereby increasing the extent to which Wānaka Airport could provide supplementary and complementary services to Queenstown Airport. Such an extension could also be done without any need to compromise the location of the Project Pure waste treatment plant.

50. WSG and the community have never been opposed to the reintroduction of regional flights via turbo prop aircraft.

51. Indeed, WSG has supported the proposal by SoundsAir to reinstate regional turbo-prop flights to Christchurch. However, until the last month or so, SoundsAir has spent 2½ years seeking approval to do so and being denied those approvals by QAC/QLDC.

52. Such flights can be accommodated without development of the Airport and are specifically contemplated by the Astral and Rationale Reports which underpinned the 2016/17 consultation process.

53. Since WSG's affidavits were filed in this matter (31 July 2020), QAC/QLDC have reversed their position and have now approved the SoundsAir flights.

- *Refer SOP (CB Part 4E, 287, 04221); affidavits of Terry Hetherington; Michael Ross; Mark Sinclair*

Converting Wānaka Airport to Code C jet capable for scheduled commercial services

54. The independent expert financial analysis of Richard Somerville, based on the projected cost of NZ$400 million for the conversion of Wānaka Airport into jet-capability, was summarised in his affidavit as follows:

> [11] I gave myself the objective of analysing what a $400 million spend for Wānaka airport means in terms of aviation activity - resulting in both flight and passenger numbers. The report I produced, entitled "What a $400m spend for Wānaka Airport really means: a simple financial analysis based on publicly available data" ("the Report"), was published in September 2019. (**CB Part 4H, 460, 05725**)
>
> …

The key findings

[15] Key data for each of the five airports is summarised on pages 6 and 7 of the Report.

[16] In short, I found that a market return on $400 million requires an annual throughput of 3.14 million passengers in order to cover costs and provide a commercial return in line with broadly similar commercial airport operations. In physical terms, this would result in 26,200 flights in or out of Wānaka Airport each year, or one flight every 10 minutes (based on a 12 hour flying window per day).

[17] I also noted that my analysis would appear to understate the ambitions which QAC may have had for Wānaka Airport at the time I produced the report. At that time, the current Statement of Intent referred to an "undertaking" to "grow QAC's business returns and increase passenger numbers", in particular leveraging "the scale and connectivity of a multi-airport relationship to grow visitor activity and deliver superior earnings growth [...]"

55. Mr Somerville's conclusions were graphically reflected in an animated video produced by WSG. As Mr Sinclair explains (affidavit at [95]-[101], the video was based on key facts and information about the proposed development of Wānaka Airport into a jet capable airport.

56. The video was launched on 27th December 2019, and got significant media coverage: https://www.stuff.co.nz/business/118477531/controversial-Wānaka-jet-airport-plan-turned-into-animated-video. Viewer numbers were significant.

57. It is self-evident that any reasonable public body/Council, making a decision to hand over a publicly owned general aviation community airport on terms which allowed for potential conversion and expansion into a busy airport intended to handle regular scheduled commercial jet services, would have to take account of all relevant factors. Prior to entering into this "lease", QLDC did not consider such factors at all.

58. In particular, these include:

    a. Climate change/carbon emissions;

    b. Overtourism;

    c. Demands on infrastructure.

59. The relevance and clear importance of these matters is covered in the following:

    a. The affidavit of Dr Carly Green, an environmental engineer with significant international experience in the measurement, reporting and verification of Greenhouse Gas emissions.

    b. The Report of the Parliamentary Commissioner for the Environment, Simon Upton (**CB Part 4H, 613, 06064**), "*Pristine, popular... imperilled? The environmental consequences of projected tourism growth*" (December 2019).

    c. The affidavit of Mark Sinclair at [72].

Project Pure

60. Project Pure is probably the most important single piece of essential infrastructure for the Wānaka and Upper Clutha communities. It is only 10 years old and a multi-million dollar plant which faces significant ongoing development requirements and associated costs.

    - *Refer Affidavit of Aaron Heath*

61. Its current location next to the airport was carefully selected by previous Councils and it has never been suggested that its location should give way to a massive redevelopment of Wānaka Airport. That point is put beyond doubt by the affidavit evidence of Aaron Heath, another former Councillor, involved in the planning and development of Project Pure in 2003-2005:

> [23] Whilst consideration was given at the time to the future development of Wānaka Airport, as Councillors, we were given assurances by staff that locating Project Pure at Wānaka Airport would not compromise future development of the Airport. I can state confidently that, if we had ever thought that an airport capable of the types of aircraft traffic and movements now being considered might ever be developed in Wānaka, there would be no way that the Council of the day would have resolved to construct a major community infrastructure asset such as Project Pure in the midst of this development. It would have been absurd and would have bordered on negligence to build a community asset such as Project Pure, with a life expectancy of more than 50 years, knowing it might have to be moved after having been utilised for little more than a quarter of its life expectancy.
>
> [24] Any decisions on the location and future development requirements of Project Pure are certainly major decisions in respect of a strategic asset of QLDC and, in particular, the Upper Clutha ratepayers. To my knowledge, there has never been any public discussion on the impacts of the Wānaka Airport lease on the future development and location of Project Pure.

62. It is important to understand that the impact of the QAC “lease” on Project Pure is already being felt. The terms of the Lease

(clause 12) prevent QLDC from expanding Project Pure except as consented to by QAC.

63. Planned improvements to Project Pure which are about to be implemented are significantly different as a direct result of the terms of the lease.

64. The result is being felt right now. The current development of Project Pure is costing an additional NZ$2.7 million, because of the need to develop it differently in order to accommodate the planned runway.

- *Affidavits of Aaron Heath, Mark Sinclair, Michael Ross*

C's Long Term Plan, in relation to these two strategic assets

65. Each Council must have a Long Term Plan which projects its intentions over the forthcoming 10 years. Each Council is also required to have a significance and engagement policy under s 76AA LGA. The Significance and Engagement Policy (**SEP**) includes identification of the assets which the Council considers are "significant strategic assets."

66. The QLDC Long Term Plan 2015-25 sets out its SEP Policy in Volume 2, page 177.

67. Both Wānaka Airport and Project Pure (as a Sewage Treatment Plant) are considered core assets and are classified under the Council's current SEP (27 November 2014) as significant strategic assets (page 3, SEP):[10]

B. STRATEGIC ASSETS

The policy needs to list the assets that the Council considers to be significant strategic assets. Any decision relating to the sale or transfer or sale of shareholding of any of the following assets is a significant matter and will trigger the Special Consultation Process. To clarify:

i. Any decision that transfers or changes ownership or control of strategic assets to or from the Council is a significant matter.

ii. The sale or transfer of shareholding of any of the Significant Strategic Assets (as outlined in the table below) will trigger the Special Consultation Process.

iii. Any long term lease of strategic assets (other than land).

Queenstown Airport	Queenstown Events Centre
Wanaka Airport	Queenstown Memorial Centre
Water Supply Infrastructure	Lake Wanaka Centre
Sewage Treatment Plant(s)	Swimming Pools
Transfer Stations and Recycling Centre (Queenstown only)	Playgrounds, Reserves and Community Halls, Cemeteries, Gardens, Sports fields and libraries listed in schedule *(Appendix 3)*
Roading Network	Victoria Flat Landfill (shared ownership)

Guidelines

>> Every agenda item requiring a decision of Council will require the author to consider significance and engagement.

>> Each proposal or decision will be considered on a case by case basis to determine significance

>> The consideration, disclosure and consultation will be proportional to the significance of the decision

10 https://www.qldc.govt.nz/media/2d5gyp4g/qldc-2015-2025-ten-year-plan-volume-2.pdf

68. Accordingly, any proposal to lease or transfer ownership of either Wānaka Airport or Project Pure would trigger the Special Consultative Procedure. The reflects the legal prohibition in s 97. Although the Rationale Report referred to this in relation to Wānaka Airport, there is no reference to this in relation to Project Pure. That appears to be simply because Project Pure was not considered in any way to be affected by the process.

69. It is also clear from the documents before the Court that the impact on Project Pure, including significant additional financial costs on the ratepayers, arises directly from the planned location of the jet-capable extended runway, and the covenants in the "lease" recognising that, and is driving the decisions currently being made by QLDC.

    - *refer affidavit of Andrew Waterworth at [161] ff*

The Statement of Proposal, October 2016 (SOP)

70. On 8 October 2016 QLDC put out its consultation document titled: "*Wānaka Airport – A Long Term Lease?*" (**CB Part 4E, 287, 06064**).

71. It is clear from s 83 relating to the special consultative procedure, and also from the general consultative principles in ss 77-83, that the local authority must provide:

    a. Reasonable access to relevant information;

    b. Clear information concerning the purpose of consultation and the scope of the decisions;

    c. Information concerning both the relevant decisions and the reasons for those decisions; and

    d. In relation to the process that following, the views received during consultation should be considered with an open mind and due consideration, without pre-determination. It of course follows that if a, b, and c are not complied with the public's "views" will simply not be properly ascertained, let alone considered.

72. Importantly, those who are required to be consulted with are "persons who will or may be affected by, or have an interest in, the decision or matter".[11] That is reflected in both ss 78 and 82.

73. On any fair reading of the 2016 Statement of Proposal in relation to a "Long Term Lease", it is clear that:

    a. The document does not inform the public that a "lease" in the terms concluded was in contemplation;

    b. On the contrary, the document positively suggests that a "long term lease" on completely different terms and to enable a materially different type of development of Wānaka Airport is what is being proposed.

- *refer affidavit of Michael Ross at [23]-[30]*

[11] Section 82 of the LGA.

74. As, for example, Terry Hetherington confirms:

> [7] … I have looked at the Statement of Proposal (**SOP**), which QLDC utilised when it consulted on the question of a long-term lease of Wānaka Airport to QAC in 2016/2017. I can categorically state that when I read it at the time, it certainly never conveyed to me (nor do I believe that it would convey to anyone else) that the SOP was signalling or contemplating a development of Wānaka Airport that included upgrading it and its runway, so as to take commercial jet operations and to be operated as an airport similar to Queenstown Airport. On the contrary, it is clear that the SOP talks about modest development of general aviation amenities and activities, with the latter being in part created by Wānaka Airport being operated in a complementary way, so that it might take some general aviation overflow from Queenstown.
>
> [8] I did not participate in the subsequent consultation process, because I was at the time away on business and there were limited opportunities. However, that did not concern me because I did not see anything in the SOP that I necessarily disagreed with.

75. It is noteworthy that Mr Hetherington is not just a member of the Wānaka community who would have had an interest in a major airport development. He was and is someone who, as a commercial airline pilot and user of both Wānaka and Queenstown Airports, would have instantly picked up even obscure suggestions of development of Wānaka Airport into a jet capable airport.

- *See also affidavits of Rachel Brown (chair of Wānaka Community Board), Graeme Perkins (Luggate Community Association), Noel Williams*

76. Mr Hudson, another resident who recalls the SOP, took the same meaning from it as Mr Hetherington (affidavit at [9]-[15]). Mr Hudson attended a public meeting run by QLDC on 10 November 2016, which only served to reinforce his impression:

> [13] I came away from the meeting thinking there was not much to worry about and that all that was intended by QLDC and QAC was to provide complementary facilities for

> Queenstown Airport and to create more hangar space to cope with an increase in the number of private aircraft and the occasional corporate jet.

77. In fact, that was the Council's message, as is confirmed by Ella Lawton, then a QLDC Councillor and directly involved in the community consultation:

> On the contrary, as I said earlier, most submissions my panel received and the discussions in Council's 2016 and 2017 meetings were focused upon and understood "development" of WA to be development of the sort referred to in the Astral report; it identified the future role of WA as complementary and supplementary to Queenstown Airport. Developing WA into another jet capable airport operating like Queenstown Airport (ie. a "dual" operation) was not contemplated or discussed by Council. We understood that even the possible reintroduction by Air NZ of the modest turbo prop service between Wānaka and Christchurch was not expected in the short term. That was the only possible type of commercial scheduled service that I had brought to my attention.

78. The above evidence is undoubtedly consistent with any fair and objective reading of the content of the Statement of Proposal.

79. On page 5, the SOP said:

> The future role of Wānaka Airport has been identified as being a complementary and supplementary facility to Queenstown Airport, able to accommodate aircraft spill-over from Queenstown. 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 Wānaka.
>
> Wānaka Airport is already internationally renowned for the bi-annual Warbirds over Wānaka air show but it could also become the base for general aviation in the region as well as accommodating scheduled and charter air transport service in its own right.
>
> Scientific aviation activities, such as the NASA balloon programme, may become increasingly important and provide additional opportunities for growth to the wider district.
>
> Future growth at the airport could well require the purchase of additional land at the current site and development of the

> existing site to provide further space for ground leases. The Council has received requests for additional ground spaces to rent, which Wānaka Airport currently cannot accommodate, due to space restrictions.

80. Indeed, the 10-page SOP devoted a whole page to a picture of a NASA space balloon, with the caption “Scientific aviation activities, such as the NASA balloon programme, may become increasingly important and provide additional opportunities for growth to the wider district.” The other major picture (page 9) is of the Warbirds airshow.

81. The SOP also drew attention (page 5) to the risk that if the existing arrangements are not changed, Wānaka Airport won’t have the space, framework or structure “to best ensure it can absorb overflow general aviation and air transport services from the major airport at Queenstown.”

82. There is no express mention of the underlying Astral Report which was the basis for the SOP, together with the related business case by Rationale Limited, which makes clear that there would be only a moderate increase in Council revenue.

83. It should be emphasised that so far as the public was concerned, the Statement of Proposal was the beginning and end of the information they were given about what was proposed. The Astral and Rational Reports, which QLDC had commissioned and which QLDC and QAC had contributed to, were not publicly distributed. They were however considered by the Council itself before resolving to proceed with the Statement of Proposal.

The Astral report

84. In this proceeding QLDC accepts that the 2016/17 consultation and the SOP were based on and reflect the recommendations of the two separate underlying reports obtained by QLDC, from Astral Limited, aviation consultants, dated 20 April 2016 (**CB Part 4E, 270, 04055**); and the follow-on business case report from Rationale Limited dated September 2016 (**CB Part 4E, 275, 04130**).

85. There is nothing in the Astral report which suggests rebuilding and expanding Wānaka Airport as a Code C jet capable airport. It can be seen that the Astral report provides the basis for what is proposed for Wānaka Airport and summarised in the Statement of Proposal.

86. Pertinent passages include the following:

> **Role of the Airport**
>
> The role of the 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. Wānaka 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. (page 3)
>
> We consider the recommencement of air scheduled transport services should be included in planning. Ideally these services will use larger 50 seat aircraft for improved per seat operating costs and lower fares. (page 4)
>
> The report is high level and is confined to identifying the major issues facing the airport. It presents proposals aimed at ensuring the airport is well provided for and able to achieve its purpose looking ahead 40-50 years. It is envisaged as the platform for more detailed nearer term planning and, if justified, land acquisition.

The report was prepared in consultation with a steering group of representatives from QLDC and QAC. … The intention was to ensure all key decision makers were apprised of the long term issues facing the airport, participated in developing recommendations and gained a shared commitment to the future of the airport. (page 5)

5. Demand forecasts

… [I]n the last four years it has become apparent that in the near term growth will not be as a result of scheduled aircraft movements as scheduled services have recently ceased at the airport. These appear unlikely to resume until Wānaka grows substantially in population or a “hub and spoke” demand emerges for turbo-prop services, that can’t be accommodated at Queenstown Airport, connecting the wider Wānaka-Queenstown area to regional centres.

In the near term Wānaka Airport is more likely to grow as a result of demand for:

- Hangar space for high value privately owned aircraft
- Hangar and facility space for scientific operations such as NASA super pressure balloon launches
- Operational offices and reception facilities for sport aviation activities
- Hangars and bases for helicopter and general aviation, including flight training.
- Ancillary services such as maintenance and repair of aircraft and components
- Aircraft parking, in particular corporate jet overflow from Queenstown airport
- Charter air services such as winter ski flights

Scheduled services cannot of course be excluded and provision needs to be made for a modest terminal building that could initially handle charter flights with provision for expansion. A terminal facility similar in size to that at Manapouri (approximately 400 sq. m) would be appropriate to provide for ad-hoc turbo-props. Airbiz recommended 1000 sq. m in the 2013 land plan study and the 2008 Master Plan allows for a 2500 sq. m terminal.
(pages 15-16)

87. Astral projected a requirement over the next 40 years for up to 23 Ha of additional land for expansion of hangars and related development (page 20).

