

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by **TOTALLY TOURISM LIMITED** for a variation to resource consent RM 910025 granted by the Environment Court under Decision RMA 250/92 on 30 March 1998 to establish a helipad at 160 Arthurs Point Road, Arthurs Point.

Date of hearing: 12 February 2008
Counsel for the Applicant: Mr M Parker

Council File: RM070941

**NOTIFICATION DETERMINATION BY INDEPENDENT HEARINGS COMMISSIONERS,
DAVID COLLINS AND JANE TAYLOR**

1. Proposal and Site Description

Totally Tourism Limited ("the Applicant") has sought consent to vary Condition (1) of resource consent RM 910025 granted by the Environment Court under decision RMA 250/92 on 30 March 1998, for the establishment of a helipad at 160 Arthurs Point Road, Arthurs Point.

The subject site is located at 160 Arthurs Point Road, Arthurs Point, and is legally described as Lot 2, DP 20925. The site contains a helipad and a dwelling owned by the Applicant. The subject property is located in the Rural Visitor Zone under the Partially Operative District Plan ("the District Plan").

Condition (1) of the original consent reads:

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

In a decision of the Environment Court dated 12 September 2007 (W77/2007),¹ the Court held that the interpretation of the words "tourism business" in Condition (1) is restricted to clients participating in rafting activities in accordance with the ambit of the original application. The current application seeks to vary Condition (1) to enable the inclusion of visitors participating in other ancillary activities, which include site-seeing, rafting and combo trips. The application states that rafting customers are flown to the start of the rafting trip at Deep Creek via two potential routes. However, it is proposed that sight-seeing and combo customers will be flown to the top of the Skyline Gondola, a route that had been flown prior to decision W77/2007 but which is no longer permitted under the terms of the original consent.

The application does not propose that there be any variation of the remaining conditions of consent RM 250/92, which provide as follows:

- "(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 50dBA Ldn.
 - (b) The Ldn value may be averaged over any one week. The exposure on any single day should not exceed a Ldn of 53dBA.
 - (c) All flights shall be restricted to between the hours of 9:00am to 6:00pm 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."

It was noted in the application and confirmed at the hearing that details of the flight paths referred to in Condition (2)(d) have since been lost. However, the director of the Applicant who gave evidence at the hearing, Mr Mark Quickfall, stated that these

¹ A full discussion of this decision is contained under the heading "Background" to follow.

flight paths were the two currently used to take rafting clients from the helipad to the rafting site at the Shotover River. Importantly, the original flight paths do not appear to include the proposed new flight path to and from the Skyline Gondola.

2. Background – Environment Court decision W77/2007

The interpretation of Condition (1) of the original consent, RM 910025, was in issue before the Environment Court at a hearing in Queenstown on 31 August 2007 in which the Applicant, Mr Clive Manners-Wood, applied for declarations under s 311 of the Resource Management Act ("the Act"). At that time, it was generally acknowledged that the type of tourism business serviced by helicopter flights at the Arthurs Point helipad had expanded from rafting to include other activities such as combo trips via the Skyline gondola.

In its decision in W77/2007 dated 12 September 2007, the Court held that Condition (1) must be interpreted in accordance with the limitations of the application which formed the basis of the resource consent granted. Judge Dwyer found that there were very specific terms contained in the application for consent, namely that Danes (the predecessor to Totally Tourism Limited) had applied for planning consent ... *"to operate a helipad to load and off-load Danes' clients participating in rafting trips at its new Arthurs Point base facility."* At paragraph [24], the Court stated:

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 off-loading of Danes' clients who were participating in rafting trips.

The Court found further at paragraph [25]:

There is nothing in [the information provided as part of the application process] which gives any indication that the helipad for which consent was sought was for the purposes of serving a wider range of activities than Danes' rafting operations. The solicitor's letter confirms the restricted nature of the application.

The Court rejected the suggestion of counsel for the Queenstown Lakes District Council and the second respondent that RMA 250/92 authorised a wider interpretation of Condition (1); that is, the business being undertaken by Danes on

the site is *tourism business* and that the helicopter operation is part of or incidental to that business. The Court was clear that this approach to interpretation ignores an overriding jurisdictional issue, namely that every resource consent is limited by the terms of its application (paragraph [22]). A resource consent which purports to grant more than what is sought in the application is *ultra vires* to the extent of the additional activity.

