

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for declarations under
s311 of the Act

BETWEEN

CLIVE MANNERS-WOOD
(ENV-2007-CHC-000053)

Applicant

AND

QUEENSTOWN-LAKES DISTRICT
COUNCIL

First Respondent

AND

TOTALLY TOURISM LIMITED

Second Respondent

AND

BISHOPDALE HOLDINGS LIMITED

Third Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge B P Dwyer

Commissioner C E Manning

Commissioner A J Sutherland



HEARING at Queenstown on 31 August 2007

COUNSEL/APPEARANCES

Mr L A Andersen for the Applicant

Ms J E Macdonald for the First Respondent

Mr M E Parker for Second and Third Respondents

Introduction

[1] Clive Manners-Wood (Mr Manners-Wood) has made application to the Court for a series of declarations relating to the operation of what he describes as a *heliport* at Arthurs Point near Queenstown.

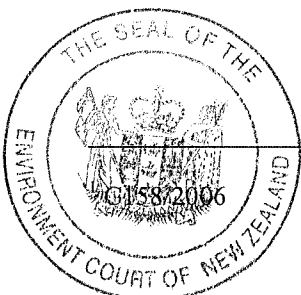
[2] Mr Manners-Wood had previously made application for an enforcement order against the Queenstown-Lakes District Council (the Council) relating to operation of the heliport. The Council sought to strike out the enforcement order application and the Court issued a decision declining the strike out application on 29 November 2006¹.

[3] In the course of its decision the Court recommended to Mr Manners-Wood that he apply for declarations as to the correct interpretation of resource consent RMA 250/92 which authorised helicopter operations at the Arthurs Point site. These proceedings are the outcome of that recommendation.

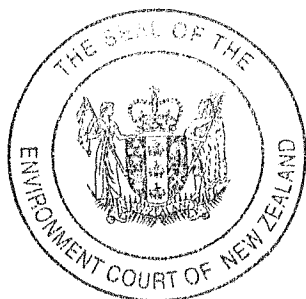
[4] The declarations now sought by Mr Manners-Wood are:

1. *Any helicopter flight from the heliport at George(sic)Road, Arthurs Point (the Heliport) for a purpose other than loading and offloading a rafting operator's clients participating in rafting trips at the operator's Arthurs Point base facility contravenes section 9 Resource Management Act.*
2. *The use of the Heliport site by Totally Tourism Ltd exclusively for combination trips as detailed in its letter of 16 November 2005 (copy attached) contravenes s9 of the Act as such trips are not authorised by the Heliport Resource Consent granted by the Environment Court on 30 March 1998 giving effect to the decision of the Planning Tribunal delivered on 2 June 1993 ("the Heliport Resource Consent"):*

- (a) *They do not comply with the actual wording of the consent as such trips are not "incidental to tourism business carried on at the site";*
- (b) *They are quite different in nature and effects to the application made and granted which limited the use of the helipad to rafting trips taking place at the Arthurs Point base facility;*



- (c) *They are not limited to the hours sought before the Planning Tribunal being 10:00 am to 11:30 am and 1:30 pm to 3:00 pm.*
3. *That any future use of the Heliport for helicopter flights contravenes s9 Resource Management Act as:*
- (a) *The resource consent only authorised the loading and offloading of rafting operator's clients participating in rafting trips at the operator's Arthurs Point base facility.*
- (b) *The resource consent has lapsed under s125 of the Act as the Heliport has not been used for the purpose of loading and offloading a rafting operator's clients participating in rafting trips at the operator's Arthurs Point base facility from the date it was granted on 30 March 1998.*
4. *The functions of the Queenstown Lakes District Council include:*
- (a) *The control of any actual or potential effects of use of the Heliport*
- (b) *The control of the emission of noise and the mitigation of the effects of noise from the use of the Heliport.*
5. *The Queenstown Lakes District Council has the following duties in the performance of its functions:*
- (a) *A duty to monitor compliance with the terms of the Heliport Resource Consent;*
- (b) *A duty to take sufficient noise measurements to satisfy itself that the terms of the Heliport Resource Consent are being complied with.*
6. *The Queenstown Lakes District Council has contravened the Resource Management Act 1991 by failing to perform its functions and duties under the Act in the following respects relating to the Heliport Resource Consent:*
- (a) *It failed in its obligation to ensure that the sealed order of the Environment Court giving effect to the Planning Tribunal's decision on 5 May 1993 properly set out the terms of the Heliport Resource Consent by limiting the terms of the Heliport Resource Consent to the activity sought in the application for resource consent as amended before the Planning Tribunal:*
- (i) *The application was limited to "consent to operate a helipad to load and offload Danes' clients participating in rafting trips at its new Arthurs Point base facility" which is more limited than the description of "flights incidental to tourist business carried on at the site" set out in the draft order subsequently sealed by the Environment Court on 30 March 1998; and*
- (ii) *The basis of the application before the Planning Tribunal (consented to by four objectors) was that flights would be limited to between 10:00*