> *Air transport services*
>
> … If air transport services could be developed to (for example) four landings of 50 seat (circa 18,000kg) aircraft per day in the longer term, the increase in landing fees would be approximately $300,000 per year. The demand for air transport services will be driven by:
>
> - local population growth
> - increased “knowledge” and service based industries
> - increased tourism especially ski fields and adventure activities
> - displacement of operations from Queenstown Airport.
>
> The use of 50 seat aircraft (such as the Bombardier Q300 operated by Air New Zealand) would substantially reduce ticket prices compared to the B1900. … Destinations tend to be limited by the flying range of turbo-prop aircraft which, rather than jets, are best suited to the existing runway length. The growth of Christchurch as the rebuild gathers momentum will make this an increasingly attractive link. …
>
> While the Air New Zealand services by 19 seat B1900D aircraft were accommodated using the existing Aspiring Air facility this is very small and a modest terminal building would be required for scheduled passenger flights by larger aircraft. For this reason we recommend a provision in the capital budget.
>
> (pages 30-31)

The Rationale report

88. The Rationale report is a follow-up "Business Case" report obtained by QLDC in September 2016, based on and derived from the Astral report of April 2016. It seeks to determine the economic outcomes of the possibilities described by Astral. Accordingly, the Rationale report quotes heavily from and derives from the Astral report recommendations. It does not expand them.

89. The Arup Report and QAC's separate planning for a second jet capable airport close to Queenstown Airport

90. We now know, although it was not disclosed in 2016/17 in the public consultation process, that through this period, QAC had been working with Arup, Australian consulting engineers of Melbourne, for some time, on plans for Wanaka Airport.

91. In July 2016, a QAC Board workshop with Arup resulted in Arup looking at alternative airport sites within 1-2 hours of Queenstown, for Code C aircraft capable of routes to Australia (Arup Siting Study Scope (**CB Part 4M, 766, 08991**)), with a milestone delivery schedule of 30 September 2016 for the Final Report.

92. In November 2016, in the midst of the SOP process, the QAC Board hosted a workshop with Arup consultants in the course of which they reviewed layouts and extended runway options for Wanaka Airport "to demonstrate the potential for Wanaka to support commercial aircraft operations."

93. QAC bought two parcels of land adjacent to Wanaka Airport, on 4 November 2016, for $6 million (**CB Part 4E, 283, 04212**). On 27 March 2017 the QAC Board Meeting (**CB Part 4M, 775, 09054**) recorded that QAC now owned 150 hectares adjacent to Wanaka Airport.

94. Not long after that, in April 2017, the QAC Arup Siting Study Report made the following recommendation:

> The existing Wanaka airport is well suited to expansion to Code C operations (runway length estimated to be between 2,200 to 2,400 m). The impacts at Wanaka could be managed with early planning and engagement.
>
> This option should be carried forward.

95. (QAC did not release the Arup Siting Study until June 2019, but QAC dated that report as April 2017.)

96. between November 2016 and May 2017, QAC asked Arup to prepare layout options for wide body jets operating out of Wanaka Airport

97. In May 2017, just after the QLDC voted to lease Wanaka Airport to QAC, Arup delivered to QAC an 18 page report laying out options for Code C and Code E jet aircraft operations at Wanaka Airport with prospective passenger movements over a 30 year period, although it appears that much of its content had previously been provided.

98. Planned runway layouts and variations of planned runways were submitted by Arup to QAC for the proposed Code C runway at Wanaka Airport dated 5 June 2017 (**CB Part 4M, 783, 09087**). It is clear from that plan, and a version provided to QLDC (**CB Part 4B, 753, 02043**) that the separation distance or safety strip would overlap with and compromise the development of Project Pure (a point which is ultimately reflected in the terms of the QAC "lease".).

99. The Code C runway plan was supplied to QLDC (**CB Part 4B, 753, 02043**) at a QAC - QLDC Wanaka Airport Infrastructure Coordination Meeting on 12 October 2017. It shows two possible alignments for the runway, one where the safety strip overlaps with the Project Pure plant and one aligned so that it avoids Project Pure.

100. The issues for Project Pure arising from QAC's planned Code C runway for Wanaka Airport were addressed again in another meeting of the QAC - QLDC Wanaka Airport Infrastructure Coordination Group on 17 November 2017 (**CB Part 4B, 753, 02045**).

101. As Mr Waterworth points out in his affidavit (which sets out the above in detail):

> It raises difficult questions to realise that both the Arup Report, and the Queenstown Airport 30 Year Master Plan (based in large part on the Arup report), were being undertaken concurrently with the Rationale Report (CB Part 4E, 275, 04130) and the Special Consultative Process (SCP) (CB Part 4E, 280, 04199).

- *Refer affidavit of Andrew Waterworth at [98]-[109], [170]-[175].*

The Lease (signed March 2018)

102. Against that background, following the consultative process, a QLDC full council meeting on 20 April 2017 formally considered the report from council staff following the Special Consultative Procedure and determined to grant a long term Lease to QAC (**CB Part 4E, 296, 04280**); (**CB Part 4E, 297, 04295**)

> On the motion of the Mayor and Councillor MacDonald it was resolved that the Council:
>
> 1. Note the contents of this report;
>
> 2. Agree the future governance and management of the Wānaka Airport will be under a long term lease to QAC; and
>
> 3. Delegate to the Mayor, Chief Executive, Councillor Hill and Councillor MacLeod the power to negotiate and execute the lease, and to engage with QAC to make any changes necessary to the QAC Statement of Intent to incorporate the Council's expectations of governance of Wānaka Airport.

103. It has already been pointed out that, in context, the delegation (of the power to negotiate and execute a lease to QAC) contemplated a lease far different from the lease which was negotiated and executed a year later by Mayor Boult and others, on behalf of QLDC.

Terms of the Lease

104. The “Memorandum of Lease” was signed on 8 March 2018 by QLDC and QAC. Its terms comprised:

    a. A lease to QAC of the land on which Wānaka Airport stands; and

    b. A sale of the improvements (i.e. everything comprising Wānaka Airport that was not the land) to QAC.

105. The lease of the land was on the following terms:

    a. QAC would pay $11,300,000 plus GST (if any) up front as a lump sum rental payment for the entire lease;

    b. The lease was for 100 years;

    c. QAC and QLDC will endeavor to agree within six months of the 70th anniversary the rent and basis for rent review from the 100th anniversary;

    d. The lease would extend indefinitely after the 100 year term expired; either party can terminate on 30 years prior written notice, although notice cannot be given before year 70;

    e. QAC will pay all rates, taxes, charges and impositions in respect of the Land or Buildings;

    f. QAC will pay all charges in respect of all services, utilities or amenities.

106. QLDC cannot terminate the lease for breach of the lease agreement unless QAC goes into liquidation, or has abandoned Wānaka Airport.

107. The **sale** of the improvements was on the following terms:

    a. QAC would buy the runway; the taxiway; the apron; roads & carparks; buildings; building fitouts; portable buildings; and other miscellaneous plant and equipment.

b. The purchase price was $3,200,000 plus GST (if any) to be paid in a lump sum, based on a depreciated replacement value of the improvements;

c. QAC is to keep the improvements in good and substantial repair as would be expected to maintain the safe and efficient operation of Wānaka Airport;

d. QAC will keep all buildings not used for Core Aeronautical Activities in good repair, fair wear and tear excepted;

e. QAC can demolish improvements if it is reasonable to do so to maintain the safe and efficient operation of Wānaka Airport;

f. QAC has to pay for all expenses associated with keeping the improvements in good and substantial repair and as otherwise required by law;

g. At the end of the lease QLDC will pay QAC compensation for all improvements used for Core Aeronautical Activities based on their net book value;

h. If required by QLDC, if any improvements are on adjoining land owned by QAC at the end of the lease, QLDC can require that land to be subdivided and QLDC will purchase it at market value;

108. Importantly, the lease provided that:

a. QAC will be responsible for all future development of Wānaka Airport;

b. QLDC's consent is not required to develop the land and/or improvements of Wānaka Airport so long as all relevant laws are complied with;

c. QAC must obtain QLDC's approval for any developments only in the final ten years of the lease;

d. If further adjoining land is required to be purchased during the term of the lease, QLDC will have the first option to purchase but will lease it back to QAC;

e. QAC can assign the lease with QLDC's consent (not to be unreasonably withheld).

109. Regardless of how the terms of the lease are described, it is clear that in all practical ways, it transfers the substantial ownership and control of Wānaka Airport to QAC.

110. QLDC is given no ability under the Lease to determine what future airport development QAC may or may not undertake. Indeed, because QAC itself purchased adjoining land (ahead of obtaining the lease), it is QAC that can effectively control what future development of the airport can be undertaken.

111. The terms of the lease as concluded are at odds with what was intended by the Council in April 2017. In particular the complete transfer of control to QAC without any ability on the part of QLDC to control the future direction of the airport via the terms of the lease is far from what was contemplated.

a. The Rationale report specifically concluded that the preferred option was a lease and a services agreement through which the airport would remain wholly owned by QLDC, and QLDC would maintain control over the future direction of the airport:[12]

The preferred option is a long-term lease to QAC. The airport would remain wholly owned by QLDC, however QAC would be better incentivised to work towards increasing revenue opportunities. It ensures that:

• Queenstown and Wānaka airports are run in a complementary manner.

• Ownership is retained by QLDC.

• **Control over the future direction of the airport is maintained via lease and [management services**

[12] Rationale Report page 12

agreement] conditions and the QAC statement of intent (SOI).

• A positive NPV is achieved.

• It enables a future decision on the sale of the airport if cash is needed or the value is maximised.

b. The report to the QLDC Council of 29 Sept 2016 recommending adoption of the Statement of Proposal for consultation on Wānaka Airport (CB Part 4E, 279, 04192, page 3):

> This option transfers the operations, long-term planning and governance of the Wānaka Airport to QAC, a party with the expertise necessary to plan and develop an airport. **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 direction 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 Wānaka community could continue to have a say in the future direction of the Airport. …
>
> At this stage the detail of any lease agreement with QAC has not been determined. If the S.O.P is adopted and finally approved following submissions, then the Council and QAC will need to negotiate appropriate lease conditions. The tenure and value of the lease will both be influenced by the level and rate of investment QAC will wish to make into Wānaka Airport as part of an overall plan for the future development of the site.

c. The delegation to Mayor Boult and others (above, para 101) based on that Council report.

112. Wayne Hudson, a senior lawyer with 33 years experience practising in commercial corporate and property law, gives his

opinion that this lease is certainly not a usual or standard form of property lease:

> [22]…. The Lease looks to me as though it had been drafted predominantly for QAC's benefit, rather than for QLDC's.
>
> [23] The Lease contains many unusual terms, which I have never seen before in my professional career as a commercial lawyer. …
>
> (e) The "rental" being paid as a one lump sum on commencement of the Lease (calculated by reference to the capital value of the unimproved land). In other words, it has the same economic effect as that of an outright sale of the land and also prevents any rent reviews and increases;

113. He comments specifically on how the lease gives QAC the freedom to develop the Airport without QLDC's agreement or consent:

> "(f) The right of the tenant to develop Wānaka Airport without the landlord's consent (except in the last 10 years, when it must seek QLDC's consent for any capital improvements over $10 million + CPI), coupled with the initial sale (not lease) of all improvements, which is not usual in a commercial lease. A normal lease requires the landlord's consent to any form of development, construction or demolition;

114. He also comments on the effect on Project Pure, and in particular the requirement for the landlord to obtain QAC's consent to develop Project Pure, if it might affect the airport operations, and QAC's right as tenant, on the other hand, to require QLDC to relocate Project Pure.

115. Overall, Mr Hudson concludes:

> In my view, the net effect of these terms is that QLDC has become the subservient rather than the dominant party in the relationship (despite QAC being a Council-controlled trading organisation owned as to 75.01% by QLDC). It has substantially transferred its ownership and control of Wānaka Airport to QAC.

116. The affidavit of John Schellekens, filed by QLDC, attempts to defend some of the terms of the "lease" as usual in commercial terms. The comparisons he offers are misconceived. In all cases they are dealing with substantial property made available

for long-term developments. They are suitable for large commercial developments and effectively transfer ownership or control to enable and encourage new large developments as a long term investment for the buyer, and without any ongoing returns for the vendor.

117. By contrast, the lease of Wānaka Airport under the Statement of Proposal, and the underlying reports, was intended to be the lease of an existing commercial activity so as to provide cashflow to be shared between lessor and lessee, and within financial incentives for the lessee to make modest capital investments.

118. Ella Lawton, a member of the QLDC Councillor who was part of the consultation process and who voted on the delegation of the power to negotiate the lease, provides the Court with clear evidence that what was produced goes far beyond what was delegated.

    - Refer Ella Lawton affidavit, set out at [32], [34], and [77] above.

119. Ms Lawton's reaction also covers the ceding of control over Project Pure, which was never contemplated or discussed in the consultation process.

Heads of Terms – January 2018

120. The Heads of Terms (**CB Part 3, 48, 00786**) signed by Mayor Boult in January 2018, prior to the Lease, sets out all of the key parts of the lease agreement already outlined above.

121. The Heads of Terms confirms that the figures for pre-paid rent in the Lease agreement are derived from the agreed freehold market value (clause 1.2).

122. The Heads of Terms also agrees to new terms to be included in the QAC's SOI, by agreeing the Wānaka Airport Guiding Principles (clause 4 and Annexure 1, page 16). Key among the Guiding Principles is the agreement that economic control of the Airport should vest in QAC:

3. QLDC and QAC acknowledge that the long-term lease arrangement regarding Wānaka Airport should vest economic control of Wānaka Airport in QAC and its terms should encourage investment in the Airport by QAC.

…

5. QLDC and QAC agree Wānaka Airport should become an economically viable and sustainable business.

123. Mayor Boult's agreement, on behalf of QLDC, to QAC having a long-term "lease" on these terms, as previously discussed, coupled with his agreement to the "Guiding Principles" to be incorporated in the next SOI, including in particular vesting economic control of Wānaka Airport in QAC, was itself a decision to transfer control of Wānaka Airport to QAC.

124. These agreed "guidelines" were included by QAC in its 2018 and 2019 SOIs, which were agreed to by QLDC itself. In conjunction with the lease, those were also decisions by QLDC to transfer substantial control of Wānaka Airport to QAC in breach of s 97.

125. It would appear that the agreement to these changes by Mayor Boult, and by QLDC itself in the SOIs, went well beyond the sorts of amendments which Mayor Boult was in fact authorised to make following the Council resolution in April 2017. QLDC had prepared a marked up version of the changes necessary to the SOI and which was provided to the Council at that April 2017 meeting (**CB Part 4A, 77, 01365**). It can be seen from the markups to the last paragraph on p18, dealing with the Strategic Alliance with AIAL, that the existing SOI referred to the two Airports. QAC's acquisition of Wānaka Airport meant that now there were three airports, so the <u>recommended</u> changes appear designed to leave Wānaka Airport <u>outside</u> that alliance, by a suggested amendment to this paragraph so that it applied only to Queenstown Airport and Auckland Airport.

126. However, two points are to be noted as to what was then agreed:

a. The Strategic Alliance Agreement entered into in November 2016 already included Wānaka Airport within the ambit of the Strategic Alliance Agreement with AIAL.

b. The actual 2018 SOI (**CB Part 4F, 316, 04640**) did not make the recommended change but retained the wording "between the two companies", which included Wānaka Airport.

The Strategic Alliance Agreement between QAC and AIAL

127. On 3 November 2016 (in the midst of the 2016/17 consultative process) QAC had signed a renewed Strategic Alliance Agreement with AIAL.[13] (The document was only disclosed subject to confidentiality in this proceeding.)

128. Mr Hudson deposes that in his experience it is unusual that a 75.01% owned CCTO should enter into an agreement with its 24.99% minority shareholder, conferring joint management and decision making rights on AIAL, without the consent of QLDC as the major shareholder and, it is suggested, without even fully disclosing to QLDC all of its terms.