At paragraph [28] the Court expanded further on the interpretation of Condition (1). Judge Dwyer noted that both the Council and the second respondent argued that the Planning Tribunal *intended* to give consent to (in effect) a helipad at Arthurs Point incidental to any tourism business, whether rafting or otherwise. In rejecting this submission, the Court stated:

Not only could the Tribunal not do so 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. 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.

The Council and second respondent further contended that as long as the helicopter flights remain *incidental to some tourism activity*, there was, on any reasonable basis, no "change of activity" to such a fundamental degree that it would be outside the terms of the consent. The Court rejected arguments in relation to the "evolution" of an approved activity, stating at paragraph [30] that:

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 is no longer valid". In our view that is what has happened in this case. Although we accept that the effects of an individual helicopter landing and take-off 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.

In relation to the increased level of activity on the site, the Court stated at paragraph [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 take-offs and landings which will occur at the helipad.

In forming this conclusion, the Court was plainly influenced by evidence relating to the then current levels of tourism activity, which in 2006 gave rise to 792 helicopter flights (during out of winter months), which it held was fundamentally different to the effects of the “occasional” flights required to service the rafting business for which consent was sought. The Court further noted the evidence of Mr Goodwin 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 to 17 June 2006. The Court was of the view that:

This strongly suggests that the effects of the current use go well beyond what was anticipated for the approved activity.

Accordingly, the Court did not consider the current helicopter operations, servicing the range of other activities undertaken, to be a permissible evolution of consent RM 250/92, even if the proposition that there may in some circumstances be permissible evolution was to be accepted.

In summary, the Court concluded at paragraph [35] that 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 the rafting trips. There was no jurisdiction to grant consent to any wider range of helicopter activities as the original application did not seek any such consent. The Court concluded that, accordingly, the range of helicopter activities carried out on the site, which in 2006 included activities other than rafting, is not permitted by RM 910025. Rather, the authorisation granted by that consent is restricted to helicopter flights servicing persons being taken to and from rafting trips.

It should be noted that prior to decision W77/2007, the Applicant was relying on legal advice received from Council’s solicitors that Condition (1) authorised the use of the helipad for other activities carried out by the company. A copy of the relevant legal opinion dated 15 November 2005 has been provided to the Commission as part of the application.

3. The Hearing

The hearing was held on 12 February 2008. Mr Michael Parker appeared for the Applicant, together with Mr Mark Quickfall, a director of the Applicant.

Prior to the hearing, we had the benefit of a planner's report prepared by Ms Wendy Rolls, a planner of Lakes Environmental. Ms Rolls recommended that pursuant to s 93 and s 94 of the Act, the application be processed without public notification on the following basis:

- The adverse effect on the environment of the activity for which consent is sought will be nil;
- There are no special circumstances that warrant notification; and
- There are no persons considered to be adversely affected by the granting of this resource consent, as the adverse effect on the environment of the activity is considered to be nil.

Three parties who considered themselves to be adversely affected persons under s 94 of the Act were given leave to address the Commission at the hearing. For the reasons which follow, it is not necessary to describe their evidence in any detail.

The Commission was assisted at the hearing by Ms Rachel Beer, Committee Secretary.

4. Preliminary jurisdictional issues

The application is for a variation of a condition of existing resource consent RM 250/92. Applications for variations of conditions are discretionary activities and are governed by s 127 of the Act which provides as follows:

- “(1) The holder of a resource consent may apply to a Consent Authority for a change or cancellation of a condition of the consent (other than any condition as to duration of the consent ...”

Mr Parker submitted that “there can be no suggestion that this application is not truly for one variation as there is no material difference in nature whatsoever contemplated by the application”. He submitted that it is the *effects on the environment* of the change proposed (not a change to the activity itself) that is relevant. Any adverse effects which there may have been from the activity in its original form, as compared to any adverse effects which will arise from the varied form are, in his submission, arguably non-existent or, at most, *de minimis*.