am and 11:30 am and again from 1:30 pm to 3:00 pm whereas the terms set out in the draft order provided to the Environment Court stated the use could be between 9:00 am and 6:00 pm.

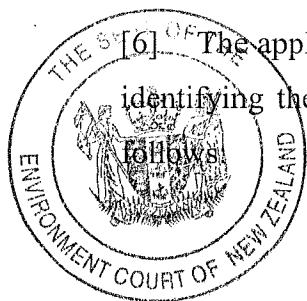
- (b) It took no action to investigate and act on complaints about the use of the heliport when it is apparent from Totally Tourism Ltd's letter of 5 February 2005 that the use contravenes the Heliport Resource Consent as the Heliport was not being used for helicopter trips that are "incidental to tourism business being carried out on the site";*
- (c) Despite complaints as to the noise generated by the helicopters using the Heliport, it has failed to investigate compliance with the Heliport Resource Consent by taking noise measurements to determine compliance with the consent;*
- (d) It failed to require copies of the flight paths to and from the Heliport submitted to the Planning Tribunal's hearing of the appeal to be provided to it in accordance with the terms of the resource consent.*

The grounds for this application are:

- 1. The terms of the Heliport Resource Consent order are wider than the consent applied for which was limited to the operation of a helipad to load and offload clients participating in rafting trips at the rafting operator's Arthurs Point base facility between 10:00 am and 11:30 am and between 1:00 pm and 3:00 pm.*
- 2. The Heliport is currently used by Totally Tourism Ltd for purposes that are not authorised by the Heliport Resource Consent.*
- 3. Queenstown Lakes District Council has failed to ensure compliance with the Resource Consent.*
- 4. The Queenstown Lakes District Council has failed to investigate the operation of the helipad after complaints from residents or to measure the noise in order to determine whether the flights of the helicopters are within the noise level specified in the Heliport Resource Consent.*

Background

[5] On 27 May 1991 Danes Shotover Rafts Limited (Danes) made application to the Council for planning consent under the Town and Country Planning Act 1977. Consent was sought . . . *to operate a helipad to load and offload Danes Clients participating in rafting trips at its new Arthurs Point base facility.*



[6] *The application was accompanied by a covering letter from Danes' solicitors and a plan identifying the application site and its proposed layout. The accompanying letter stated as follows*

Re: Town and Country Planning Act 1977 – Application for Planning Consent

We enclose application by Danes Shotover Rafts Limited for consent to operate a helipad, essentially to load and offload rafting clients of the company at premises it is taking under long term lease at Arthurs Point which comprise the former Herb Barn.

A plan is attached to the application.

It should be pointed out that the helipad proposal involves a diversion of helicopter landings from the present helipad which is located on the Shotover Resort property and now used by Danes and other rafting operators.

There is therefore no increase in volumes of likely traffic to the area, simply a diversion of present traffic to a better located landing spot.

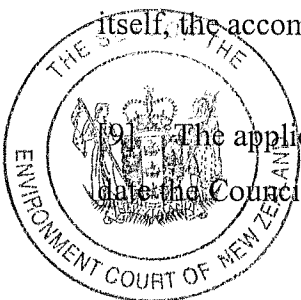
The site is located 3 metres below the terrace on an existing lower terrace area and approaches/departures to and from site would be towards the Shotover River.

