

Decision No A 55/93

IN THE MATTER of the Resource Management  
Act 1993

AND

IN THE MATTER of an appeal under section  
120 of the Act

BETWEEN DANES SHOTOVER  
RAFTS LIMITED

(RMA 250/92)

Appellant

AND

QUEENSTOWN LAKES  
DISTRICT COUNCIL

Respondent

BEFORE THE PLANNING TRIBUNAL

His Honour Judge Sheppard (presiding)  
Mrs R Grigg  
Mrs N J Johnson

HEARING at QUEENSTOWN on 5 May 1993

APPEARANCES

Mr G L Berry for appellant  
Mr N S Marquet for respondent

Ken Plamer noted here that no  
appearance objectors at this Court  
hearing. QLDC planner Mike  
Garland gave evidence - in affidavit  
Tim Francis 2007

DECISION

By this appeal under section 120 of the Resource Management Act 1991, the appellant challenged refusal of its application for planning consent for a helipad at Gorge Road, Arthurs Point (some 5 kilometres north-west of Queenstown), and sought that consent for the helipad be granted. Although the original application had been made for planning consent under the Town and Country Planning Act 1977, the effect of section 389(1) of the Resource Management Act was that on appeal the application is to be treated as being for resource consent under the latter Act. By the transitional district plan, the subject land is in the Tourist



Development 2 zone. Under that plan, helipads are predominant uses in the Rural B zone, but are not provided for in the Tourist Development 2 zone. The proposal has therefore to be considered as a non-complying activity.

### Non complying activity

The applicant carries on a long-established business conducting commercial river rafting trips. The trips are mainly on the Shotover River, although some other rivers are used. The company's base for making those trips is on the subject property at Gorge Road. The facilities there include changing rooms, showers, drying rooms for gear and wetsuits, a restaurant, bar and shop, and storage.

Skippers  
road  
closed

The launching point for trips on the Shotover River is at Boulder Beach or Sutherlands Beach. For much of the year access to it can be gained by the Skippers Road. However the road is closed due to winter conditions for 3 or 4 months each year. Then the only access to the launching points on the river is by helicopter.

Prior to the 1992 season, the appellant used to engage a particular helicopter operator to convey its customers to the launching point in the winter. That operator had secured the right to use a helipad at the Shotover Resort Hotel at Arthurs Point. However, the ownership of the hotel has changed and the new owner has an association with a rafting company in competition with the appellant and with a helicopter operator in competition with that now used by the appellant. The latter is not permitted to use the hotel helipad for flights with the appellant's customers.

flight  
paths

The proposal is to provide a helipad on the land occupied by the appellant for its base, so that a helicopter can land there from Frankton airport, and take the passengers directly from the base to the launching point. The site for the helipad is on a terrace at a level about 3 metres below the general level of the land where the base buildings are located. The helicopter approach to the helipad would be over the rural land of the lower Shotover Valley, and there would be no overflying of the Arthurs Point residential area (some 1 kilometre to 1.5 kilometres distant), nor of the tourist hotels in the vicinity. The flight path would not be significantly different from that already in use.



During the winter, when the Skippers Road is closed, flying would be subject to both weather and demand. When the weather is suitable and there are enough customers, there could be as many as 12 takeoffs and 12 landings in the morning

12 flights

these times from original applicatin 1992 were changed in 1998 consent order  
by QLDC Counsel Neville Marquet

(between 10:00 am and 11:30 am) and 12 in the afternoon  
3:00 pm). At other times of the year, there would be  
Current occupiers or the occupiers of the nearest  
consents to the proposal.

Noise effects of helicopters using the proposed helipad

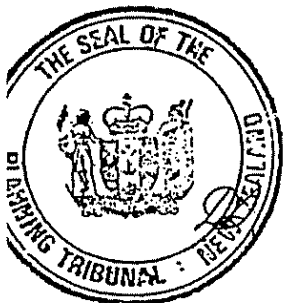
I Hegley, a registered engineer specialising in acoustics with particular experience  
of noise from helicopter operations. He had based his assessment on the Health  
Department's *Acoustic Guidelines for New Heliports* and the proposed New  
Zealand Standard DZ 6807 *Measurement, Assessment & Management of Noise  
from Helicopter Landing Areas* (accepting that the latter is still a draft) which  
adopt 50 dBA  $L_{dn}$  as the recommended maximum noise exposure for residential  
areas. Mr Hegley considered that it would take about 15 landings and 15 take-offs  
to reach that level of exposure; and gave the opinion that it would be appropriate  
to allow weekly averaging of the daily exposures with a limit that the exposure on  
no day is to exceed the permitted 50 dBA  $L_{dn}$  by more than 3 dBA. He also  
accepted that the use of the helipad should be restricted to machines no noisier  
than the aircraft proposed by the appellant, a Squirrel AS350; and he suggested  
detailed conditions which might be imposed to protect the environment from  
excessive helicopter noise.

15 flights

Without implying acceptance of helipads in urban areas, nor of the same approach  
to an acceptable noise exposure in those areas, we accept Mr Hegley's conclusions  
for the present proposal, particularly because it is incidental to a tourist activity in a  
Tourist Development 2 zone.

As a non-complying activity, the proposal can only succeed if one of the tests in  
section 105(2)(b) is passed. However decision on that must be preceded by  
consideration of the matters set out in section 104. The relevant matters there are  
any actual or potential effects of allowing the activity (subsection (1)); any relevant  
rules of the transitional district plan (subsection (4)(a)); any relevant policies or  
objectives of that plan (subsection (4)(b)); and Part II. We address them in reverse  
order.