Mr Parker further submitted that the effects on the environment are essentially constrained by Condition (2) of the original resource consent, which places a limit on the number of flights to and from the helipad depending on the levels of noise generated. We will refer to this as the “maximum bucket of noise permitted”, a term commonly used in applications involving airports and helipads. In Mr Parker’s submission, as the change in the activity undertaken by the passengers has no effect on the maximum number of flights to and from the helipad that can be carried out by the company in terms of the constraint in Condition (2), the effects of extending the range of passenger activities must be nil or *de minimis*. In other words, a change to the current activity will potentially mean the same number of flights to and from the site as currently occur so as to comply with the noise requirements of the remaining unaltered conditions of consent.

Mr Parker further submitted that the number of flight paths remain unchanged by this application. We note in this respect that the “flight paths” he is referring to are the flight paths to and from the heliport to a level of approximately 500 feet directly over the Shotover River in a southerly direction. It was his submission that the route taken by a helicopter past this point (or close to this point) cannot form part of the jurisdiction of the Act on the authority of *Dome Valley District Residents Society Inc v Rodney District Council*, decision number A99/2007, 14 December 2007. We will come back to this point later in our decision.

When questioned by the Commission, Mr Parker submitted that, in his view, the *activity* which is the subject of the original application comprises the take-offs and landings at the helipad. He considered that it was important for the Commission to

focus on the essence of the matter, which is a land use issue. In his opinion, this focus was lost by the Environment Court in decision W77/2007. The relevant activity, in his submission, is the take-offs and landings by helicopters at the Arthurs Point helipad, not the activities undertaken by passengers transported by the helicopters. We note that Mr Parker's reasoning is premised on acceptance by the Commission of the proposition that the environmental effects of the activity are exclusively governed by Condition (2) of the existing consent, the "maximum noise bucket", which remains unchanged.

Accordingly, it is necessary for us to consider the nature of the activity consented in the original application and whether the variation applied for is indeed a change to that activity. In essence, Mr Parker's submission for the Applicant is that the activity which generates the effects on the environment comprises the take-offs and landings from the helipad, which are constrained by Condition (2) of the resource consent, not the activities undertaken by the passengers. However, we have difficulty in accepting his interpretation of "activity" in the wider context of this application. Indeed, it appears to us that this was the very point in issue before the Environment Court in W77/2007, in which the Court quite plainly considered the relevant activity to be the loading and offloading of Danes' clients participating in rafting trips at the Arthurs Point facility. The Court held that any extension or alteration to this very narrow range of activities was outside the scope of the application. Accordingly, it seems to us that it is not jurisdictionally possible to extend the scope of the application by amending Condition (1) as proposed.

Mr Parker's argument essentially requires Condition (1) to be considered in isolation from Condition (2), and requires us to accept that Condition (2) alone is the sole condition governing the effects of the activity on the environment. However, the Environment Court, having addressed this very issue (albeit indirectly), expressly found that Condition (1) imposes a limit on the number of actual and potential take-offs and landings (being restricted to activities conducted by Danes or its successor and activities associated with rafting trips), together with restrictions on the maximum number of flights established by Condition (2). To accept Mr Parker's argument would be tantamount to contravening the Environment Court's express view of the *activity* consented, which we are not able or prepared to do. The Court has clearly defined the ambit of the original application, which is confined to both the operator (the Applicant) and the activity undertaken by passengers (rafting) –

Condition (1); and the numbers of take-offs and landings limited by the noise bucket - Condition (2). Put simply, it is our view, based in part on the Court's reasoning, that the two Conditions (1) and (2) must be read together as "(1) and (2)" and not "(1) or (2)" when defining the scope of the application and the relevant activity (and hence the effects on the environment). It is not, in our view, possible to enlarge the purpose of the application originally consented by applying for a variation to a condition which the Court has, following detailed evidence, interpreted in a very narrow form. Nor can the variation comprise an "evolution" of the activity, a point directly considered by the Court in paragraphs [29] and [30] of W77/2007.

In conclusion, we are of the opinion that the consent authority, Queenstown Lakes District Council, does not have jurisdiction to grant consent to this application in its current form, whether notified or not under ss 93 and 94, as the requested variation to Condition (1) is outside the scope of the original application. However, should we be wrong in our conclusion on this jurisdictional matter, we have gone on to consider the tests in ss 93 and 94, and whether public notification is required.