Please invoice Danes direct for fees on application, at PO Box 230, Queenstown.

[7] It is uncertain if the letter and plan described above were the only documents accompanying the application as the Council has apparently misplaced the file or some of the material which may have been on it. It is clear from the planning officer's report to the Council Hearings Committee (which has been located) that Danes had commissioned an acoustic report which was undertaken on 21 May 1991. However the solicitor's letter (above) does not refer to that report as being lodged with the application documents. Clearly the report had come into the Council's possession by the time it heard the application. Neighbours' consents to the application which may possibly have limited the ambit of consent in some way could not be located and were not part of the information before us.

[8] Because the application for planning consent was filed before the Resource Management Act 1991 (RMA) came into force (1 October 1991) it was not accompanied by an assessment of effects on the environment pursuant to Fourth Schedule RMA which is now mandatory for resource consent applications. Accordingly the documents now before the Court, which constituted the application documents appear to be the application document itself, the accompanying letter, the attached plan and (possibly) an acoustic report.

[9] The application was not finally determined by the Council until 3 August 1992. On that date the Council issued a decision pursuant to RMA declining consent.



[10] Danes appealed the decline of consent. The appeal was heard by the Planning Tribunal in May 1993. On 2 June 1993 the Tribunal issued a decision² allowing the appeal and determining to grant consent. The decision invited the parties to agree on the terms of a formal order incorporating conditions on various issues identified by the Tribunal.

[11] There was considerable delay in submitting an agreed order. Eventually an order was issued by the (now) Court on 30 March 1998 nearly five years after the Tribunal's decision on the appeal. That order (RMA 250/92) which constitutes the consent document provides as follows:

ORDER

HAVING CONSIDERED the draft order submitted by counsel pursuant to leave reserved by the Planning Tribunal's Decision A55/93 given on 2 June 1993 THIS COURT HEREBY ORDERS:

1. *That land-use resource consent is granted to permit the establishment and operation of a helipad on the land at Gorge Road, Arthurs Point, described as Lot 2 DP 20925, Block XIX, Shotover Survey District subject to compliance with the following conditions -*

- (1) *Use of the helipad is limited to flights incidental to tourism business carried on at the site.*
- (2) *That the following noise controls shall apply to the operation of helicopters from the helipad:*
 - (a) *Noise generated by helicopters, as measured at the notional boundary of any dwelling (excluding the dwelling on the site) shall not exceed a level of 50 dBA Ldn.*
 - (b) *The Ldn value may be averaged over any one week. The exposure on any single day should not exceed an Ldn of 53 dBA.*
 - (c) *All flights shall be restricted to between the hours of 9.00 am – 6.00 pm each day.*
 - (d) *The flight paths to and from the helipad shall be generally in accordance with the flight tracks submitted to the Planning Tribunal's hearing of this appeal, copies of which are to be*



lodged with and held by Queenstown Lakes District Council to record same.

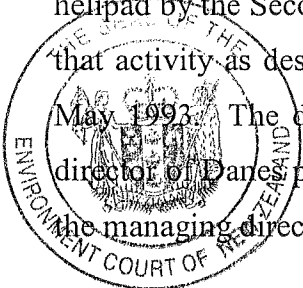
- (e) Measurements shall be carried out in accordance with the requirements of NZS6801:1991 Measurement of Sound.*
 - (f) The operator shall keep a log of flights from the helipad. This log shall be made available to the Council if requested.*
 - (g) The helipad shall not be used for any helicopter creating noise effects greater than a Squirrel AS350 helicopter.*
- 2. To that extent, this appeal is allowed and the respondent's decision is cancelled.*
 - 3. There is no order for payment of costs.*

[12] Danes has sold the business which it carried out and also the property which it owned at Arthurs Point. Totally Tourism Limited (the Second Respondent) now carries on the business previously undertaken by Danes and Bishopdale Holdings Limited (the Third Respondent) owns the site where Danes' business was based and from which the Second Respondent continues to operate.