129. A strategic alliance would more usually have been between the two shareholders, QLDC and AIAL. Instead, QAC has changed the balance of control, so that it is vested equally in AIAL and QAC, rather than in QLDC and AIAL in respect of their respective shareholdings.

130. The 2016 Strategic Alliance Agreement (**CB Part 4M, 772, 09028**) includes the following:

a. It covers the "Business" of QAC, which is expressly defined to include Wānaka Airport (also defined) (cl 1.1);

[13] The 2016 Strategic Alliance Agreement replaced a previous (undisclosed) agreement between QAC and AIAL dated 21 March 2011. AIAL first purchased a 24.99% shareholding in QAC in 2010, when the QAC Board, without formal agreement from QLDC, then then 100% owner, and thus without QLDC undertaking public consultation, entered into an agreement with AIAL which gave AIAL, by share issue, a 24.99% shareholding and a right to purchase up to 33% of QAC. That resulted in a public outcry and judicial review proceedings at the time, which were settled prior to a hearing.

b. It defines for the Business a Joint Purpose (cl 3) to leverage the scale and connectivity of a multi-airport relationship to grow travel, trade and tourism activity, to deliver superior economic growth and superior earnings.

c. The Annual Objectives objectives for QAC are set by AIAL and QAC, rather than being set by QAC (or QLDC) (cl 4).

d. There are formal Annual Reviews of performance by the CEO and CFO of AIAL and QAC (cl 7).

e. The Chairs of the Boards of each company are expected to consult and interact; management are expected to meet and exchange information and advice (Sch 2)

f. The QAC Board is required to encourage QLDC to support the participation of AIAL in governance of QAC.

131. When one considers the SAA, it is inconceivable that AIAL, at a director/senior management level, did not participate in and contribute to decisions about how QAC intended to acquire by lease and SAA and in light of the Arup report QAC obtained in 2016. The Arup report identified Wānaka as the best option for a second jet-capable airport. In WSG's solicitors' letter of 14 August 2020, WSG specifically pointed out the need for disclosure of that participation (and documents relating to it), but has been provided with nothing. The Court is invited to draw the inference that AIAL was fully behind decisions regarding the redevelopment of Wānaka Airport, consistent with the Strategic Alliance Agreement.

132. The Strategic Alliance Agreement was not disclosed to QLDC at the time the lease was voted on. Indeed, it appears that the full SAA has never been disclosed to the full Council of QLDC at any time prior to this proceeding. Ella Lawton describes her reaction to subsequently seeing the Agreement, in the context of this litigation:

> [10] Having now seen the SAA I am also surprised to learn:

(a) That this SAA was entered into between QAC and AIAL in November 2016 and that it specifically included WA in the definition of "the business". To the best of my memory this relationship regarding WA was not disclosed to the Council at the time we were considering the possible lease of WA and consulting with the community about it.

(b) That AIAL was given the right to agree jointly with QAC the primary purpose and annual objectives (financial target) of QAC and to participate in the management of QAC's "business" which expressly including Wānaka airport.

[11] Had I been made aware of this SAA in 2016/2017 it would have had considerable weighting on my decisions relating to WA. It would have been unlikely I would have agreed to any lease or other transfer by QLDC to QAC of any part of QLDC's full rights of ownership and control of the WA, at least not before we (the Council) had reached specific decisions about how the airport should be developed and run and before we had consulted with the Wānaka and Upper Clutha communities regarding the airport development plan.

133. The Strategic Alliance Agreement clearly has a significant impact on the level of control, if any, which QLDC actually has, under the Statement of Intent or as a 75% shareholder, over QAC and its business direction and development decisions.

134. Given the clear relevance and concerns expressed during consultation (including at Council level) about continued community control over Wanaka Airport, proper consultation required disclosure of much more than the fact that AIAL owned 24.99% of QAC’s shares. That was all the more important because Wānaka Airport was expressly brought into the Strategic Alliance Agreement on 3 November 2016, and the advice being received from Arup.

Statement of Intent

135. Each year, as required by the LGA, the Board of QAC must prepare its Statement of Intent for the forthcoming 3-year period, setting out inter alia its strategic objectives and financial forecasts for the next 3 years. Each year the Statement of Intent must be agreed to by the "shareholders" of the CCTO, although it appears in practice that the process that is followed by QAC is that the Statement of Intent formally goes to QLDC, at least, for its approval.

136. Accordingly, and relevant for present purposes, there is each year **a decision** by QLDC to approve the Statement of Intent, i.e. agreeing to its contents. (This is relevant to alternative arguments pleaded by WSG, that each such decision relating to QAC's proposals for Wānaka Airport was itself a significant decision which required prior LGA consultation, and thus was in breach of the LGA.)

137. It should be emphasised that SOIs are not the subject of public consultation, and nor are they specifically brought to the attention of the community for that purpose. Generally they are published together with forthcoming Council meeting agendas when these are publicly notified. However that is typically only a few days, at best, prior to the actual meeting.

138. The Statement of Intent delivered by QAC after the Lease was signed, and agreed to by QLDC was dated June 2018 (**CB Part 4F, 316, 04640**)

139. The SOI finalised in June 2018 can be read as not being inconsistent with the Astral and Rationale reports, and it is clear from the evidence before the Court that that was how it was understood by the community (insofar as they might have looked at it at all).

Public statements raise community concerns – late 2018/2019

140. It was in late 2018 and the first half of 2019 that members of the community first became concerned by public statements that seemed to suggest that QAC had plans to undertake significant development, to enable jet capability at Wānaka Airport.

141. That resulted in some engagement with QLDC, initially in a meeting, but followed by correspondence in April 2019. QAC initially refused to meet with Michael Ross (now Chair of WSG), but subsequently, QAC's CEO (Colin Keel) met with WSG on 29 April 2019.

142. At that meeting Mr Keel said that QAC would be spending NZ$300-NZ$400 million developing the airport, and that they would be looking to land narrow body jets. The same statements were made to the media. (The true significance of the figures is and was not immediately apparent; however, Richard Somerville undertook an analysis for WSG, published in September 2019 (**CB Part 4H, 460, 05725**), which shows that $400 million of expenditure translates to a jet flight movement at Wānaka Airport every 10 minutes, if usual airport industry commercial airport drivers are applied.

    - *Refer affidavit of Michael Ross at [51]-[78]; affidavit of Andrew Waterworth at [242]-[245]; affidavit of Richard Somerville at [11]ff, esp at [16]*

143. April 2019 was the first time that there were public statements and admissions as to QAC's plans for Wānaka Airport. Their plans received national coverage and featured regularly in the media,[14] which serves to demonstrate both the novelty and the significance of the information.

144. As a result of these revelations, the community began pushing for a copy of the Memorandum of Lease.[15] QLDC refused to release a copy on the grounds of QAC's commercial confidentiality, and maintained that stance until September 2019, when it was finally released by Mayor Boult (under

[14] Affidavit of Michael Ross at [65]-[66].
[15] Affidavit of Michael Ross at [67].

political pressure). These proceedings were filed shortly thereafter.

June 2019 SOI (for 2020-2022)

145. When QAC presented for QLDC's agreement their 2019 Statement of Intent ( ), the draft included, for example, the following passage which for the first time made express reference to jet aircraft landing at Wānaka:

> At Wānaka 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. This planning approach is consistent with QLDC's aspiration to have scheduled services reintroduced at Wānaka Airport through the long term lease to QAC. (page 7)

146. There was significant community opposition at the Council meeting, including from WSG. Because of the strength of the pushback from the community, the SOI for 2020-2022 could not be agreed, and QLDC backed off on continuing with the SOI process.

147. As a result of the ongoing pressure, particularly from the Upper Clutha communities, but also from groups in Queenstown, in August 2019 Mayor Boult unexpectedly announced a "pause" on the matter, at a Council meeting, and also the reference of the matter to consultants.[16]

148. Following the election, and despite WSG filing these proceedings, challenging the lawfulness of the "lease", and the consultation that had led to it, QLDC insisted on continuing with the process notwithstanding protests from WSG.

149. The consultants to be engaged were ultimately named as MartinJenkins. That process was regarded with scepticism and concern by WSG, and by the community, and their concerns were fully set out in correspondence.[17] One key point was that

[16] See affidavit of Mark Sinclair [35]-[45].
[17] See affidavit of Mark Sinclair [39]-[72].

these same consultants had previously prepared a report for QLDC which expressed conclusions justifying on economic grounds the benefits of high tourist numbers coming to Queenstown in particular. In essence, therefore, they were bound to repeat their conclusions and therefore inevitably support plans for a second jet-capable airport (as they eventually did).

150. Unexpectedly, in December 2019, QLDC pushed through the 2019 SOI for QAC (amended from the prior version) on the express basis that there had to be one, but that there was a new process in place, and that the controversial matters would be properly addressed in the 2020 SOI.

151. The "pause" process Mayor Boult had announced, which essentially centred on obtaining the report from MartinJenkins (which ultimately cost NZ$214,000), was due to be completed in April 2020. However, Covid-19 hit New Zealand in March 2020, and its major impact on tourism and air travel in particular were felt instantly by QAC in particular, and the QLDC district as well.[18]

152. At this point, WSG immediately proposed to QLDC, in light of the significant impact of Covid-19, that this litigation be resolved by a reset and cancellation of the lease.[19] That proposal was declined.

153. QLDC has pressed on with a placeholder (essentially meaningless) SOI for QAC (**CB Part 4H, 559, 05883**), and intends to conclude with QAC the 2020 SOI in late October 2020. The MartinJenkins report has been completed, notwithstanding the documented flaws in its process and content, which are set out in the evidence, and the significant cost to ratepayers for no apparent purpose.[20]

[18] See affidavit of Mark Sinclair [72](f).
[19] See affidavit of Mark Sinclair [16](d)(ii) and **CB Part 4E, 606, 06053**
[20] See affidavit of Mark Sinclair [39]-[72].

DUTY OF CANDOUR

154. The duty of candour was raised in this matter at an early stage and again later, in particular in the context of candid disclosure sought from the respondents.

155. On 29 January 2020 the applicant's solicitors wrote to the respondents' solicitors (**CB Part 4C, 213, 03044**) clearly and fully setting out the duty of candour and the obligation to comply with it which lies on the respondents. In particular, that letter drew attention to the decision of this Court in *Bain v Minister of Justice*:[21]

> [29] The Minister, Mr Bain contends, is under the high duty of candour that Lord Donaldson MR described in 1986 in *R v Lancashire County Council, ex p Huddleston*; and for the reasons he gave.
>
> [30] On judicial review, Lord Donaldson MR said, "a new relationship" has arisen "between the Courts and those who derive their authority from public law". It is, he said, "one of partnership based on a common aim, … the maintenance of the highest standard of public administration". Judicial review, he said, requires an equally open process, "which falls to be conducted with all the cards upwards on the table", recognising that "the vast majority of the cards will start in the authority's hands."

156. The letter also drew attention to the nature of such litigation, and in particular that it is settled law that "*proceedings for judicial review should not be conducted in the same manner as hard-fought litigation*".[22]

157. WSG's solicitors made the same and related points in relation to the evidence to be filed by the respondents, in letters of 7 and 14 August 2020 **(CB Part 5, 85, 09969; CB Part 5, 85, 09973, CB Part 5, 85, 09997)**.

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[21] *Bain v Minister of Justice* [2013] NZHC 2123; See also de Smith, Judicial Review, 8th Ed, (Sweet & Maxwell UK, 2018) at [16-027]; *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62; Garry Williams, Judicial Review: the duty of candour, [2013] NZLJ 15;

[22] *Belize Alliance of Conservation Non-Governmental Organs v Department of Environment* [2004] UKPC 6.

158. The respondents it seems have a different view of the duty of candour. Given the differences between the parties, and the relevance to this proceeding, the law on the point must be examined.

159. It is well established in New Zealand that parties to an application for judicial review have a duty of candour.[23] Decision makers in particular are urged to show candour.[24]

160. In *New Zealand Fishing Industry Association Inc v Minister of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at 544, Cooke P stated that while the courts recognised that they "should not trespass into the legitimate policy sphere of Ministers" in judicial review proceedings, the "constitutional corollary should be Ministerial candour with the Courts about their policy." His Honour added, for good measure, "that does not seem too much to ask."

161. As Dr Dean Knight has observed, in our submission aptly:[25]

> The key lesson for local government is that legality is not the only lodestar when asking whether something can or should be done. There are important, and fundamental, constraints that also need to be respected. The legislative terms of the Local Government Act 2002 are not exhaustive.
>
> ….
>
> We might also think about constitutional propriety as raising the following issues too:
>
> - Expectations of local authorities as 'model litigants', where an ethical approach should be brought to the adversarial contest.

162. In *Henderson v The Privacy Commissioner* HC Wellington CIV-2009-485-1037, 299 April 2010, Miller J addressed the level of candour the courts expect:

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[23] Garry Williams, "Judicial Review: the duty of candour" [2013] NZLJ 156. Note: this duty of candour should not be confused with the statutory duty of candour on healthcare providers in the UK, regulated by the Care Quality Commission.

[24] A to Z of New Zealand Law (online ed, Thomson Reuters) at [2.22.14] "Duty of candour"

[25] Dr Dean Knight, "Constitutional practice in local government: growing constitutional culture when acting locally", Address to Society of Local Government Managers (January 2019) pp3-4.

> [108] [Counsel] also accepted that, as a general principle, decision-makers have a duty to disclose to the Court material relevant to a decision being judicially reviewed. I agree. The Court normally expects public bodies to disclose relevant material, which is one reason why discovery is not required as a matter of course under the Judicature Amendment Act, and an adverse inference may be drawn where a decision-maker has failed to do so.

163. The position in New Zealand has flowed from and is supported by the legal position in the UK.

164. In the UK Treasury Solicitor's guidance note it says "all public authorities who are respondents to applications for judicial review are subject to what is known as the duty of candour".[26]

165. In *R v Lancashire County Council ex p. Huddleston* [1986] 2 All ER 941 Lord Donaldson MR explained the duty of candour in judicial review:

> "This development [i.e. the remedy of judicial review and the evolution of a specialist administrative or public law court] has created a new relationship between the courts and those who derive their authority from public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration… The analogy is not exact, but just as the judges of the inferior courts when challenged on the exercise of their jurisdiction traditionally explain fully what they have done and why they have done it, but are not partisan in their own defence, so should be the public authorities. It is not discreditable to get it wrong. What is discreditable is a reluctance to explain fully what has occurred and why… Certainly it is for the applicant to satisfy the court of his entitlement to judicial review and it is for the respondent to resist his application, if it considers it to be unjustified. But it is a process which falls to be conducted with all the cards face upwards on the table and the vast majority of the cards will start in the authority's hands"

166. In *R (Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1409 at [50] Laws LJ

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[26] UK Treasury Solicitor's "Guidance on Discharging the Duty of Candour and Disclosure in Judicial Review Proceedings" document published in January 2010 at pg 3.

described the public responsibility of the duty of candour as "a very high duty on public authority respondents, not least central government, to assist the court".

167. In *Belize Alliance of Conservation Non-Governmental Organs v Department of the Environment* [2004] UKPC 6 Lord Walker said, referring directly to the duty of candour, that "proceedings for judicial review should not be conducted in the same manner as hard-fought litigation".

168. Part of the duty of candour is the duty of disclosure, or, in other words, the duty to provide information. "Decision-makers are under a duty of disclosure to the court when their decisions are challenged in judicial review."[27]

169. Williams in "Judicial Review: the duty of candour" describes the duty as follows:[28]

> The duty requires a respondent public authority to cooperate and make candid disclosure of the relevant facts and, so far as it is not apparent from the disclosed documents, the reasoning behind the decision challenged. Lord Walker also indicated that the duty can extend to non-public authority respondents who find themselves named as a party in an application for judicial review. Even the applicant in judicial review proceedings owes the Court a duty of candour. …
>
> Lord Walker's observation in the *Belize* case echoes the oft-quoted words of Sir John Donaldson MR in *R v Lancashire County Council ex p Huddleston* [1986] 2 All ER 941 at 945G, where the Master of the Rolls referred to judicial review as being "a process which falls to be conducted with all the cards face upwards on the table…". That this should be so is all the more important because the vast majority of the cards will start in the public authority's hands. …
>
> Put simply, a public authority whose decision is being challenged by judicial review must provide full and fair disclosure of relevant evidence and material. The obligation of disclosure was described in *Huddleston* at 947E in these terms:

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[27] A to Z of New Zealand Law (online ed, Thomson Reuters) at [2.22.14] "Duty of candour"

[28] Garry Williams, "Judicial Review: the duty of candour" [2013] NZLJ 156

> [The respondent] should set out fully what they did and why, so far as is necessary, fully and fairly to meet the challenge…

In *Banks v Secretary of State for the Environment, Food and Rural Affairs* [2004] EWHC 1031 it was said that:

> Frank disclosure of the decision making process does not mean referring to so much of the truth as assists the public body's case. It means the whole truth including so much of the truth as assists the applicant for judicial review.