5. Notification Determination

Section 93

Section 93 states:

"93. When public notification of consent applications is required:-

- (1) A Consent Authority must notify an application for a resource consent unless –
 - (a) the application is for a controlled activity; or
 - (b) the Consent Authority is satisfied that the adverse effects of the activity on the environment will be minor.
- (2) If subsection (1) applies, the Consent Authority must notify the application by –
 - (a) publicly notifying it in the prescribed form; and
 - (b) serving notice of it on every person prescribed in the regulations.

The issue for a consent authority in applying the test in s 93 is whether it can be satisfied, without notification, that any adverse effects of the proposed activity on the environment are minor: *Westfield (NZ) Limited v Northcote Main Street Inc* [2005] NZSC 17 at paragraph [28]. If the Authority cannot be so satisfied, it is required to notify the application.

In the *Westfield* case, Elias J stressed that the issue in s 93 is the determination of *participation*, rather than a judgment on the merits of the application made after hearing all those interested. She considered the decision not to notify an application to be an exception to the general policy of the Act that better substantive decision-making results from public participation – see paragraph [25]:

The requirement that the consent authority must be 'satisfied' that effects are minor before deciding not to notify a resource consent application to undertake a discretionary or non-complying activity is a requirement of caution. The consent authority must be clear that notification would not illicit information or perspective which would cause it to view the effects of the activity on the environment as more than minor.

In relation to the information required by a consent authority properly determining whether notification of an application can be dispensed with, Justice Tipping stated at paragraph [119]:

To be adequate for present purposes, the information must be sufficiently reliable and comprehensive to justify a decision in favour of non-notification. That will be so if the Consent Authority can be properly satisfied that it is improbable that notification will result in further information being presented to it which might cause it to change what ex hypothesis will be its current view that the level of adverse effect will be minor only. It is the shutting out of such further material by the non-notification process which is the cause of flawed substantive decisions and disquiet in the minds of potential objectors that they have not been heard.

At paragraph [52], Keith J discusses the meaning of “satisfied”, which he terms “the strongest decisional verb used in the Act”. He considered a standard meaning relevant in this context is:

To furnish with sufficient proof or information; to assure or set free from doubt or uncertainty; and to convince; or to solve a doubt, difficulty.

Keith J notes that the word “satisfied” must be read in the context of the power in question – which in this case is the power to decide on the procedure to be followed in relation to the processing of a resource consent. It is not a power to decide on the merits of whether or not to grant a resource consent. He notes that a consent authority’s exercise of the power is:

... a step on its way to determining whether someone who would claim that there should be a hearing both to protect and recognise that person’s rights and interests (direct or general) and to facilitate the making of a better quality substantive decision may initiate that process.

It is important to note that s 93 is concerned with effects on the “environment”; that is, the environment as it currently exists or as anticipated by the District Plan. Whether or not the adverse effects on the environment are more than minor is a question of fact in each individual case.

Analysis of Effects under s 93

As a starting point, the Environment Court in W77/2007 plainly considered (at paragraph [31]) that a consequence of the acknowledged increase in the range of activities being serviced by the helipad is a potential increase in a number of take-offs and landings which will occur at the helipad. Although the Court accepted that the effects of an individual helicopter landing and take-off 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, it did not consider that to be the issue. Rather, Judge Dwyer considered that the effects of the tourism activity in 2006 (which included the extended range of activities now sought) were fundamentally different to the effects of the “occasional flights” required to service the rafting business for which consent was originally granted. In support, Judge Dwyer noted that compliance with the daily noise limit (or maximum bucket) was achieved only for the period 25 May to 17 June 2006, suggesting that the effects of the then current use (in 2006) “go well beyond what was anticipated for the approved activity”.

From the evidence at the hearing, it is plain that since the decision in W77/2007 limiting the activity to clients participating in rafting activities, the numbers of take-offs and landings at the helipad have declined considerably. Several local residents commented that since the Applicant has been restricted to rafting clients as a result of decision W77/2007, there has been a significant decrease in helicopter flights down the gorge and over the residential area of Atley Downs. The Applicant's evidence was that all rafting clients are currently channelled through the Arthurs Point helipad, but not clients participating in other activities. When questioned by the Commission as to whether the current level of rafting passengers meets or exceeds the maximum envelope constrained by Condition (2), Mr Quickfall's response was that it is currently "close" in the busy tourist months of December/January/February, but not at other times of the year. Mr Parker stated in his submissions that the current rafting operations were not sufficient to fill the noise bucket, and that extending the type of client activity that can be conducted at the site will increase the number of flights but "remain within the envelope".