[13] These proceedings and the related but separate enforcement order proceedings arise as the result of alleged unsatisfactory operation of the helicopter activities now conducted by the Second Respondent at Arthurs Point. Mr Manners-Wood resides at Arthurs Point and is concerned about aspects of those operations including the noise generated by them. It seems from affidavits sworn by Mr V C Goodwin (an environmental acoustician) and filed by the Council in these proceedings that there is an issue as to compliance with the terms of resource consent RMA 250/92. That is not a matter before us in these declaration proceedings. We do however note the assurance from its Counsel that the Council would be investigating the matter of ongoing compliance.

Helipad Usage

[14] The documents filed in these proceedings establish that the extent of current use of the helipad by the Second Respondent or its agents is very considerably greater than the extent of that activity as described to the Planning Tribunal when it considered Danes' application in May 1993. The documents included the brief of evidence which Mr J D MacDonald the director of Danes presented to the Tribunal at that time and an affidavit from Mr M Quickfall the managing director of the Second Respondent.



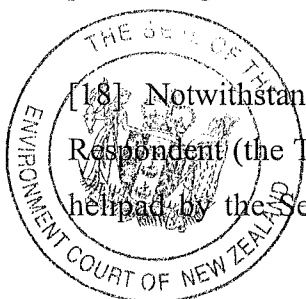
[15] Mr MacDonald testified to the Tribunal that Danes' rafting activities were conducted from Boulder Beach which is accessed by Skippers Road. Skippers Road was commonly closed due to winter conditions between May and September so that it was necessary to use a helicopter to fly rafting clients into Boulder Beach during the winter. For the rest of the year access would be by vehicle. Mr MacDonald's evidence was that in May and June such helicopter flights would usually be every second day and then only once per day. From July to September his evidence was that there would be much more extensive use with a possible maximum of up to 12 trips in the morning (Mr MacDonald described that as *unusual*) and 12 in the afternoon. However, he also said that over the winter generally there would be *many days* when there was no use of the helipad. In so far as the rest of the year other than winter was concerned Mr MacDonald said that the helipad use would be *occasional only*.

[16] Mr Quickfall's affidavit included the usage figures for the helipad in 2006. The figures showed that:

- Over the winter period (May-September) there were only 10 days when no flights took place from the helipad compared to Mr MacDonald's evidence of every second day in May-June and *many days* of no flights for the balance of the winter.
- Over the rest of the year (January-April, October-December) there were 792 flights compared to Mr MacDonald's evidence of only *occasional* flights.

[17] Mr MacDonald's evidence to the Planning Tribunal related solely to use of the Arthurs Point helipad to service Danes' rafting business. It is apparent from Mr Quickfall's affidavit that the helipad is now used to accommodate helicopter flights servicing a range of other activities including Shotover Jet, Shotover Canyon Swing, Gravity Action Mountain Biking, Skyline Cableway and Challenge Rafting. The range of activities currently being serviced by the helicopter operation far exceeds that of the rafting business which was the basis of Mr MacDonald's evidence to the Tribunal and probably explains (at least to some extent) the discrepancy between the extent of usage of the helipad anticipated by Mr MacDonald in his evidence to the Planning Tribunal and that identified in Mr Quickfall's affidavit in these proceedings.

[18] Notwithstanding that discrepancy it is the position of both the Council and Second Respondent (the Third Respondent abiding the Court's decision) that current operation of the helipad by the Second Respondent is authorised by resource consent RMA 250/92. They



oppose the declarations sought by Mr Manners-Wood on that basis. We accordingly now turn to consider the terms of resource consent RMA 250/92.

RMA 250/92

[19] We again refer to the particularly relevant provisions of the order as it issued namely:

1. That land-use resource consent is granted to permit the establishment and operation of a helipad on the land at Gorge Road, Arthurs Point, described as Lot 2 DP 20925, Block XIX, Shotover Survey District subject to compliance with the following conditions –

(1) Use of the helipad is limited to flights incidental to tourism business carried on at the site.