170. The position in New Zealand with regards to disclosure is also set out in Westlaw commentary on the duty of candour:[29]

> [The decision makers] are urged to show candour and file affidavits disclosing to the court the full circumstances of the decision-making, including the "decision making process … the relevant facts and the reason behind the decision challenged".[30] The duty facilitates the court's function of resolving the dispute according to the justice of the case: the outcome of judicial review challenges is often highly fact dependent.[31] The courts must 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".[32] The context of the decision-making determines the scope of the duty. All materials relevant to, or bearing upon, the decision-making should be disclosed, including the decision-making "record" (the decision documents(s), and applications and reports produced prior to the decision-making), affidavits from the parties, relevant or commissioned expert reports, and any additional information of probative value.[33] Sometimes the record speaks for itself, obviating the need for full

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[29] A to Z of New Zealand Law (online ed, Thomson Reuters) at [2.22.14] "Duty of candour"

[30] *Tweed v Parades Commission for Northern Ireland* [2006] UKHL 553, [2007] 1 AC 650 at [31] cited with approval in *Solicitor-General v Miss Alice* [2007] 2 NZLR 783 (HC) at [47] …

[31] See M Smith *New Zealand Judicial Review Handbook* (Brookers, Wellington, 2011) at ch 29.

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

[33] See authorities cited in M Smith *New Zealand Judicial Review* Handbook (Brookers, Wellington, 2011) at [29.3].

disclosure.[34] But, where the decision-makers do respond, "it is desirable for the evidence to be full and candid".[35] A less than candid disclosure may invite adverse inferences,[36] or the granting of leave to cross-examine the deponent.[37]

… The decision-maker should provide full and candid disclosure, rather than have the court "scramble through a mass of material or be forced to draw inferences from inadequate information".[38] Decision-makers whose decisions are challenged should not "enter the fray" or compromise their independence of office.[39] They must resist becoming partisan in the proceedings but should assist by disclosing the full record of the decision-making and the true reasons for their decision.[40] A bare declaration that all relevant matters had been considered and irrelevant ones ignored would fail a decision-maker's public responsibility.[41]

Ministers of the Crown bear a special responsibility. Although ministers may not be compelled to swear affidavits, they are expected to discharge fully their duty to the court: "[T]he Crown must act, and be seen to act, as a model litigant."[42] The Crown as executive "must be an exemplar of high standards of conduct in litigation before the courts".[43] It would be "regrettable", observed the Court of Appeal, were ministers to make no affidavit…[44]

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[34] *Inder v Commissioner of Crown Lands* HC Christchurch CIV-2009-409-1219, 28 May 2010 at [30].
[35] *Inder v Commissioner of Crown Lands* HC Christchurch CIV-2009-409-1219, 28 May 2010 at [30].
[36] *New Zealand Fishing Industry Association Inc v Minister of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at 554, 561-562 and 567-568 …
[37] *Inder v Commissioner of Crown Lands* HC Christchurch CIV-2009-409-1219, 28 May 2010 at [30].
[38] *New Zealand Fishing Industry Association Inc v Minister of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at 561-562
[39] *New Zealand Engineering, Coachbuilding, Aircraft, Motor and Related Trades Industrial Union of Workers v Court of Arbitration* [1976] 2 NZLR 283 (CA) at 284-285.
[40] *Huddleston at* 945 per Sir John Donaldson MR, 946-947 per Parker LJ
[41] *Fiordland Venison Ltd v Minister of Agriculture and Fisheries* [1978] 2 NZLR 341 (CA) at 345.
[42] *SCI Operations Pty Ltd v Commonwealth of Australia* [1996] 64 FCR 346 at 368, quoted with approval in *Solicitor-General v Miss Alice* [2007] 2 NZLR 783 (HC) at [44].
[43] *Solicitor-General v Miss Alice* [2007] 2 NZLR 783 (HC) at [48] …
[44] *New Zealand Fishing Industry Association Inc v Minister of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at 554.

171. Compliance with the duty of candour is onerous.[45]

172. This is because the duty essentially replaces the obligation of discovery in judicial review proceedings.[46] The duty also explains, at least in part, why leave is required before a party in judicial review proceedings may administer interrogatories or cross examine a deponent from an opposing party.[47]

173. As Williams explains:[48]

> Judicial restraint in relation to discovery and these other tools for getting to the truth cannot be expected to survive if lack of candour was to become the norm in applications for judicial review (see *Brenda Downes* (HC) at [31]). As Michael Fordham QC has suggested in *Judicial Review Handbook* (5th ed, Hart, 2008), this is why such "anxious concern" is expressed by the court where it transpires that the duty has not been complied with.

174. Williams goes on:[49]

> Complying with the obligation will necessarily involve:
>
> - Undertaking the steps necessary to investigate what material exists;
> - Providing the applicant, if only informally in the first instance, documentary material and information that is relevant or that will help the applicant's case, or which gives rise to some different (and as yet non-relied upon) ground of challenge; and
> - Informing the Court of all known material facts.
>
> The existence of the duty also means:
>
> - The affidavits filed need to be drafted in clear an unambiguous language;

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[45] UK Treasury Solicitor's "Guidance on Discharging the Duty of Candour and Disclosure in Judicial Review Proceedings" document published in January 2010 at pg 7
[46] Garry Williams, "Judicial Review: the duty of candour" [2013] NZLJ 156
[47] Garry Williams, "Judicial Review: the duty of candour" [2013] NZLJ 156
[48] Garry Williams, "Judicial Review: the duty of candour" [2013] NZLJ 156
[49] Garry Williams, "Judicial Review: the duty of candour" [2013] NZLJ 156

- The language used in the affidavits should not deliberately or unintentionally obscure areas of central relevance;
- There is no place in the affidavits filed for "spin"; and
- Public bodies and agencies must present their cases dispassionately and in the public interest.

175. In other words, all materials, facts and issues relevant to, or bearing upon, the decision-making should be disclosed, including (but not limited to) the decision-making "record" (the decision documents(s), and applications and reports produced prior to the decision-making), affidavits from the parties, relevant or commissioned expert reports, and any additional information of probative value which existed at the time the decision was made.[50]

176. The extent of the disclosure obligation will vary depending on the circumstances of each case, but it will usually not be enough for the public authority to simply produce the "Record" of its decision and say that that is all the relevant information. In judicial review proceedings, "facts are all important".[51]

177. In *Hager v Attorney-General* [2014] NZHC 3293, for example Dobson J considered that the normal discovery test for documents should govern the analysis of the scope of the Crown's obligation to provide documents and at [19] stated that "the obligation of candour on a decision-maker is likely to affect the scope of discovery obligation but not impose an obligation of a different type".[52]

178. Discovery of all documentation and relevant facts by the public authority is therefore required. As Hammond J stated in *Esekielu v Attorney-General* (1993) 6 PRNZ 309 (HC) at 312:

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[50] See authorities cited in M Smith *New Zealand Judicial Review* Handbook (Brookers, Wellington, 2011) at [29.3].
[51] *Tairoa v Minster of Justice* HC Wellington CP99 / 94, 4 October 1994 at 59 per McGechan J referring to Cooke P.
[52] See also UK Treasury Solicitor's guidance note at [1.5], which recommends that where there are complex issues of disputed fact, an exercise that has all the elements of the normal disclosure exercise (the UK equivalent to New Zealand discovery obligations) will be required.

> Where there is a genuine dispute between the parties, I cannot conceive that the Crown would not make full and free discovery of its files in such a way as to enable the substantive application to be set down as such in a relatively urgent fashion.

179. Similarly, background context to explain what considerations were taken into account when the decision under review was being made will usually be important. Various cases have commented on the helpfulness of affidavits explaining the background of the decision.[53]

180. The duty of candour must be complied with not only by public authorities, but by quasi-public authorities who are respondents in a judicial review proceeding.[54] Thus, here, the duty applies not only to QLDC, but also to QAC.

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[53] See, for example, *CD (CA27/2015) v Immigration and Protection Tribunal* [2015] NZCA 379, [2015] NZAR 1494 at [22], *New Zealand Fishing Industry Association Inc v Minister of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at 567, *Marlborough Aquaculture Ltd v Chief Executive of the Ministry of Fisheries* HC Wellington CIC-2009-485-500, 13 August 2010 at [87], *C v Legal Complaints Review Officer* [2012] NZHC 2085, [2012] NZAR 924 at [11].

[54] *Belize Alliance of Conservation Non-Governmental Organizations v Department of the Environment and another* [2004] UKPC 6 per Walker J at [87]. *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62 is also an example of a SOE having to comply with the duty of candour in judicial review proceedings. Further, in *Southern Community Laboratories Ltd v Healthcare Otago Ltd* HC Dunedin CP30/96, 19 December 1996 Eichelbaum CJ agreed with earlier dicta of Ellis J in *Auckland Electric Power Board v Electricity Corp of New Zealand Ltd* [1994] 1 NZLR 551 in holding that in certain circumstances the decisions of crown health enterprises (which have similar obligations to a CCO and CCTO) are amenable to judicial review because of their quasi-public nature.

Adverse inferences drawn where there is a failure of candour

181. Where the duty of candour has not been complied with, it is open to the Court to draw adverse inferences against the authority. As is set out in *Inder v Commissioner* by Fogarty J:

> Where the Crown does produce evidence by the persons involved it is desirable for the evidence to be full and candid. If it is not, it invites an adverse inference, and can promote an application for cross-examination.

182. There is a large volume of authority on the ability to draw inferences as a result of the failure by a public authority to file affidavits.[55] In *New Zealand Fishing* at 554 Cooke P stated:

> When a Minister's handling of a particular matter has naturally given rise to serious doubts about whether he has had regard to the obligations placed on him by Parliament, refraining from being prepared to justify himself in Court can serve to strengthen misgivings, as well as rendering the Court's task more difficult.

183. Also in *New Zealand Fishing* at 567 McMullin J stated:

> … there is real risk that if a Minister does not himself make an affidavit setting out the matters to which he has had regard, affidavits from the opposing party may, in the absence of an affidavit from a Minister, justify the drawing of other inferences and carry the day against him.

184. In *Healthcare Providers New Zealand Inc v Northland District Health Board* HC Wellington CIV-2007-485-1814, 7 December 2007 at [166], McGechan J stated that without:

> … an affidavit stating the grounds upon which a decision is made, the Court is left looking at such evidence as it does in fact have. In that situation, the Court can be justified in drawing inferences which are adverse to the decision maker which had means of knowledge, and could have given evidence, but did not do so.

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[55] Summarised in M Smith *New Zealand Judicial Review* Handbook (Brookers, Wellington, 2011) at [30.5.2].

185. In *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62 at [106] Elias CJ and Arnold J considered, given the evidence before them, that they could fairly draw an inference that the defendant public body representatives intended to mislead the applicant and that it was fair to conclude there was bad faith on the part of the public body representatives.

186. In *Reid v Rowley* [1977] 2 NZLR 472 (CA) at 484-485 Cooke J discussed the dangers of assuming reasons in the absence of evidence from the decision-making body setting out those reasons and, as a result, placing much less importance on the reasons than would otherwise be the case.

187. Further examples include:

    a. *Northern Inshore Fisheries Co Ltd v Minister of Fisheries* HC Wellington CP235/01, 4 March 2002 at [78] where Ronald Young J found adverse inferences against the Minister;

    b. *Khouri v Waitakere City Council* HC Auckland CP886/91, 6 August 1997 at 74 where Elias J inferred that the provision of written records did not overcome prior deficiencies in process;

    c. *Ngati Maru v Thames-Coromandel District Council* HC Hamilton CIV-2004-485-330, 27 August 2004 at [56] where Laurenson J found adverse inferences against the Council;

    d. *Te Waero v Minister of Conservation* HC Auckland M360-SW01, 19 February 2002 at [66] where Harrison J inferred that the Minister in question "did not properly consider her obligations";

    e. *Glaxo New Zealand v Attorney-General* HC Wellington CP187/90, 28 May 1991 at 17 where Jeffries J inferred that there was not a proper, bona fide exchange of views prior to a decision by the Attorney General.

188. Compliance with the duty of candour can require significant care and thought.[56] It is clear from the above authorities that a

failure by a public authority to comply with its duty of candour (and its duty of disclosure) will see the Court draw adverse inferences against the authority if the evidence from the applicant in the judicial review proceeding is compelling. The Court is justified in doing so because the overarching objective of judicial review proceedings, to ensure high standards of public administration, relies upon the public authority coming to the court openly and without any form of partisanship.

189. The public authority should not approach judicial review proceedings in an adversarial way, but rather with a view to ensuring that its processes and decisions comply with its obligations to act in the best interests of the public which it represents. If it is not, then it is not fulfilling the function it exists to fill and should be criticised and corrected by the Court. The public authority should accept such criticism openly because it exists to serve the public.

THE LOCAL GOVERNMENT ACT – GENERAL PRINCIPLES

"Local government is, at least in aspirational terms, all about "the peoples". The very raison d'être of local government is the facilitation of citizen participation and local self-government. The famous Widdicombe report – United Kingdom's parliamentary inquiry into the conduct of local authority business – marked out "participation" as one of the three valuable attributes of local government, along with pluralism and responsiveness:

> Local government offers two kinds of participation; participation in the expression of community views and participation in the actual delivery of services. It does so both through the process of electing representatives as councillors and through the opportunity to influence local government more directly through consultation, co-option, and local lobbying.

In a similar vein, an earlier inquiry also emphasised the importance of the democratic features of local government, over and above its role as a provider of services. Local government provides the means by which people "can take an active and constructive part in the business of government; and can decide for themselves . . . what kind of services they want and what kind of environment they prefer".

[56] Garry Williams, "Judicial Review: the duty of candour" [2013] NZLJ 156

…

> In the New Zealand context, major reform of the local government framework in 2002 explicitly placed the notion of citizen participation at its heart. The reforms introduced a new statement of the purpose of local government. In addition to the substantive goal of promoting community well-being, local government is charged with enabling "democratic local decision-making and action by, and on behalf of, communities". This lodestar is buttressed by a number of more specific principles and processes that aim to facilitate interaction between the citizen and the local state. Most significantly, the regime imposes a specific obligation on local authorities to take into account community views when making decisions."

Dr Dean Knight, Local Democracy and the Consideration of Community Views: Obligation and Observance", in Charters & Knight, eds, We, the People(s): Participation in Governance, p284.[57]

190. The LGA conferred a general power of competence on local authorities, giving them full capacity to do acts or enter transactions, along with related full rights, powers and privileges.[58]

191. At the same time, the general power of competence is locally focused: it only enables local authorites to exercise such power wholly or principally for the benefit of its district or region.[59]

192. A local authority must give consideration to a wide variety of factors when making decisions, particularly about strategic assets, and that all decisions made, consciously or not, are subject to the LGA.

193. Strategic assets are safeguarded by the long-term plan and by consultation, requiring certain actions and procedures to be undertaken when important decisions are made.

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[57] Mitchell C, Knight D, The Laws of New Zealand (Online ed, LexisNexis) "Local Government: Preface"

[58] Section 12(2) of the LGA.

[59] Section 12(4) and (5) of the LGA. Thus a non-operational or "intangible" decision by a local authority is a statutory power of decision subject to judicial review: *Scott v Auckland City Council* High Court Auckland CIV-2006-404-7226, 23 November 2006.

“Atomisation”

194. It is important in this context to appreciate that the combination of long-term plan, special consultative procedures, and general consulation obligations on a Council provide a framework whereby the “direction of travel” is clearly signalled to ratepayers.