From this evidence it seems to us that the noise bucket in Condition (2) is currently only filled between the months of December to February at best; suggesting that first, the noise bucket is not currently filled by the Applicant's rafting activities alone, and secondly, that rafting is a seasonal activity, occurring predominantly during the summer months. Accordingly, an extension of the range of client activities beyond rafting would almost certainly lead to filling of the noise bucket on a year-round basis (potentially to pre-W77/2007 levels, which, ignoring the compliance issues, nonetheless reached the maximum number of flights on all but three weeks of the year), and, in our opinion, a potential increase in the adverse effect on the environment resulting from additional noise and disturbance that is more than minor.

We accept that Condition (1) of RMA 250/92, together with Condition (2), does not restrict growth in the number of flights which meet the purpose of loading and off-loading of the Applicant's clients participating in rafting trips. Indeed, the only restriction on growth of potential flights, providing this purpose is met, appears to be that contained in Condition (2), which applies to maximum noise levels. However, we are not satisfied on the evidence presented at the hearing that seasonal variations, together with the expected growth in rafting clients, will greatly exceed that experienced at present in the immediate future.

In summary, we have difficulty in accepting that there can be no environment effects associated with a widening of the passenger activity status. We take the view that the lifting of the restriction to rafting passengers can only potentially increase the number of landings and take-offs at the helipad, particularly on a seasonal basis, notwithstanding that these are ultimately constrained by Condition (2).

In coming to this conclusion, we do not consider that Conditions (1) and (2) of the original consent can be severed, as Mr Parker has essentially submitted, or that the only environmental effects relevant to this application are those generated by the number of flights constrained by Condition (2). It is our view that the ambit of Condition (1), which restricts both the operator (to the Applicant) and the passenger activity (to rafting), cannot be severed from Condition (2), and that both conditions inherently restrict the nature of the operations at the helipad and, hence, the effects on the environment. While we accept that over time it is possible that the company may have sufficient rafting passengers to reach the maximum number of flights permitted under Condition (2), albeit that this may be seasonal, we remain of the view that a change to Condition (1) to allow a wider range of activities may result in usage patterns that are quite different, and potentially more intensive based on the evidence outlined by the Court in decision W77/2007, than would otherwise naturally have occurred. Indeed, it is possible that the maximum number of flights from rafting activities may not be maintained all year round, whereas if the helipad was opened up to other activities, the maximum level is likely to be achievable (based on the 2006 evidence of use) within a reasonably short timeframe. Accordingly, we cannot be satisfied that the effects on the environment are no more than minor, notwithstanding that these effects may be temporal in nature. The effects, in our view, can only be greater and are potentially too fluid for us to be satisfied that they are indeed minor without further information and analysis.

A secondary issue associated with effects on the environment is the potential increase in the number of flight paths taken by helicopters to and from the site if consent is granted to a change in client activities. The evidence disclosed that prior to the Environment Court's decision in W77/2006, the Skyline Gondola departure and return flight path had been utilised by the company for its combo trips. Since the release of decision W77/2007, this flight path has been discontinued, as it is not associated with rafting passengers and did not form part of the original application in RM 910025. Should consent to this application be granted, it seems apparent that

the Skyline Gondola flight path will be reinstated. One of the residents of Arthurs Point, Mr Clark, gave evidence at the hearing that the effects of noise and disturbance previously associated with this flight path, particularly in windy weather, were significantly adverse on his property.

Mr Parker has submitted that the jurisdiction of the Act in relation to flights is very much tied to the land use/helipad activity and concern relating to the noise of helicopters in the course of landing, on the ground, and in the course of departing; but does not extend to noise effects of aircraft while airborne or in flight. He submitted that once aircraft have reached the notional 500 feet point over the Shotover River (from which the various flight paths diverge), the environmental effects generated by helicopters are no longer relevant to the decision-making process under the Act. He relies on the authority of *Dome Valley Residents Society Inc v Rodney District Council* in support of this submission.

While there do appear to be potential limitations on the jurisdiction of the consent authority in terms of s 9(8) of the Act, which applies to ‘over-flying’ aircraft, we are not satisfied that we have sufficient evidence to ascertain the point at which a helicopter entering or leaving the airspace at the Arthurs Point helipad can be said to be ‘over-flying’. Correspondingly, we are not satisfied that the District Plan Zone Standards are necessarily complied with (in which case the proposed activity may in fact be non-complying), or that there are no persons who may be affected by the proposed new Skyline Gondola flight path should this prove to be within the jurisdiction of the consent authority.