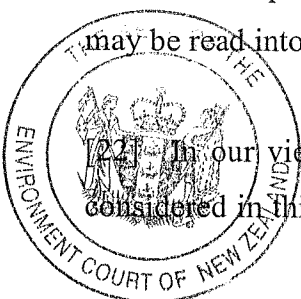
[20] Both Ms Macdonald (for the Council) and Mr Parker (for the Second Respondent) refer to the principle that as far as possible a resource consent should be interpreted on its face. Mr Parker put it this way:

[8] It is submitted that the words of the Order are plain on their face and should be given their literal and ordinary meaning. They are not ambiguous and do not require interpretation.

The Second Respondent says that the business being undertaken by it on the site is *tourism business*, that the helicopter operation is part of or incidental to that business and that accordingly the present helicopter operations are authorised by RMA 250/92.

[21] Ms Macdonald further refers to the principle that evidence given in support of an application may not be looked at to determine the meaning of the resource consent actually granted. That is acknowledged by the Court. It is further acknowledged that Mr MacDonald's evidence to the Planning Tribunal may properly be regarded as a statement of intention rather than establishing limitations on the extent of the consent. However both Ms Macdonald and Mr Parker referred extensively to the comments and findings made in decision A55/93 to support their common contention that the helicopter flights are incidental to tourism business now carried on by the Second Respondent at the site and that no further limitation or qualification beyond that contained in the conditions of consent in RMA 250/92 may be read into the consent.

[22] In our view that contention ignores an overriding jurisdictional issue which must be considered in this instance, namely, that every resource consent is limited by the terms of its



application³. A resource consent which purports to grant more than what is sought in the application is ultra vires to that extent⁴.

[23] The Environment Court discussed those matters in some detail in its decision *Clevedon Protection Society Inc v Warren Fowler Limited and Manukau City Council*⁵. *Clevedon* refers to a number of decisions of the Court where that principle has been identified. The Court makes the point⁶ in *Clevedon* that *the interpretation of the limits of a resource consent is a jurisdictional issue, rather than an evidential one*.

[24] In making the submission which they have as to reading the terms of resource consent RMA 250/92 on its face both Ms Macdonald and Mr Parker have failed to have regard to the limitations of the planning consent application which must form the basis of the resource consent which was subsequently granted. At the risk of being repetitious we refer again to the very specific terms contained in the application for consent made under the Town and Country Planning Act, namely that Danes applied for planning consent . . .

to operate a helipad to load and offload Danes Clients participating in rafting trips at its new Arthurs Point base facility.

In our view the ambit of the application is crystal clear. It seeks consent to operate a helipad for a very limited purpose, more particularly, the loading and offloading of Danes' clients who were participating in rafting trips.

[25] Information formally provided as part of the resource consent process (whether as part of the application documents or in response to requests for further information) may form part of the application and may limit or qualify the application in some way. However such information cannot enlarge an application⁷. In this case the information provided as part of the application process appears to be confined to the application document itself, the solicitor's covering letter, the plan lodged with the initial consent and possibly an acoustic report. There is nothing in those documents which gives any indication that the helipad for which consent was sought was for the purposes of servicing a wider range of activities than

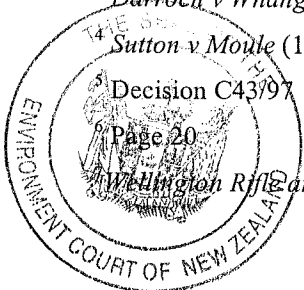
³ *Darroch v Whangarei District Council*, Decision A18/93 (Page 27)

Sutton v Moule (1992) 2 NZRMA 41 (46)

⁵ Decision C43/97

⁶ Page 20

⁷ *Wellington Rifle and Gun Club Inc v Wellington City Council*, Decision W141/95



Danes' rafting operations. The solicitor's letter confirms the restricted nature of the application.

[26] In interpreting consent RMA 250/92 we have looked back at the application documents because those documents set the boundaries of the consent which could be granted. In this case the application was for a helipad to be used for the limited purpose identified and that is all that either the Council or the Planning Tribunal had jurisdiction to approve.

[27] We have given consideration to the suggestion contained in the submissions of the Council and Second Respondent that the wider meaning which they have ascribed to the resource consent (in terms of the activities which it authorised) is consistent with the Tribunal's findings in decision A55/93. Even if that suggestion was correct that would not overcome the jurisdictional issue we have identified. In any event we disagree with that suggestion.