195. The purpose of this framework is to flush out and prevent “atomization” or “slow cooking” of decisions, for example by feeding each step (self-contained) of the proposed development to the community, while at the same time working towards an overall goal which is <u>not</u> disclosed.

196. Put more directly, where a Council (and, as here, its subsidiary) have a potential outcome in mind, or where a goal is set up, that potential outcome or goal must be disclosed as part of the process. It must be included in the Long-Term Plan, signalled for discussion in the Statement of Proposal, and put squarely into the frame.

Section 97 – Legal principles

197. The long-term plan is the cornerstone of local authority governance.[60]

198. The long-term plan is required by s 97 of the Local Government Act 2002 (**LGA**). The academic commentary (by Christopher Mitchell and Dr Dean Knight) on s 97 describes it as a "gatekeeping provision", and makes the point that any failure to comply with it would almost certainly lead to the decision being set aside on judicial review:[61]

> [Section 97] is a central gate-keeping provision. It reinforces the central importance of the long-term plan to a local authority's accountability, planning and decision making by requiring that decisions on the two categories listed cannot be taken unless they are explicitly provided for in the long-term plan.
>
> The importance of this provision is such that any decision made by a local authority in contravention of it would almost certainly be set aside in judicial review proceedings, and could raise issues of individual liability under s 46.

199. Section 97 provides:[62]

> **97 Certain decisions to be taken only if provided for in long-term plan**
>
> (1) This section applies to the following decisions of a local authority:
>
> (a) a decision to alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the local authority, including a decision to commence or cease any such activity:
>
> (b) a decision to transfer the ownership or control of a strategic asset to or from the local authority.

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[60] Mitchell & Knight *The Laws of New Zealand* (online ed, LexisNexis) "Local Government: 75. Long-term plan"
[61] Mitchell & Knight, Local Government (NZ) (LexisNexis online ed) "[LGA97.4] Commentary"
[62] Section 97(3) has since been amended but is of no particular relevance here.

(2) A local authority must not make a decision to which this section relates unless—

(a) the decision is explicitly provided for in its long-term plan; and

(b) the proposal to provide for the decision was included in a consultation document in accordance with section 93E.

200. Section 97 of the LGA has only been considered in a small number of cases, of limited relevance to the present case.

Section 97(1)(a) of the LGA

201. Section 97 provides that a decision to alter significantly the level of service provision for any significant activity by or on behalf of a local authority, including to commence or cease any such activity, must be explicitly provided for in the long-term plan and the proposal to provide for it must have been included in a consultation process s 97(1) and (2).

202. "Activity" is defined in s 5(1) of the LGA:

> ***activity*** means a good or service provided by, or on behalf of, a local authority or a council-controlled organisation; and includes—
>
> (a) the provision of facilities and amenities; and
>
> (b) the making of grants; and
>
> (c) the performance of regulatory and other governmental functions

203. "Significant" is defined in s 5(1):

> ***significant***, in relation to any issue, proposal, decision, or other matter, means that the issue, proposal, decision, or other matter has a high degree of significance.

204. "Significance" is also defined, although the definition was amended on 14 May 2019. From 5 December 2012 to 13 May 2019, it was defined as:

> ***significance***, in relation to any issue, proposal, decision, or other matter that concerns or is before a local authority, means 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 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.

205. From 14 May 2019, the definition was amended to reintroduce a reference to the “four well-beings” of local government:

> ***significance***, in relation to any issue, proposal, decision, or other matter that concerns or is before a local authority, means 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

Part 6 LGA – Consultation – Legal principles

206. Part 6 of the Local Government Act 2002 (**LGA**) governs the consultation obligations imposed on local authorities when making decisions.

207. Section 75 of the LGA outlines the purpose of Part 6.

208. Section 76 is the "leading provision" of Part 6 of the LGA. The breadth of s 76 is emphasised in s 76(5), which stipulates that all decision-making by a local authority under the LGA or another Act, must be made in accordance with Part 6 unless inconsistent with principles from another Act.[63]

209. Under s 76 a local authority is required to make all its decisions per the five subsequent sections: ss 77, 78, 80, 81 and 82 (as are applicable).

210. Section 77 requires the authority to identify "all reasonably practicable options" in the course of its decision making, and to identify the advantages and disadvantages of these options.

211. Section 78 requires the local authority to take into account the views and preferences of "persons likely to be affected by, or to have an interest in, the matter".

212. Section 80 requires the local authority to identify if the proposed decision is significantly inconsistent with another policy it has or the LGA.

213. Section 81 requires the local authority to follow a process to take into account Maori contributions to the decision-making process.

214. Section 82 then sets out the requirements for consultation where a council does decided to consult:

215. Section 83 sets out the additional requirements for the "Special Consultative Procedure". In particular, it requires that the local board make the summary of the information contained in the proposal "as widely available as reasonably practicable".

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[63] Mitchell and Knight *Local Government (NZ)* "[LGA76.4] Commentary" (LexisNexis online)

216. Lastly, s 79 deals with compliance with the above provisions. It begins with a statement that it is for the local authority to decide how ss 77 and 78 are complied with.

217. The following principles are derived from ss 77-83 are particularly relevant here:

    a. The local authority must provide:

        i. Reasonable access to relevant information;

        ii. Clear information concerning the purpose of consultation and the scope of the decisions;

        iii. Information concerning both the relevant decisions and the reasons for those decisions; and

    b. The views received during consultation should be considered with an open mind and due consideration, without pre-determination.

218. Importantly, those who are required to be consulted with are "persons who will or may be affected by, or have an interest in, the decision or matter".[64] That is reflected in both ss 78 and 82.

219. As emphasised in *Gwyn v Napier City Council* [2018] NZHC 1943 that will include ensuring that affected community groups are actually consulted with.

220. The leading decision on the above "consultation" and "decision making" provisions is *Wellington City Council v Minotaur Custodians Ltd* [2017] NZCA 302, [2017] 3 NZLR 464. Prior to *Minotaur,* the leading decision was *Whakatane District Council v Bay of Plenty Regional Council* [2010] NZCA 346, [2010] 3 NZLR 826, although the legislation has been changed since then.

[64] Section 82 of the LGA.

The transfer of ownership of Wānaka Airport was in breach of s 97(1)(b) of LGA

221. Wānaka Airport was a "strategic asset" of QLDC in terms of the LGA.

> **strategic asset**, in relation to the assets held by a local authority, means an asset or group of assets that the local authority needs to retain if the local authority is to maintain the local authority's 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; and includes-
>
> (a) any asset or group of assets listed in accordance with section 76AA(3) by the local authority; and
>
> (b) any land or building owned by the local authority and required to maintain the local authority's capacity to provide affordable housing as part of its social policy; and
>
> (c) any equity securities held by the local authority in—
>
> (i) a port company within the meaning of the Port Companies Act 1988:
>
> (ii) an airport company within the meaning of the Airport Authorities Act 1966

222. Project Pure is the wastewater and sewage treatment plant for Wānaka and Albert Town with two other Upper Clutha communities due to be connected. It is located on land owned by QLDC immediately adjoining Wānaka Airport.

223. Project Pure is also a "strategic asset" of QLDC.

224. On 8 March 2018 QLDC entered into the "Memorandum of Lease", with QAC whereby it transferred to QAC substantial ownership or control of Wānaka Airport to QAC.

225. We use the word "substantial" in the preceding paragraph in the qualitative sense of "material" or "significant". This argument is necessarily advanced on the basis that s 97 of the LGA is to be given a sensible purposive construction.

226. The clear purpose of the section is to prohibit councils from deciding to remove strategic assets from either their existing ownership or other control unless they follow the process prescribed in s 97. It follows that any decision by a Council to do something – here enter into a contract – which transfers either any material part of its ownership or of its control of a strategic asset is prohibited unless the preconditions in s 97 have been met.

227. The purpose of the section is defeated if a Council can bypass the prohibition in the section simply by retaining a part, however small, of its ownership rights of a strategic asset or retains only some part of the control it once had.

228. Even if this was solely a lease of Wānaka Airport for 100 years with no right of termination by QLDC, that would still breach s 97 because such a lease would amount to a transfer of the right of possession of the airport and to operate it and develop it for the next 100 years.

229. As to an actual transfer of legal ownership (sale) in the lease, see in particular Clause 4 and the “improvements purchase price” Clause 6 of Schedule 1:

> **4. SALE AND PURCHASE OF BUILDINGS**
>
> 4.1 Buildings on the Land as at the Commencement Date
>
> (a) The Parties agree that the depreciated replacement value of all of the Buildings situated on the Land as at the Commencement Date is the Improvements Purchase Price.
>
> (b) The Lessor has agreed to sell, and the Lessee has agreed to purchase, the existing Buildings on an "as is where is" basis for the Improvements Purchase Price. The Lessor gives no warranties whatsoever as to the condition of the existing Buildings as at the Commencement Date. The Lessee will pay the Improvements Purchase Price in one lump sum to the Lessor on or before the Commencement Date without deduction or set off of any kind and otherwise as the Lessor shall direct. …

6. IMPROVEMENTS PURCHASE PRICE

$3,200,000 plus GST (if any) allocated as follows:

Improvement	Allocated value
ay	5,600
Taxiway	$132,800
Apron	$279,500
Roads & carparks	$453,400
Buildings	$292,200
Building Fitout	$120,600
Portable Buildings	$22,300
Other plant & equipment, office furniture, computer assets & vehicles	$73,600
L	**),000**

230. The remainder of the main “lease” provisions are in substance and effect more like a sale (i.e. more like a full transfer of ownership) than any usual commercial lease.

    a. The minimum term is 100 years (perpetually renewable thereafter unless terminated, although the lessor has no usual right of termination for cause).

    b. The “rent” for those 100 years is in fact a one-off payment (i.e. like a purchase price) made at commencement, calculated by reference to the freehold market value of the land as at 1 March 2018, $11.9m (discounted by 5% to $11.3m).

    c. Finally (Section E para 4(d)) QAC has a right to assign the 100 year lease to a suitable assignee – i.e. to sell the 100 year lease and improvements to a new purchaser.

- Refer Memorandum of Lease - First Schedule – Clauses 1, 4; Second Schedule – Clause 2 [**CB Part 3, 49, 00806**],

- Heads of Terms dated 8 January 2018- Clause 1 and 3 [**CB Part 3, 48, 00786**]

- Refer Affidavit of Wayne Hudson; Noel Williams, at [10] – [19].

231. As to whether there has **also** been a transfer of control, it is first important to note that s 97(1)(b) is disjunctive: the section prohibits transfer of ownership or control (not ownership and control).

232. If, therefore, there has been a transfer of ownership of a material part of Wānaka Airport, then the prohibition in s 97 has been breached by QLDC deciding to enter into this "lease". Questions of retention of any control via the SOI process or otherwise, as raised by the Respondents, are irrelevant to this first breach of Section 97(1)(b). The transaction (the "lease") was unlawful.

233. However, there has also been, in our submission, a further breach of s 97(1)(b) insofar as the "lease" also has the effect of transferring substantial control over Wānaka Airport to QAC. That is covered further below.

The transfer of control of Project Pure was in breach of s 97(1)(b)

234. Clause 12.1 of the lease confers on QAC controlling rights over Project Pure.

235. This has clearly arisen in the lease because Project Pure is located right next to the runway, and the "planned runway" could well require Project Pure to be moved away altogether.

    a. First, QLDC is not entitled to develop Project Pure on the existing site without QAC's agreement, so as to ensure that additions to Project Pure do not compound the problem by building in places which block the planned runway;

    b. Second, QAC is entitled to require QLDC to relocate Project Pure on 3 years notice. In such a case QAC must pay the costs of relocation except insofar as QLDC has <u>increased</u> the capacity of Project Pure since the Commencement Date; QAC's liability is only for the cost of relocating the extant Project Pure

236. Clause 12.1(b)(ii) and (iii) in particular are clearly significant provisions that have the effect of taking part of QAC's control over the future development and location of Project Pure out of what was previously QLDC's 100% control.

237. All the provisions potentially have the effect of making the future development and location of Project Pure more expensive for QLDC and its ratepayers than would have otherwise have been the case.

    - *Refer affidavits of Richard Somerville, at [30]-[40]; Andrew Waterworth at [161]-[240]; Mark Sinclair at [106]-[113]; and Aaron Heath.*

238. No part of the public consultation in 2016/17 relied on by the Respondents to justify the "lease" to QAC ever disclosed or discussed giving control to QAC over the future location and development of Project Pure so as to make way for the planned new runway. (The planned runway, of course, was not discussed either in that consultation.)

- *Refer affidavits of Ella Lawton (1st affidavit) at [12]-[15]; Rachel Brown at [12]; Graeme Perkins at [13]; Aaron Heath at [24].*

239. Project Pure, is an important piece of infrastructure of the Wānaka and other Upper Clutha communities. It is a multi-million-dollar plant facing significant ongoing operational and development costs. WSG (and those communities) had no reason to believe or suspect prior to the disclosure of the "lease" of Wānaka Airport in September 2019 that these provisions even existed in relation to Project Pure.

- *Refer affidavits of Aaron Heath; Michael Ross at [48]-[49].*

240. Following limited discovery provided to the Applicant it has now become apparent that since the "lease" was signed in March 2018, both QLDC and QAC have been making decisions and acting in relation to Project Pure on the basis of the covenants in the "lease" and the "planned runway", that is, a new Code C jet capable runway. In particular, the documents show that:

    a. The Project Pure covenants in the "lease" had an immediate impact and effect on QLDC's plans and decisions in relation to the new connections to be made to the Project Pure system and on the future design and operation and location of Project Pure, including, potentially, on the cost of this to ratepayers.

    b. The conduct of both QLDC and QAC evidenced in these documents is also clear evidence of the fact that QAC had decided in principle to build the "planned runway" and that some people at QLDC, if not the full Council, were well aware of this.

- *Refer affidavit of Andrew Waterworth, para 61 - 240.*

Transfer of control of Wānaka Airport in breach of s 97(1)(b) of the LGA

241. There has clearly been a substantial transfer of control of Wānaka Airport by virtue of the "lease". That is all the more so given that:

    a. QAC is 24.99% owned by AIAL; and

    b. That by the SAA entered into by QAC, the operation of QAC's two airports in the district is actually a joint venture between QAC and AIAL with substantial management control and decision making exercised jointly by AIAL and QAC.

242. The first point, perhaps obvious but relevant given the Respondents' reliance on the SOI provisions of the LGA as their "answer" to this breach, is that s 97(1)(b) prohibits any transfer of control of a strategic asset.

243. The strategic asset here is Wānaka Airport (and separately, Project Pure, dealt with above). Section 97(1)(b) covers ownership or control of QAC separately because shares in an airport company are separately a strategic asset of a local authority.

244. As submitted in relation to ownership, s 97, given a sensible purposive construction prohibits a decision by a Council to transfer any material part of its control over a strategic asset – here Wanaka Airport itself.

245. The "lease" has clearly handed over significant control over Wānaka Airport to QAC.

246. It has actually sold all of the airport buildings/improvements, i.e. everything which makes Wānaka Airport an airport as opposed to a piece of rural land.

247. As to the underlying rural land, QLDC has alienated the right to possession and hence its own right for a minimum of 100 years to use that land as the type of airport operation it chooses to have. There is no retention of control of QLDC's right to itself

use the land for an airport of QLDC's choosing in those 100 years.

248. On the contrary, for the first 90 years of the minimum term, QAC is given the right, without any consent required from QLDC, to develop Wānaka Airport as QAC chooses to (clause 8):

8 FUTURE DEVELOPMENT

8.1 General

(a) The Lessee will be responsible for all future development of the Wānaka Airport and subject to subclause (d) below and clauses 8.2 and 8.3, the Lessor's consent will not be required provided that the Lessee:

i. obtains all necessary building and resource consents and such other consents as maybe required for the proposed development; and

ii. carries out and complete such development in accordance with:

a. the building and resource consents and such other consents obtained; and
b. the proper requirements of all applicable Authorities and all applicable laws, regulations and codes of practice for the time being in force.

(b) The Lessee will be entitled, as part of any future development of Wānaka Airport, to:

i. erect or construct new Buildings; and

ii. alter, refurbish or demolish existing Buildings.

(c) Upon completion of any development, the Lessee will remove all surplus plant, materials, temporary works and equipment from the building site and ensure that all construction waste and debris is lawfully removed and disposed of.