The appellant claimed that sustainable management (as defined by section 5(2))  
includes serving the needs of tourists, and so providing for the economic wellbeing  
of people and communities; and also that proposed conditions of consent would  
avoid, remedy or mitigate any adverse effects of the helipad activities on the



environment. We accept those claims. No other provision of Part II was relied on, and none seems relevant to us.

The transitional district plan contains objectives of providing for the development and operation of air transportation services within the district; of recognising the important function which helicopters perform and that applications for approvals will need to be made as their role develops (referring particularly to noise levels and hours of operation). The plan also contains policies and objectives for the Tourist Development 2 zone, including promoting development sympathetic to outdoor recreation facilities; that within those zones the tourist interest would be the overriding consideration; and permitting a range of tourist entertainment facilities within the zone. Other policies and objectives are more general, for setting up the conventional zoning structure of the plan.

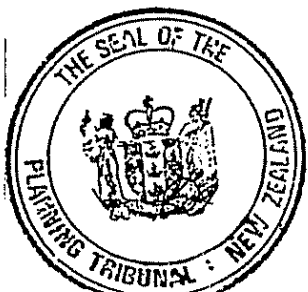
this statement supported by inclusion of helicopters as discretionary activity in current District Plan 2010

Relevant rules of the district plan also include those implementing the general zoning base of the plan; and those prescribing classes of use in the Tourist Development 2 zone. Unlike the Rural B zone, where landing and take-off strips for category 8 aircraft are predominant uses, there is no provision for helipads in the Tourist Development 2 zone. The absence of provision for them in a zone expressly intended for tourist facilities is not explained in the plan. We infer that the failure to provide for them in that zone was not so much a deliberate exclusion of them from that zone, as a failure at the time the plan was prepared to realise the growing importance that helicopters would have for tourism in the succeeding twelve or fifteen years.

Via strada evidence shows District Plan standard does provide adequate protection

The only other rule that could be thought relevant is that prescribing performance standards for noise by reference to maximums of 45 dBA 8:00 am to 8:00 pm and 40 dBA at all other times (in each case subject to correction). We accept Mr Hegley's opinion that those standards are not appropriate for measuring helicopter noise, and if they were applied, the acoustic environment would not be adequately protected. Assessing exposure to helicopter noise should be done by special techniques designed for the purpose.

Actual and potential effects of allowing the activity are confined to economic benefit of the proposed helipad, noise from the helicopter operations, and any adverse effect on public confidence in the administration of the plan and its coherence. We are not able to quantify the economic benefit, but we accept that there would be likely to be some benefit to the appellant, which may flow to some



extent to the community generally. The community is (as the plan contemplated) already exposed to noise from helicopter operations. Noise from use of the proposed helipad could be appropriately controlled by imposition of conditions such as those suggested by Mr Hegley.

The proposal would conflict with the general zoning rules of the plan (as virtually all non-complying activities by definition do). However the proposal would be consistent with the policies and objectives referred to about development of helicopter transport and development of tourism facilities in the Tourist Development 2 zone. There is no policy or other apparent reason why the appellant's customers should be taken by van from the appellant's correctly zoned base to the Rural B zone for their flights to the launching points, provided there are no adverse effects on the environment of flying from the base itself. A general heliport would be different, but the proposal is for a helipad incidental to the appellant's tourism activities, the base for which has been established in the zone provided for the purpose. For those reasons we consider that the proposal can be seen to possess such unusual circumstances that granting consent to it should not undermine public confidence in the administration of the district plan. If the respondent wishes to preclude a proliferation of helipads accessory to tourism bases in the Tourist Development 2 zone, it should make appropriate provision in its plan for a heliport conveniently accessible from those bases.

Having had regard to the matters set out in section 104, we return to the tests in section 105(2)(b). We are satisfied that, if carried out in compliance with appropriate conditions, the effect on the environment (as defined) of the proposed activity would be minor; and that the activity would not be contrary to the objectives and policies of the plan. The Tribunal therefore has authority to grant consent to the proposal even though it is a non-complying activity.

In exercise of the discretion conferred by section 105(1)(b) to grant or refuse that consent, we are influenced by the economic benefit for a tourism business already established in the correct zone; the fact that the activity of the helipad would only be incidental to that business; and our finding that, if carried on in compliance with conditions proposed by the appellant's own expert witness, there would be no significant adverse effect on the environment.



For those reasons we will grant resource consent, and we invite counsel to agree on the terms of a formal order. The order should limit the use of the helipad to

Neville

**Counsel (Neville) did not include this condition in 1998 Order**

flights incidental to tourism business carried on at the site; and should be expressed subject to compliance with a condition such as that suggested by Mr Hegley, with the addition which he expressed orally at the appeal hearing limiting use of the helipad to machines no noisier than a Squirrel AS350.

Although the appellant sought an order for costs we are not willing to make such an order. We consider that if the appellant had engaged Mr Hegley at an earlier stage, and called evidence from him in support of the application at the council hearing, the outcome might have been different and the appeal not been necessary. The Tribunal makes no order for costs.

When the terms of an order to give effect to the decision described in this appeal have been provided, the Tribunal will make a formal order allowing the appeal and granting resource consent as outlined.

DATED at AUCKLAND this *2nd* day of *June* 1993



DFG Sheppard  
Planning Judge

(DE-0010.DOC/DFGS)