[28] It is correct that decision A55/93 in identifying the terms of the formal order to be submitted to the Tribunal by the parties directed that *the order should limit the use of the helipad to flights incidental to tourism business carried on at the site . . .* and that is what condition (1) of RMA 250/92 provides. Both the Council and the Second Respondent have interpreted that direction as indicating that the Tribunal intended to give consent to (in effect) a helipad incidental to any tourism business carried on at this site whether rafting or otherwise. Not only could the Tribunal not do that for jurisdictional reasons, it did not purport to do so. We think it is abundantly clear when decision A55/93 is read in its entirety that the tourism business to which it was referring was the applicant's *long-established business conducting commercial river rafting trips*⁸. That is a tourism business and is the only business discussed anywhere in the decision. We accordingly reject any suggestion that the Tribunal intended to grant consent to a helipad serving any wider range of tourism activities than described in the initial application.

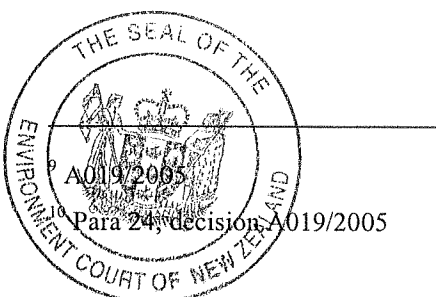


Evolution of Approved Activity

[29] Counsel for the Council referred us to the Court's decision in *Parnell Residents' Society Inc v Edinburgh Institute Limited and Auckland City Council*⁹. That was a case where consent had been granted under the Town and Country Planning Act 1953 to establish residential accommodation specifically to accommodate 75 pupils plus staff at Queen Victoria School. The Court considered whether or not a completely different educational institution to Queen Victoria School could *pick up* the benefit of the consent. The Court held . . . *that there must be room for the activity authorised by a consent to develop somewhat over time; - to evolve as conditions and society evolves*. Ms Macdonald advanced that proposition as the basis on which the Court should approach the interpretation of the consent in these proceedings. She acknowledged that the type of tourism business serviced by helicopter flights in this case had expanded from rafting to include other activities but contended that as long as the helicopter flights remained incidental to some tourism activity then it could not reasonably be said that there was a change of activity to such a fundamental degree as to take it outside the terms of consent.

[30] We disagree. The Court in the *Parnell Residents' Society* case went on to state *But a change in the activity of such a degree that it is fundamentally different from what was first agreed to will mean that the consent no longer is valid*¹⁰. In our view that is what has happened in this case. Although we accept that the effects of an individual helicopter landing and takeoff at the site will be the same whether or not that helicopter is taking passengers on a rafting expedition, a jet boat trip or some other tourism experience that is not the issue.

[31] It seems apparent that a consequence of the acknowledged increase in the range of activities being serviced by the helipad over and above the initial rafting activities is a potential increase in the number of takeoffs and landings which will occur at the helipad. We consider that effect is amply demonstrated by the difference between Mr MacDonald's evidence to the Planning Tribunal as to the extent of usage required to service the rafting business compared with Mr Quickfall's evidence as to the extent of the Second Respondent's usage in 2006. That is the reason why we have referred to that evidence in this decision.



[32] We bear in mind that RMA is an effects based statute. We consider for example, that the effects of the tourism activity which in 2006 gave rise to 792 helicopter flights (during out of winter months) are fundamentally different to the effects of the *occasional flights* required to service the rafting business for which consent was sought. We note further that an appendix to Mr Goodwin's first affidavit records that the daily noise limit required by RMA 250/92 was exceeded on 151 days between 1 January 2006 and 28 February 2007 and that in the whole 14 month period compliance with the required weekly average noise limit was achieved only for the period 25 May – 17 June 2006. This strongly suggests that the effects of the current use go well beyond what was anticipated for the approved activity.

[33] Accordingly we do not consider the current helicopter operations, servicing the range of other activities which they do, as being a permissible evolution of consent RMA 250/92, even if we uncritically accept the proposition that there may be permissible evolution.