We note further that we have not had the benefit of any submissions or evidence in relation to any safety concerns that may be associated with the proposed application. In particular, we have in mind the safety aspects of the additional flight path towards the Skyline Gondola, which was not addressed in the original application. Given the Environment Court’s finding that the original application was for only “occasional” take-offs and landings at the helipad, there may well be safety effects associated with the location of the helipad that, due to the increased volume of helicopter traffic, together with the growth of residential housing in this location, have not been fully taken into account, nor have appropriate conditions necessarily been volunteered. This is not intended to be in any way a criticism of the company’s internal policies and procedures governing safety, which are as evidenced in the

application extensive; rather, it relates to potential effects on the environment that have not been addressed to the point where we can be satisfied that they are no more than minor. The information contained in the application appears to be primarily directed towards noise which, although an important issue, is not the only environmental effect potentially raised by this application. In this respect, we note Mr Clark's comments that on windy days helicopters fly at a much lower level than is usually the case because of the danger of wind shear at higher altitudes. It is possible that low flying over residential areas may raise safety issues that correspondingly may result in adverse effects on the environment. Potential safety issues are a relevant consideration in terms of the Act, as was confirmed in *Aviation Activities Limited v McKenzie District Council* (C72/2000, Environment Court, 31 March 2000, Jackson J).

Accordingly, there is insufficient information or evidence for the Commission to be satisfied that the wider effects of the flight paths potentially associated with the additional tourist activities will result in environmental effects that are no more than minor.

Accordingly, we find that we are not satisfied that the adverse effects on the environment associated with the proposed variation of Condition (1) are minor. Accordingly, we determine that the application must be publicly notified in accordance with s 93(2). As public notification is required, it is not necessary to consider the provisions of s 94.

We wish to emphasise that our conclusion in no way reflects on the Applicant or the integrity of its operations. Mr Quickfall explained that since the Environment Court ruling in W77/2007, all raft trips are now operated from the Arthurs Point helipad. However, the Coronet Peak flight path is used in preference to the more direct flight path over Arthurs Point in an effort to reduce the effects on residents of Arthurs Point. The use of this flight path is totally voluntary and, indeed, as the Coronet Peak path is longer, incurs a cost to the company of approximately \$15.00 to \$20.00 per passenger.

We further accept that the company has exhibited responsibility in a sensitive area by voluntarily complying with the flight limits set by CAA, and by voluntarily operating in accordance with company standards and those recommended by the

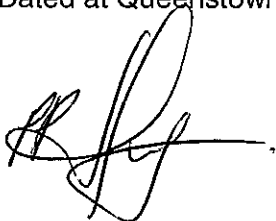
Queenstown Milford Users Group; that is, to fly causing the minimum effects on the environment and third parties. However, the company has given no formal undertakings by way of volunteered conditions that might ensure that its present operational behaviour is able to be enforced. Ultimately, we understand and expect that the company's flight operations will, to an extent, be dictated by economic concerns which may well change the pattern of operations over time. Without conditions, which can only be developed after a full hearing and discussion of the environmental effects, including necessary expert evidence, such assurances are of no material effect.

In summary, in terms of the test in s 93 we are not satisfied, for the reasons set out above, that the adverse effects of the activity on the environment will be minor. We consider that a public hearing would better promote the purpose of the Act and would facilitate a more sophisticated regime for the control of any adverse effects after full discussion and appropriate evidence. Accordingly, we consider the ambitions of the company and the residents of Arthurs Point would be better achieved by a publicly notified hearing.

We find as follows:

- (i) *There is, in our view, no jurisdiction to grant consent to this application for the reasons explained above. Accordingly, it is not necessary for us to give a decision on notification.*
- (ii) *However, should we be wrong in relation to the jurisdictional issue, we find that we are not satisfied that the adverse effects of the proposed activity on the environment will be minor. Accordingly, public notification is required under s 93 of the Act.*

Dated at Queenstown this 13th day of March 2008



Jane Taylor

Hearings Commissioner (on behalf of the Commission)