(d) During the final 10 years of the Term, the Lessee must obtain the Lessor's prior written approval to any

proposed major capital expenditure on Buildings that are for or part of the Core Aeronautical Activities where that expenditure (excluding GST) will exceed the then Threshold Amount.

249. QAC may assign the whole of its interest in the lease or sub-let parts of the land to any respectable, responsible, solvent and suitable assignee or sub-lessee (clause 9). So, for example, QAC could undoubtedly assign the "lease" to a party not subject at all to the SOI regime vis-à-vis QLDC.

250. The combination of the material transfer of ownership and the terms of the lease itself, individually and certainly collectively, amount to QLDC having decided to transfer a very substantial part of its previous 100% control over Wānaka Airport, its strategic asset, to QAC.

251. Some of the arguments raised by the Respondents, such as the existence of regulatory controls before any redevelopment of Wānaka Airport can be carried out are self-evidently irrelevant and nonsense. Section 97 prohibits the transfer of ownership or control rights which a local authority has over a strategic asset. If those rights are subject to regulatory controls by some other body or even by the Council itself exercising separate statutory functions that is irrelevant to Section 97.

252. The key argument of the Respondents in relation to "control" seems to be that via the SOI process QLDC can literally control (i.e., decide for QAC) whether and how Wānaka Airport can be redeveloped and operated as an airport available to scheduled commercial services by jet aircraft. That argument is flawed for numerous reasons including, of course, that the SOI process only arises and applies after ownership and control of the Airport has been transferred to QAC.

253. In any event, the SOI provisions in the LGA do not give QLDC such a clear level of control over QAC's business decisions. Certainly it cannot be argued that QLDC still has the same control over the strategic asset, i.e. over Wānaka Airport itself.

254. The effect of the Respondents' argument would be to bypass the statutory prohibition in section 97(1)(b). That section, as a statutory prohibition, is there to underpin the mandatory public

consultation and annual plan processes that must be followed where strategic assets of local authorities are at stake. “Control” in s 97 should not be read down in that way.

255. However, and even if it were held that the existence of the SOI process is potentially relevant to the “control” limb of the prohibition in s 97, the related decisions which QLDC has made in agreeing to the terms of SOIs, both contemporaneously with agreeing to the lease itself and subsequently on the back of the “lease” are all, in fact, further instances of QLDC deciding to cede control to QAC of Wānaka Airport and are breaches of section 97(1)(b). Such decisions to agree to the SOIs are tantamount to further decisions to transfer control of Wānaka Airport to QAC.

- *Refer Heads of Terms [CB Part 3, 48, 00786], 2018 SOI [CB Part 4E, 302, 04346], 2019 SOI [CB Part 4F, 316, 04640]*

256. It is now known, but only from disclosure in these proceedings, that in January 2018 when the Heads of Terms document was signed, Mayor Boult agreed, on behalf of QLDC, the “Wanaka Guiding Principles” for inclusion in the next SOI **[CB Part 3, 48, 00786]**. These included:

> “1. QLDC and QAC are committed to the development of Wānaka Airport to support district growth and community needs.
>
> 2. QLDC and QAC support the operation, management, planning, and development of Wānaka 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 Wānaka Airport should vest economic control of Wānaka Airport in QAC and its terms should encourage investment in the Airport by QAC. [emphasis added]
>
> [..]
>
> 5. QLDC and QAC agree Wānaka Airport should become an economically viable and sustainable business.”

257. In addition, the Strategic Alliance Agreement gives AIAL substantial joint economic control over Wānaka Airport and the extra land already acquired.

258. The “lease” terms were signed off in March 2018 by Mayor Boult and QLDC Chief Executive Theelen. The “final June 2018” Statement of Intent for QAC was agreed to by QLDC in about June 2018. It contained, inter-alia, the above four guiding principles referred to above.

259. The 2018 Statement of Intent agreed to by QLDC also contained the following statements:

> **“Situational Overview**
>
> QAC’s business success and growth is intrinsically linked to the health of New Zealand’s tourism and visitor industry. In turn, the industry depends on Queenstown and Wānaka airports to provide sustainable air connectivity and a world-class visitor experience to support its tourism industry goal of achieving $41 billion annual revenue by 2025.
>
> **Vision** [..]
>
> Our vision is to position Queenstown and Wānaka Airports collectively as a World Leading Tourism Airport Group, taking full advantage of the region’s appeal as a leisure and visitor destination ….
>
> **Strategic Alliance with AIAL**
>
> Auckland International Airport Limited’s (AIAL) investment in QAC includes an undertaking between the two companies to work together to grow QAC’s business returns and increase passenger numbers.
>
> The focus of the strategic alliance for the next five years will be for the two companies to leverage the scale and connectivity of a multi-airport relationship to grow visitor activity and deliver superior earnings growth to both companies and economic growth to their respective communities.
>
> [..]

> AIAL will continue its own route development into markets such as the US, China, South East Asia and South America that cannot support direct flights to Queenstown due to aircraft size. Promotions will feature Queenstown and promote passengers travelling through AIAL to Queenstown on domestic carriers."

260. The decision QLDC made to agree to the 2018 SOI, including the Guiding Principles, when read together with the terms of the "lease", amounts to QLDC authorising or agreeing to Wānaka Airport being redeveloped into a jet-capable airport to provide for increased tourist and visitor numbers and to be operated so as to become an economically viable and sustainable business.

2019 SOI

261. The 2019 SOI, both as first presented by QAC to QLDC, and then as pushed through in December 2019, despite opposition from WSG and others and despite disagreements earlier at Council level, contained the same agreed guiding principles as in 2018.

    - *Refer affidavits of Mark Sinclair, para 18 to 23; Michael Ross, para 64 to 78.*

262. Additionally, in the first version of the 2019 SOI which QAC produced, QAC recorded its expectations and QLDC's "aspiration" in the following terms (emphasis added):

> At Wānaka 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.** This planning approach is consistent with QLDC's aspiration to have scheduled services reintroduced at Wānaka Airport through the long-term lease to QAC. This aspiration was further confirmed by the conclusion of the "Shaping Our Future" Upper Clutha Transport Taskforce report in May 2017 which recommended that Wānaka Airport be developed.

263. In the “Situational Overview” section of this SOI, it indicates what is actually planned and the scale can be found in passages such as the following:

> “Tourism remains the primary business sector in the region and over the past year, various tourism operators have announced major expansion plans of more than $200 million. A further $900 million worth of infrastructure projects which support tourism are also underway, particularly in Queenstown.
>
> Queenstown and Wānaka airports are part of a national network of critical infrastructure assets which connect residents and visitors to the Southern Lakes region.”

264. It referred for the first time in the SOI in several places to developing a “dual airport” approach for Queenstown and Wānaka airports. It is apparent from the separate Arup independent consultant’s report which QAC had obtained in 2017 (before the “lease” had been signed) that Arup had identified Wānaka airport as the best option within one-two hours of Queenstown airport to build a jet capable (Code C) runway and operate the airport at Wānaka as a “dual airport” with Queenstown airport. The Arup report was also the source of the location of the proposed new runway at Wānaka Airport identified as the “planned runway” in the “lease”.

- *Refer affidavit of Andrew Waterworth*

265. There was significant strong opposition to what was now being clearly signalled in the first draft of the 2019 SOI. The final version of the 2019 SOI was redrafted in a number of ways in an attempt to play down the real significance, size and scale of the redevelopment of Wānaka Airport, as were the various public statements particularly by Mayor Boult.

- *Refer affidavits of Michael Ross at [67]; Mark Sinclair.*

266. What has occurred and what QLDC continued to do (until Covid-19 intervened), supported by QAC and, tacitly it would seem, by AIAL, points inevitably to the conclusion that such “control" as may exist over a CCTO by virtue of the SOI process (in this case “control” over QAC by QLDC and AIAL),

does not translate into retention of full “control” over the strategic asset, Wānaka Airport, by QLDC.

267. It cannot and should not override the specific operation and application of the prohibition in section 97(1)(b) of the LGA regarding transfer of “control”.

268. The s 97 regime is directed to ensuring a mandatory process for prior specific consultation by QLDC with the public/communities of its district, specifically in the context of the long term plan for the district.

269. Before a council can decide to make any changes to ownership or control of the community’s strategic assets, that is the path mandated by the LGA. If Parliament had wanted to make an exception allowing councils to transfer Strategic Assets into CCTO’s, it would have made an express exception for s 97, given that s 97 is a fundamental “gatekeeper” provision.

270. Furthermore, the definition of “Strategic Asset” in s 5 of the LGA distinguishes between an airport being a Strategic Asset and the council’s shareholding in an airport company also being a Strategic Asset. That distinction in the definition shows that ownership and control over the airport itself is different from ownership and control over the airport company via a shareholding and the SOI process.

271. As is the situation in the present case, a CCTO might have the ability to transfer its interest in the Strategic Asset to a third party which is not a CCTO, in which case the SOI process has no residual control application at all.

272. The SOI process, on the other hand, is a “control” more broadly of the activities of a CCTO. That SOI process does not have a mandatory public consultation component before a council can decide to agree to an SOI. It is a mandatory annual process as between a Council and it’s CCTO (or in the case of mixed ownership between the Council and the shareholders of the CCTO) with a short timeframe which is not suitable to enable a careful LGA consultation to be carried out by the Council before a decision to agree the SOI is made by it.

273. The final point of distinction between the two processes (s 97 and SOI) is that a CCTO is not necessarily owned 100% by a Council. The SOI process is one under which the SOI provides to a CCTO "the objectives of its shareholders".

274. A CCO, by Section 59, has as its "principal objective", to achieve the objectives "of its shareholders" as well as three other objectives, one of which, in the case of a CCTO, is "to conduct its affairs in accordance with sound business practice".

275. The objectives of AIAL as a shareholder are relevant. AIAL's objectives in relation to both QN and Wānaka airports are clear from the Strategic Alliance Agreement. Indeed they are secured by contractual agreement with QAC. QLDC cannot override those legal commitments by exercising its shared rights with AIAL qua shareholder to identify "objectives" of QLDC that may be different.

276. Furthermore "sound business practice" would expect proper returns from an investment of the hundreds of millions of dollars needed to convert Wānaka Airport to a Code C jet capable airport. That, in turn, means a very large volume of jet aircraft scheduled services.

277. Additionally, and regardless of "control", the decisions already made by QLDC in relation to the content of SOIs since January 2018 have also amounted to decisions not only to "transfer control of a strategic asset" but also "to alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the local authority…" (discussed further below).

278. One final point on the so-called "control" through the SOI. The position taken by both Respondents on the SOI being a mechanism giving QLDC "control" over Wānaka Airport is worryingly contradictory.

279. On the one hand, the Respondents assert and plead that the SOI is the process that gives QLDC alone control/by which QLDC alone retains control over Wānaka Airport and Project Pure. On the other hand, both respondents plead as an "affirmative defence" that the relief sought by WSG (presumably

to declare the “lease” unlawful and set it aside) is barred by section 64 of the LGA.

280. They plead that the effect of s64 (10) is that a failure by a CCO to comply with any statement in its Statement of Intent does not affect the validity or enforceability of any deed, agreement, right or obligation entered into, or obtained or incurred by a CCO- i.e. in this case by QAC.

281. They therefore take the position that both the “lease” itself and the SAA (or, for that matter, any other agreements QAC might enter into in relation to Wānaka Airport) are valid regardless of whether they are inconsistent with QLDC’s objectives recorded in the SOI.

282. That interpretation of section 64 (10) is not accepted by WSG. If it were correct, it makes a nonsense of the Respondents' submission that what QLDC may put into an SOI in the future gives QLDC legal control over what QAC does in the future to develop and operate Wānaka Airport as a jet capable airport. It is in fact a further reason why the unlawful lease should be set aside. The SOI process is at best an imprecise and uncertain “control” over QAC decision-making in relation to the conduct of QAC’s business. At worst, the SOI is window-dressing providing no effective legal control at all to QLDC.

The decision to grant the "lease" is in breach of s97(1)(a) LGA

283. The Respondents' characterisation of the decision made to build a jet capable airport at Wānaka as something undecided and always intended to merely "return" scheduled services to Wānaka for the benefit of the Upper Clutha communities to meet their "demand for improved air services" is in our submission, demonstrably inaccurate.

    - *Refer affidavit of Mark Sinclair at [103]-[104]; affidavit of Ella Lawton (1) at [6](e) and Astral Report [CB Part 4E, 270, 04055]; Terry Hetherington, at [13]; Andrew Waterworth, at [83]-[85]*

284. However, even if it were the sole or primary reason for the decision to grant the "lease", and that in turn carried with it the related decision to rebuild Wānaka Airport into a jet capable airport so that scheduled services could be by jet aircraft including between Wānaka and Auckland in particular, that would clearly be a decision that breached the prohibition and avoided the mandatory consultation processes in s 97(1)(a) and (2) of the LGA.

285. The "service provision for any significant activity undertaken by or on behalf of the local authority" in the present situation at Wānaka Airport is the provision of an airport at Wānaka which currently provides airport facilities for air services, in particular for general aviation and potentially commercial scheduled services via smaller turboprop aircraft as were provided there until 2013.

286. A decision to rebuild the airport, including in particular building a new runway, to enable take-off and landing of narrow-body jets for scheduled commercial services to and from Auckland would clearly be a decision to alter significantly the level of service provision. The words "by or on behalf of" cover the service provision being on behalf of QLDC by QAC under a "lease" or other contractual arrangements.

287. This additional legal basis for judicial review was included in the amended Statement of Claim, one reason being the emphasis or "spin" in 2019 following concern and when the protest by

WSG and others about the real extent of the plans for Wānaka airport started to become apparent. Refer to the affidavit evidence setting out some of the key statements in this regard at various times.

- *Refer affidavit of Mark Sinclair at [102] – [105].*

288. For example, the "revised" Statement of Intent of 30 June 2019, unlike the first version, now includes the following:

> In addition to these challenges, QLDC leased Wānaka Airport to QAC in 2018. This was in response to the potential that scheduled commercial services would return to Wānaka. There is growing demand in the Upper Clutha for improved air services since the withdrawal of such services in 2013, and strong interest from airlines to recommence services at Wānaka Airport. Currently between 15-20% of total annual passenger movements at Queenstown Airport are attributed to residents and visitors travelling directly to/from the Upper Clutha, which is only likely to increase with the growth in this part of the region. The addition of Wānaka Airport also ensures that QAC can factor additional capacity into its long-term planning for air services infrastructure for the Southern Lakes region in a balanced way.

289. Even if, as the evidence shows, the real reason to build a jet capable airport at Wānaka was so that a substantial number of flights to carry increased tourist numbers, to and from Auckland in particular on scheduled services, that too would be a decision by QLDC "to alter significantly the intended level of service provision" for a significant activity undertaken by or on behalf of QLDC.

- *Refer affidavits of Terry Hetherington at [9] – [10]; Andrew Waterworth at [108], [114], [133]-[137]; Queenstown Airport 30 year Master Plan dated August 2017 [**CB Part 4F, 304, 04423**].*

290. In summary, whether the decision was to expand the airport to cater for jet aircraft for the benefit of the local community or to enable arrivals into the district of projected tourist numbers or both, the decision is caught by s 97(1)(a) and breaches the prohibition in that section.

Additional/alternative breaches of LGA – failures of consultation in breach of ss 76, 77, 78 and 82 LGA

291. If s 97 of the LGA had no application to the “lease” of Wānaka Airport to QAC, then the decisions by QLDC or on its behalf to enter into such a lease was a "significant decision” and still required prior consultation by QLDC under the above provisions of the LGA.

292. A decision or series of decisions (separately and collectively referred to as “the decision”) to grant to QAC a long-term lease of Wānaka Airport on these terms was a “**significant decision**” within s 76(3)(b) of the LGA and required prior public consultation with the communities affected here, being particularly the Upper Clutha communities of which WSG and its 3,500+ members are part.