Conclusion

[34] We do not accept the contention of the Council and Second Respondent that RMA 250/92 authorises the range of helicopter activities currently being carried out at the Arthurs Point site. There is no dispute that helicopter activities at this site require authorisation by resource consent as they are not permitted by the District Plan. Section 9(1) RMA provides:

(1) No person may use any land in a manner that contravenes a rule in a district plan or proposed district plan unless the activity is –

(a) Expressly allowed by a resource consent granted by the territorial authority responsible for the plan;

(our emphasis)

[35] In this case the resource consent application which forms the basis of RMA 250/92 expressly limited helicopter operations at the site to those servicing clients participating in rafting trips. There was no jurisdiction to grant consent to any wider range of helicopter activities as no consent was sought for that. Accordingly we conclude that the range of helicopter activities currently carried out on the site is not allowed by RMA 250/92. The authorisation given by that consent is restricted to helicopter flights servicing persons being taken to and from rafting trips.



Declarations

[36] During the course of the hearing we indicated to the parties that we did not propose to make declarations 4, 5 and 6 sought by the Applicant. Declarations 4 and 5 required us to (in effect) simply state the existence of statutory functions and duties identified in RMA. We do have power to make such declarations but there seems little point in doing so. The Council does not dispute that it has such functions and duties in a general sense. Declaration 6 required the Court to make a determination as to whether or not the Council had carried out those functions and duties in this case. Even assuming that the Court has power to do so, the evidence provided to us simply does not go to the extent of establishing the propositions sought in declaration 6. We accordingly decline to make Declarations 4-6.

[37] We now turn to consider the remaining Declarations 1-3.

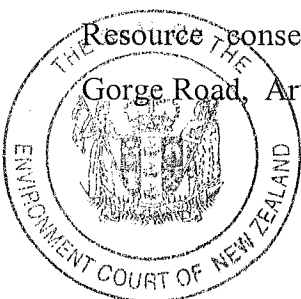
[38] Declaration 3 is extremely widely phrased. It requires the Court to make a declaration about *any future use of the Heliport for helicopter flights*. In our view it is a hypothetical question. It is not appropriate for the Court to exercise its discretion to make a declaration on such a vague and potentially wide ranging issue. Declaration 3(a) is largely a repetition of the subject matter of Declaration 1 in any event. There was insufficient evidence to support Declaration 3(b). We decline to make Declaration 3.

[39] That leaves Declarations 1 and 2. We consider that the evidence supports the making of declarations in respect of both these matters although not in the precise form sought by Mr Manners-Wood. Sections 313(a) and (b) RMA enable the Court to make declarations outside the precise ambit of those actually sought in this case.

[40] We have identified the limitations of RMA 250/92. We find that Danes sought consent to allow an extremely limited range of helicopter operations at the Arthurs Point site. When RMA 250/92 is interpreted by reference to the application which was made (as it must be) it does not authorise the range of helicopter operations currently being undertaken at the helipad. Accordingly we make the following declarations:

Declaration 1

Resource consent RMA 250/92 expressly allows helicopter usage of the helipad at Gorge Road, Arthurs Point, for the purpose of loading and unloading a rafting operator's



clients participating in rafting trips. Use of the helipad for servicing other activities is not in accordance with RMA 250/92 and contravenes s9 RMA.

Declaration 2

Use of the helipad at Gorge Road, Arthurs Point, by the Second Respondent (Totally Tourism Ltd) for purposes other than loading and off-loading its clients participating in rafting trips is not expressly allowed by RMA 250/92. More particularly use of the helipad to service the range of activities described in the affidavit of Mark Quickfall filed in these proceedings (but excluding rafting activities) is not expressly allowed by RMA 250/92 and accordingly contravenes s9 RMA.

Costs

[41] The question of costs is reserved. In the particular circumstances of this case an application for costs is not encouraged. However, if Mr Manners-Wood wishes to make an application it is to be filed in the Court within 15 working days of the date of this decision. The other parties to have 15 working days in which to respond and Mr Manners-Wood a further 5 working days to reply.

DATED at WELLINGTON this 12th day of September 2007



B P Dwyer
Environment Judge