293. One way or another, the Respondents accept that the decision to enter into a long-term lease of Wānaka Airport required consultation. However, they now raise two related arguments in these judicial review proceedings:

    a. That in 2016/17 QLDC did carry out a valid and lawful (i.e. LGA compliant) public consultation about the decision to grant QAC a long-term lease of Wānaka Airport; but neither QLDC (nor QAC) has ever made a decision to develop Wānaka Airport into a jet capable airport; and

    b. QLDC will have to consult under the LGA before QLDC makes any such decision. QLDC also appears to say, although it remains unclear, that steps taken by it and QAC since August 2019 were or are part of some sort of ongoing “consultation”. It appears that this has been delayed or postponed for an indefinite/unspecified time by Covid-19.

294. For present purposes, given that the primary focus is whether the “lease” breached the LGA and should be set aside, this section deals with the first limb of the above argument, namely that the 2016/17 consultation was adequate compliance with the requirements of the LGA. WSG says that it was not.

295. The essence of the "lease" which Messrs Boult and Theelen agreed on behalf of QLDC (together with the related side agreements, including that QAC should have "economic control" of Wānaka Airport) is a lease on terms which authorise and facilitate the substantial redevelopment of Wānaka Airport into a jet capable airport, including giving QAC related control over the location of Project Pure to make way for the planned runway.

296. That is plain both from the express terms of the " lease" and from what is implicit in the related documents and hence in the decision to enter into the "lease".

- *Refer affidavit of Andrew Waterworth, at [172]-[175], [178]-[184], [210]-[237].*

297. However, the decision by QLDC Council in 2017 to enter into a long-term lease with QAC, was a decision by QLDC reflecting an entirely different redevelopment of Wānaka Airport; and therefore contemplating a different type of lease.

298. The table below provides a summary of the key differences.

The "lease"	Statement of Proposal CB Part 4E, 280, 04199	Astral Report CB Part 4E, 270, 04055	Rationale Report CB Part 4E, 275, 04130
A **sale** of all eWA assets and improvements	Recommended a **lease** of EWA, not a sale	No clear option but see Rationale Report	Recommended a **long-term lease,** not a sale
Ground lease for 100 years perpetually renewable	**Long-term lease,** no term identified in the SOP, but 33 years discussed when 2017 decision made by Council	N/A	**Long-term lease** Appraisal period **30 years** (see page 12)
"Rent" is, in fact, all 100 years paid **in one sum upfront** equal to a sale at valuation	SOP suggests **"regular income from leasing"**, i.e. conventional rent	N/A	Conventional **rent tied to a share of net income** from eWA
Contemplates **rebuild and**	Suggests **land purchase and**	Suggests land purchase for further	Refers to what is outlined by the

extension of the runway to Code C **for jets**	**development of further ground spaces to rent** for general aviation	ground spaces to rent for general aviation. Suggests potential OPEX of $15.5 million over 15 years	Astral Report (see pages 5-6).
Gives QAC control over the location of **Project Pure**	No mention of Project Pure	Existing location of Project Pure treated as a given, no relocation	N/A
New runway permits "dual" operation with QN, i.e. two jet capable airports	Suggests eWA as a **"complementary and supplementary"** facility taking **spill-over from general aviation** as QN focusses on taking jets	Same suggestion of **complementary** as SOP. Recommends possible **recommencement of scheduled services by turboprop aircraf**t to enhance revenue	Refers to **"complementary" operation not dual**
Terms of lease negotiated privately by QLDC "delegates". **Terms of "lease" not considered by Council** before **execution.**	N/A	N/A	Proposed that council staff negotiated terms with QAC in advance **"for council to consider at the time of the hearings**" i.e. before consultation concluded.

299. It is untenable to assert that the 2016/17 consultation as per the SOP, was either a sufficient or lawful consultation – i.e. LGA compliant – before the decision to enter into this "lease".

300. Indeed, what the SOP (and the two background reports relied on by the Respondents) demonstrates is that Mayor Boult and the Chief Executive had no valid delegated authority from QLDC to agree to a "lease" on these terms with QAC. (This ground of challenge is pleaded in [37](g)(iii) of the ASOC.)

    - *Refer affidavits of Ella Lawton, affidavits 1 and 2.*

301. This "consultation" argument by the Respondents is presumably why they now seek to retreat to the argument that

neither QLDC nor QAC have made either then or since any decision at all to redevelop Wānaka Airport into a jet capable airport.

302. That is illogical as well as inconsistent with the evidence before the court, including the terms of the lease itself. As a matter of logic, one could not negotiate and agree to a lease in these particular terms without also knowing and agreeing in principle (i.e. deciding) that such redevelopment would be undertaken by QAC.

303. There are numerous difficulties for the respondents in this position, not least because it does not match the facts or the evidence before the Court. For example, when QLDC retreated to Mayor Boult's "pause" announced in August 2019, the Mayor did so, he said, so that QLDC could obtain independent reports (the "MartinJenkins process") to inform the Council about what decision it would make about the redevelopment of the Wānaka Airport.

- *Refer affidavit of Mark Sinclair, [102]-[105]*

304. However, when the process and MartinJenkins terms of reference were questioned,[65] Mayor Boult refused to agree that such the assessment would include consideration of Wānaka Airport being developed without jet aircraft capability – i.e. turboprop aircraft only. On the contrary, Mayor Boult insisted that scheduled services at a redeveloped Wānaka airport had to include jet aircraft flights to and from Auckland.

305. The respondents' position is also undermined by their refusal to disclose the terms of the "lease" to the community, claiming "commercial confidentiality". If it were correct that the lease received full prior public consultation before being entered into, following a published Statement of Proposal which reflected publicly accessible reports, there is no realistic basis to suggest that the terms could suddenly become "confidential" on commercial grounds.

306. QLDC is a public body; QAC is a CCTO, both with public disclosure requirements, including of their business objectives

[65] See affidavit of Mark Sinclair, at [46]-[72].

and financial details and activities. Wānaka Airport and Project Pure are strategic assets subject to and affected by the lease agreement.

- *Refer affidavits of Noel Williams, para 10 to 19; Michael Ross, paras 31 to 49.*

307. The conclusions to be reached from the material before the Court are as follows.

308. First, QAC and QLDC were aware from around 2016 that there would be challenges for Queenstown Airport to handle the projected growth in tourist numbers. A decision was made, based on reports and plans from Arup, commissioned by QAC's Directors, that Wānaka Airport was the best site to acquire, close to Queenstown, to create a dual airport operation (i.e. two jet capable airports, both run by QAC);

309. Shortly before QAC secured the "lease", QAC spent millions of dollars to buy extra land to provide for such expansion of Wānaka Airport. Initially it appears to have justified that decision on the basis that the land had, in any event, the value paid for it plus if QAC owned that land, it considered that at least it would shut out any potential competitor being able to create and operate such an airport on the site of Wānaka Airport. More importantly, QAC had an informal indication from the then Mayor (van Uden) that the Council would transfer Wānaka Airport to QAC.

- *Refer affidavit of Andrew Waterworth, at [46]-[48], [71]-[76], [83], [86], [98]-[106].*

310. The terms of the "lease" agreed between QAC and QLDC's delegates then enabled that significant development without further agreement from QLDC. That was wholly consistent with building and operating a jet capable airport at Wānaka.

311. The terms of the "lease" and QAC's real plans were inappropriately kept secret from any public consultation, particularly the Upper Clutha communities most directly affected by the development of a Code C jet capable airport on the site of the Wānaka Airport.

312. But for the determined intervention of thousands of members of the Upper Clutha communities, spearheaded in particular by WSG, there is no doubt that QAC, supported by Mayor Boult and others at QLDC, would have proceeded with the expansion of Wānaka Airport. The pause and MartinJenkins processes were a rearguard action, driven by Mayor Boult, seeking to justify the decision to turn Wānaka Airport into a jet capable airport. It is only the unexpected arrival of the Covid-19 pandemic that has temporarily changed QAC's plans.

313. There is no reasonable basis upon which the Court should exercise its discretion to leave Wānaka Airport and Project Pure, two strategic assets of the community, in the ownership and/or control of QAC as they will be if the "lease" remains in place.

Proper consultation required by LGA, reasonableness, and the Court's discretion

314. If, as the Respondents appear to concede, there must be LGA compliant consultation, then to comply with the LGA it must take place in the context of the status quo ante and not with this "lease" remaining in place. Otherwise the terms of the lease and the Strategic Alliance Agreement with AIAL will inevitably drive decisionmaking about Wānaka Airport and Project Pure.

315. The questions of how best to operate and develop both of these strategic community assets remains of immediate importance and relevance to the community (and the ratepayers), regardless of the current Covid-19 crisis.

316. In terms of the appropriate exercise by the Court of its discretion and the need for this "lease" to be set aside, the significance of both Strategic Assets to the community and their interrelationship needs to be understood.

317. The status quo ante is that Wānaka Airport was a small principally general aviation airport but with the capacity to receive modest turboprop commercial services. It was nevertheless an important strategic asset in particular for the Upper Clutha communities where it is located.

318. Project Pure is also an important, indeed critical piece of community infrastructure and strategic asset for the Upper Clutha communities. It is their multi-million dollar wastewater and sewage treatment plant. It is a material ongoing cost to the ratepayers. Both strategic assets were expressly noted as such in the QLDC Long Term Plan.

319. Importantly, these two strategic assets are located next to each other. It follows that in considering and planning for the future development and operation of either asset the Council needs to have, as it did before this “lease”, full ownership and control of both assets, because any proposed decisions it may wish to make in relation to one may affect the other.

320. For example, if the Council was required to consider a decision to substantially expand Wānaka Airport, it would have to take into account how that might affect Project Pure. Similarly, if the Council is considering decisions to expand Project Pure to meet future requirements, it would have to consider how that might affect the airport.

321. The short point is that the LGA necessarily dictates that it is the Council, and only the Council, that can make such decisions in consultation with the community. That is not the role of a CCTO, particularly one which is 24.99% owned by AIAL. The LGA does not permit the Council to delegate its consultation obligations to another body which is not its alter ego.

322. QAC’s position is further compromised by the Strategic Alliance Agreement which places it effectively in a joint venture with AIAL, a public listed company operating commercial airports for profit.

323. The lease cannot be allowed to stand if there is to be proper LGA compliant decision-making by present and future Councils about these two Strategic Assets.

324. There is an irony for the community in the Respondents’ current refusal to reset and give up the “lease", even in the face of the Covid pandemic and its effects on airlines and tourism. The Astral report in 2016 identified that changes were needed to address the financial shortcomings of Wānaka Airport's position

as it was then being run. Those shortcomings included that management by QAC was “thin on the ground” and only “day to day” and the fact that responsibility for the airport within QLDC was “very fragmented” and “high staff turnover with little institutional knowledge.” “It is clear to us [said Astral] that effective long-term planning for the airport has languished as there is no specific responsibility and budget for it.”

325. In other words, it was the shortcomings of QLDC and QAC themselves, in managing and governing of Wānaka Airport, that led to the situation the community found itself in by 2017.

326. Two points fall to be dealt with briefly because they are expressly raised by the Respondents as matters relevant to discretion:

    a. the Respondent’s contention that relief should be denied because of “ unreasonable delay" on the applicant’s part in bringing these proceedings, is wrong and totally lacking in merit, particularly in light of the fact that the Respondents negotiated the “lease” privately and kept its contents secret from the public and the Applicant until September 2019. There was no unreasonable delay; and

    b. QLDC’s statement of defence at [101] asserts that QLDC will have to undertake various processes at speed “in order to resume operational management of Wānaka Airport”. None of the evidence supports that contention. QAC was managing Wānaka Airport prior to the “lease” and has, in fact, continued to do so since then. There can be no realistic issue with reverting to the earlier arrangements.

QAC has no basis to resist discretionary relief

327. WSG's entitlement to such relief is not dependent on establishing any breaches of the LGA by QAC, although related breaches by QAC also arise on the facts and are pleaded. Those matters may be relevant to the Court's discretion being exercised in favour of granting the relief which WSG seeks and will be addressed in reply as required. For present purposes it is noted that QAC has adopted a parallel and clearly coordinated approach with QLDC, to defending this proceeding and resisting the relief sought. The following factors apparent on the evidence are relevant to QAC's position and the Court's discretion.

328. First, QAC overtly supported (on the face of the Astral Report) the materially different lease and development of Wānaka Airport recommended to QLDC by Astral and Rationale.

329. As noted earlier, both Respondents have claimed that the 2016/2017 consultation was valid and complied with the LGA- i.e. that it, therefore, justified QLDC entering into the "lease" and related agreements in the subsequent SOIs. However, as established (refer to section G above) the Respondents' claims are incorrect. The SOP and the two background reports (Astral and Rationale) were contemplating something materially different.

Refer affidavits of Ella Lawton (affidavits 1 and 2).

330. What is also relevant to the lack of merit in QAC's position to resist discretionary relief is what the Astral Report itself, and also Rationale, disclose about QAC's own conduct and knowledge at the time.

331. The following section of the Astral Report is clear:

> Background
>
> This report was prepared at the initial suggestion of the Wānaka Airport Manager to provide an up to date basis for making long term decisions on airport development, in particular sewage services, and the siting of new and expanded facilities such as hangar space.

> The commissioning of the report was actively supported by the airport owner, Queenstown Lakes District Council (QLDC), and the airport operator Queenstown Airport Corporation (QAC).
>
> The report is high level and is confined to identifying the major issues facing the airport. It presents proposals aimed at ensuring the airport is well provided for and able to achieve its purpose looking ahead 40-50 years. It is envisaged as the platform for more detailed nearer term planning and, if justified, land acquisition.
>
> The report was prepared in consultation with a steering group of representatives from QLDC and QAC. Two meetings of the group were held, facilitated by Astral, which primarily discussed the airport's role, infrastructure requirements, land requirements for aviation purposes and possible land acquisition. The intention was to ensure all key decision makers were appraised of the long-term issues facing the airport, participated in developing recommendations and gained a shared commitment to the future of the airport.

332. QAC clearly not only knew exactly what kind of long-term issues and future development of Wānaka Airport were being identified to the Council, but QAC also knew that the Astral recommendations which went to the Council were on the basis that QAC itself had participated in developing the recommendations and shared a commitment to what was proposed.

333. It is relevant that the Report also says the following:

> In preparing this report we have taken a fresh look at the role of the airport, recent developments in airport planning, air navigation changes at Queenstown airport, and that airport's continued double-digit growth in airline passenger movements and increasing demand by corporate jet aircraft. We have not felt particularly bound by the recommendations of previous reports, including the 2008 Master Plan.

334. The point is that in coming to its conclusions, endorsed by QAC representatives, Astral did not overlook but indeed considered growth at Queenstown airport and what spill-over (private corporate jet aircraft and general aviation) Wānaka Airport might take.

335. That led to the future role of Wānaka Airport being described on page 7 [Astral Report], in the following terms:

> "a complementary facility to Queenstown Airport; [..]
>
> enabling sustainable future use of the airport particularly to accommodate the ongoing growth in the general aviation service; [..]
>
> enabling sustainable future use of the airport particularly to accommodate the ongoing growth in general aviation activities.; [..]
>
> The QLDC/QAC steering group endorsed the role of the airport as a supplementary and complementary facility to Queenstown airport".

This, and not expansion into a dual airport operation with Queenstown, is what Astral, endorsed by QLDC and QAC representatives, was proposing.

336. As to future scheduled commercial services, the Astral Report was clear. It was not ambiguous. Nowhere did it talk about extending the runway to accommodate jet aircraft. On the contrary, for example, it said:

> In the last four years it has become apparent that in the near-term growth will not be as a result of scheduled aircraft movements as scheduled services have recently ceased at the airport. These appear unlikely to resume until Wānaka grows substantially in population or a "hub and spoke" demand emerges for turbo-prop services, that can't be accommodated at Queenstown Airport, connecting the wider Wānaka-Queenstown area to regional centres. [Page 15, Emphasis Added]

It continued to state that:

> Scheduled services cannot of course be excluded and provision needs to be made for a modest terminal building that could initially handle charter flights with provision for expansion. A terminal facility similar in size to that at Manapouri (approximately 400 m²) would be appropriate to provide for ad hoc turboprops. [Page 16]

And further:

> Air Transport Services
>
> [..]
>
> If air transport services could be developed to (for example) four landings of 50 seat (circa 18,000kg) aircraft per day in the longer term, the increase in landing fees would be approximately $300,000 per year. The demand for air transport services will be driven by:
>
> local population growth
>
> increased “knowledge” and service based industries
>
> increased tourism especially ski fields and adventure activities
>
> displacement of operations from Queenstown Airport.
>
> The use of 50 seat aircraft (such as the Bombardier Q300 operated by Air New Zealand) would substantially reduce ticket prices compared to the B1900.8 These aircraft could operate from the existing runway length subject to the provision of runway end safety areas. These would be relatively easy to provide to the minimum 90m.
>
> [Page 30, Emphasis Added]

337. In summary, from what we now know was being considered and actively pursued by QAC, at Board level, in 2016 with the Arup report and related land acquisitions adjoining Wanaka Airport, it was surely incumbent on QAC to advise QLDC of this alternative future development.

338. Second, QAC never raised any requirement to have control over Project Pure.

339. Ironically, not only is there no suggestion in the Astral Report of the future development of Wānaka Airport (which it identified) needing to constrain in any way either the location or development of Project Pure, but there is instead confirmation that sewerage reticulation is the most pressing issue facing the airport itself and noting the need for the airport to be connected

up to Project Pure (implicitly Project Pure in its existing location):

> 7.1.Sewage
>
> Sewage reticulation is the most pressing issue facing the airport. Currently, the airport is on a septic tank system. This has reached capacity and a connection to reticulated sewage is required. The connection should not present a problem as the Project Pure waste treatment plan has the sewer main running to it.
>
> It is understood that sewage reticulation is now on the QLDC 10 year plan for the airport with design scheduled for 2016-17.
>
> [Page 22]

340. The above is important. To the knowledge of QAC, the process of consultation about a long-term lease to QAC was not done in a vacuum. It was specifically to follow through on identified future development options for Wānaka Airport identified by Astral and Rationale and endorsed by QAC. QAC should not now retain a "lease" on terms unrelated to and unnecessary to deliver the development that was jointly proposed and clearly designed to enable a quite different development of Wānaka Airport.

341. The "lease", particularly when coupled with decisions reflected in the SOIs, enables QAC to rebuild Wānaka Airport into a Code C jet capable airport for QAC's own preferred business ends. Obviously, if by March 2018, QAC had come to a different decision in principle about the extent and nature of future development of Wānaka Airport that it wished to undertake, the proper course would have been to identify that and put it to the full Council of QLDC, so that a further and different consultation could have first taken place, as required under the LGA.

342. The Council would then have had to consider whether it should decide to agree to such different development and to the different terms of any related transfer of ownership and control that QAC sought, including, any related relinquishing of control over the location and development of Project Pure. Before

making any such fresh decision the Council would have had to comply with the mandatory requirements of the LGA, including s 97.

343. Thirdly, QAC must be taken to have known that it could not legally obtain ownership or control via a "lease" of this sort.

344. The Astral Report was formally adopted by QLDC on 28 April 2016. When QLDC did so, it resolved to then investigate future governance models for Wānaka Airport "to assist in the implementation of the proposed strategic planning in the [Astral] Report", (see the report to Council for agenda item 9 for 28 April 2016 meeting). This report to Council also noted the following, even before the governance options were ultimately identified:

> it should be noted that Wānaka airport is a strategic asset on the Council's strategic asset register and that should Council ultimately decide to change the current control or ownership of the facility it would require an amendment to the LTP through an SCP.
>
> [Page 24]

345. In other words, from the outset, QLDC and its officers clearly understood the potential application of section 97 of the LGA.

346. The Rationale Report proceeded to adopt the Astral Report recommendations and identify the "business case" for them and hence the "governance models" for Wānaka Airport. The sort of lease which Rationale recommended (as opposed to the completely different "lease" subsequently entered into) has been covered in earlier submissions.

347. For present purposes there are two additional aspects apparent from the Rationale Report, which QAC must have been aware of, that are also relevant to the Court's exercise of discretion being in favour of terminating the "lease":

348. In making its recommendation for a lease (in the usual sense of that term) Rationale noted from the outset (emphasis added):

> 2.1.2 Alignment with QLDC goals

The airports of the Queenstown Lakes district provide an important service to residents and businesses alike. They cater to the demands of an increasing number of domestic and international travellers, as well as providing a hub for freight. This movement of people and goods in and out of the district is vital to the many local businesses that rely on tourism for their bottom line.

Like any local council, QLDC's role requires a balance of preserving the lifestyle residents desire with creating and sustaining the business opportunities that enable its residents to live prosperously. From a broad perspective, QLDC's key aims as an organisation are:

To enhance the quality of life for all people within the District:

• By further developing services and facilities.

• By carrying out sound social, physical and economic planning.

• By ensuring the provision of cost effective services is responsive to community needs.

QLDC value statements include:

• Commitment to striving for the long term desires of each community.

• Communication and consultation with the residents and ratepayers of the district on major policy direction.

• Provision of services in a cost effective and efficient manner.

• A high level of service to residents and ratepayers of the district.

• Management of community assets with a long-term strategic view of community desires.

• A proactive approach to managing the resources of the district.

• A commitment to the strategic planning process.

> As part of meeting these needs, QLDC owns and operates a substantial community facilities portfolio comprising of approximately 106 facilities with a total asset value of approximately $470M. The activity includes commercial properties held in the context of QLDC's general strategic objectives, which either produce a positive commercial return or are being operated to at least cover their costs (breakeven). QLDC's investment in Wānaka Airport falls within this category.
>
> **Wānaka Airport has been designated a 'strategic asset'. Strategic assets are those assets that are important to the long-term goals of QLDC. Under the provisions of the Local Government Act 2002 (specifically Section 97), QLDC cannot transfer ownership or control of a strategic asset, unless it has first consulted with the community and included the proposal in its operative LTP (QLDC Community Facilities Asset Management Plan 2015, page 6).**

349. Notwithstanding the above, QAC proceeded to negotiate and conclude a "lease" which amounts to precisely that, namely a transfer of substantial ownership and control.

350. Fourthly, QAC did not follow the recommendation to disclose to QLDC in advance of any decision the terms of any lease which QAC sought.

351. The Rationale Report had expressly recommended that QAC and QLDC negotiate the <u>possible</u> terms of the lease i.e. in advance of consultation being concluded, to enable consideration of the proposed terms by Council:

> While QLDC owns a majority controlling share of QAC, there is a minority shareholder and so any terms of a lease will need to be defensible to ratepayers.
>
> To avoid wasted effort, part of the commercial work should involve QAC. To avoid any perception of a conflict of interest, QAC should be a consulted party in how QLDC could structure any commercial terms for the transfer. QAC should not play a role in the compilation of information for QLDC to adopt, but its position can be considered by QLDC. This is because, while it is not considered that there is a true conflict

(QAC being a CCTO), AIAL's shareholding means that there is a potential perception issue for QLDC to manage.

[Page 13]

- *See also submissions to the Council on the SOP from CUBE (Centre of Unique Business Evolution) and also Ignite (Wānaka Chamber of Commerce)*

- *Refer CUBE submission on SOP (dated 23rd November 2016), paras 2, 3, 6 of the submission [CB Part 4E, 285, 04215]*

- *Refer Ignite submission on SOP (dated November 2016), paras 3 and 6 of the submission [CB Part 4E, 284, 04214]*

352. The above recommendations were ignored. Instead, the terms of this "lease" were negotiated in secret by QAC, and only concluded some 12 months after the "consultation" and long after the full Council's consideration of the lease option proposed by Astral and Rationale had concluded.

353. As already noted, QAC and QLDC then kept the "lease" terms secret from the public for 18 months, and only disclosed it under mounting pressure to do so.

354. The manner in which the "lease" was concluded and kept secret from the public is a further factor in favour of relief.

355. Fifthly, QAC did not fully disclose and discuss the significance of AIAL's 24.99% shareholding

356. A further matter relevant to the Court's exercise of discretion is also apparent from the Rationale Report itself. Rationale expressly drew attention to the fact that QAC is 24.99% owned by AIAL. Prior to the "lease" terms being negotiated in private, there was no consideration by QLDC or disclosure during the consultation process of the potential significance of AIAL's part ownership. Some of that significance becomes apparent only in the later SOIs, by which time the "lease" and related SOI terms are already a fait accompli for QAC, and hence for AIAL as to 24.99%.

357. Rationale said that "AIAL's shareholding means that there is a potential perception issue for QLDC to manage." That clearly understates the issue, though at least pointing to the need to discuss and disclose it.

358. The issue should have been squarely and properly addressed during any consultation. The "Strategic Alliance Agreement" between QAC and AIAL, expanded and re-signed early in the consultation process, was only partially disclosed in the later QAC Statements of Intent.

359. Had it been disclosed in the SOP process, it would have highlighted the particular interest of and benefit to AIAL in QAC facilitating substantial numbers of additional flights between the Queenstown Lakes district and Auckland to carry increased numbers of tourists.

360. As it was sumarised in the publicly available PwC report dated 5 March 2011, the parties to the prior Alliance agreement summarised it in the following terms:[66]

> The Strategic Alliance Agreement sets out the basis on which the parties will collaborate and work together to achieve their growth objectives. In practical terms, probably the most significant element entails the parties working together to grow passenger volumes through attracting and retaining new airlines and services. This is founded on the parties' view that airports do not have to be passive providers of airfield and terminal services to which airlines choose to direct their services. There are opportunities to proactively market route opportunities to airlines to attract them to the airports. Having a network of airports located in prime destinations enhances the "offering" to airlines.

361. But even more significant is the conduct of QAC's directors in 2016 in not disclosing the terms of the Strategic Alliance Agreement entered into at that time. AIAL's part ownership of QAC and the true nature of its influence and control over QAC's operations by reason of the SAA would also have been highly relevant for the Council and the community to consider in deciding whether to hand Wanaka Airport over to QAC.

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[66] Refer affidavit of Wayne Hudson, at [26]-[28].

362. Sixth, QAC did not disclose its real interest in building the "planned runway" and in making Wānaka a second jet capable airport for dual operation with Queenstown Airport.

363. Not only did QAC privately negotiate a "lease" materially different to what was suggested and required for a modest level of development recommended for Wānaka Airport in a report which QAC itself endorsed, the evidence shows that at exactly the same time from at least July 2016, but separately and confidentially, (refer ASOC para 16) and just months after the Astral Report went to the Council, QAC and its directors were commissioning offshore experts, Arup, to locate for QAC a site within one-two hours of Queenstown airport for commercial jet operation.

364. That request to Arup by QAC is summarised by Arup in August 2016 to include the following criteria:

> Located 1-2 hours from the existing airport and Queenstown city […]
>
> Runway Length
>
> The first component of the aeronautical review will be an assessment of runway length needed at the site…..Arup will focus on identifying a high level runway length which serves the proposed aircraft (e.g. A321 for the Code C case) and typical routes suggested by the forecasts (e.g. to major cities on the East Coast of Australia) which will inform the prescribed range for aircraft and therefore also pay load. These will enable Arup to understand- to an appropriate level of detail- if each site will permit the necessary airport infrastructure [...]
>
> Each of the proposed sites will be reviewed to identify feasibility of linking the site with Queenstown on the existing road network. […]
>
> …. Any proposed second airport would require land areas to support with other landside services (e.g. commercial, retail and other landside land uses). The intention of this report will be to define at a high level if any of the proposed sites can support the necessary operations to make it an option for a second airport.

- *Refer affidavit of Andrew Waterworth, at [69], [78]-[82], [90], [91], [102].*

365. In 2016, well before the "lease" consultation was concluded and before the "lease" was signed, Arup had identified Wānaka Airport as the best/only possibility for QAC to pursue.

    - *Refer affidavit of Andrew Waterworth at [103], [107], [109], [114], [117], [130]-[137], [143]-[147], [150]-[157].*

366. It is also telling that the Arup Report included in its summary the following:

> During the early stages of development for the Queenstown Airport masterplan it was identified that various factors…. could impact Queenstown Airports ability to expand to accommodate forecast passenger growth within the current airport land boundary. As a result QAC requested Arup investigate potential alternative airport sites that could accommodate the full forecasted passenger demand. Options considered included new airport sites which could facilitate either dual operations with the existing Queenstown Airport or provide a new site for all airport operations.

367. Arup's Siting Study identified Wānaka "as the preferred second airport site for commercial jet operations".

368. Seventh, QAC did not candidly disclose its plans behind its advance acquisition of millions of dollars of land adjoining Wānaka Airport

369. In 2016 and 2017 QAC spent a total of some $12 million acquiring large parcels of land adjoining Wānaka Airport. While some of this extra land was identified by Astral as desirable for provision of additional private aviation hangar development, the scale and cost of acquisitions was well in excess of anything which Astral had recommended.

370. The purchases were made by QAC before it had negotiated the "lease" (although obtaining a lease was really a one-horse race).

371. The only inference to draw is that QAC always had plans to develop Wānaka Airport into a jet capable airport. This also

militates against allowing QAC to retain the “lease” and control over Project Pure.

- *Refer affidavit of Andrew Waterworth [101], [123]*

372. Eighth, QAC’s conduct breached either the letter or the spirit of its obligations under the LGA

373. The conduct of QAC in this matter has not been consistent with the legal obligations of QAC and its directors set out in sections 58 (1), 59 and 59 (1)(c) and 60 of the LGA:

> **58 Role of directors of council-controlled organisations**
>
> (1)The role of a director of a council-controlled organisation is to assist the organisation to meet its objectives and any other requirements in its statement of intent.
>
> (2)This section does not limit or affect the other duties that a director of a council-controlled organisation has.
>
> **59 Principal objective of council-controlled organisation**
>
> (1)The principal objective of a council-controlled organisation 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.
>
> (2)In subsection (1)(b), good employer has the same meaning as in clause 36 of Schedule 7.

60 Decisions relating to operation of council-controlled organisations

All decisions relating to the operation of a council-controlled organisation must be made by, or under the authority of, the board of the organisation in accordance with-

(a)its statement of intent; and

(b)its constitution.

- *Refer affidavit of Wayne Hudson at [31], [37], [40], [45], [47], [53].*

374. At the relevant time the requirements for contents of Statements of Intent were found in clause 9 of Schedule 8 of the LGA. Clause 9(1)(a) required QAC in its Statement of Intent specify for the relevant years "(a) the objectives of the group" and, "(c) the nature and scope of the activities to be undertaken by the group".

375. There is nothing in the Statements of Intent for QAC or in any public material that QAC were investigating second airports for commercial jet operations or that its experts had identified Wānaka airport as the preferred site. QAC's conduct in this regard breached either the letter or the spirit of the above statutory obligations.

- *Refer affidavit of Andrew Waterworth, at [112].*

376. On the contrary, the only inference to draw from the facts of what occurred in 2016/17 is that QAC's directors were pursuing the joint business objectives of QAC and AIAL to identify, acquire and develop a suitable airport site for expansion of jet aircraft operations.

- *Refer affidavit of Andrew Waterworth*

CONCLUSION

377. WSG seeks orders that the decisionof QLDC granting a lease to QAC be set aside, and declarations as set out in the Amended Statement of Claim.

SCHEDULE – LIST OF WSG AFFIDAVITS

1. **Ella Lawton** – (two affidavits) former QLDC Councillor at the time of the SOP process and the lease.
2. **Aaron Heath** – former QLDC Councillor and Chairman of the Wanaka Sewage Working Party
3. **Rachel Brown** – former chair of Wanaka Community Board
4. **Michael Ross** – Chair WSG – former local government chief executive
5. **Mark Sinclair** – Deputy Chair WSG
6. **Andrew Waterworth** – Wanaka resident and formerly Deputy Chair WSG
7. **Graeme Perkins** – Chair of Luggate Community Association
8. **Terry Hetherington** – Wanaka resident and commercial pilot
9. **Wayne Hudson** – Wanaka resident and former commercial lawyer
10. **Richard Somerville** – Wanaka resident, Chartered Accountant and former investment banker
11. **Dr Carly Green** – environmental engineer with significant experience in greenhouse gas emissions
12. **David Hawkins** – Wanaka resident and recreational pilot
13. **Andrea Oxley** – Wanaka resident and business owner
14. **Nicholas Page** – retired civil engineer
15. **Shaun Gilbertson** – Wanaka business owner and recreational pilot
16. **Chris Riley** – Wanaka tourism business owner
17. **Karen Eadie** – Wanaka tourism business owner
18. **Noel Williams** – Wanaka resident and real estate agent
19. **Kylee Murphy** – (two affidavits) exhibit documents