

FORM 12

File Number RM080434

QUEENSTOWN LAKES DISTRICT COUNCIL**PUBLIC NOTIFICATION**

Notification of an application for a Resource Consent under Section 93(2) of the Resource Management Act 1991.

To:

The Queenstown-Lakes District Council has received an application for a resource consent from:

TOTALLY TOURISM LIMITED

A description of the activity to which the application relates is:

- Consent is sought to fly visitors participating in sightseeing, rafting and combo trips from a helipad in Arthurs Point on a daily basis, within the following noise controls:
 - o 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.
 - o The Ldn value may be averaged over any one week. The exposure on any single day should not exceed an Ldn of 53 dBA.
 - o All flights shall be restricted to the hours of 9.00 am to 6.00 pm each day.
 - o The flight paths to and from the helipad shall be generally in accordance with the flight tracks submitted with this application.
 - o Measurements shall be carried out in accordance with the requirements of NZS6801:1991 Measurements of Sound.
 - o The operator shall keep a log of flights from the helipad. This log shall be made available to the Council if requested.
 - o The helipad shall not be used for any helicopter creating noise effects greater than a Squirrel AS350 helicopter.

The location in respect of which this application relates is situated at:

The subject site is located at 160 Arthurs Point Road, Arthurs Point, and is legally described as Lot 2 DP 20925.

If you wish to make a submission on this application, you may do so by sending a written submission to the consent authority no later than:

5 June 2008

The submission must be dated, signed by you and must include the following information:


- (a) Your name and postal address and phone number/fax number.
- (b) Details of the application in respect of which you are making the submission including location.
- (c) Whether you support or oppose the application.
- (d) Your submission, with reasons.
- (e) The decision you wish the consent authority to make.
- (f) Whether you wish to be heard in support of your submission.

The application file can be viewed at Lakes Environmental, 74 Shotover Street, Queenstown. The Lakes Environmental planner processing this application on behalf of the Council is Wendy Rolls, who may be contacted by phone at 03 450 0356 or e-mail at wendy.rolls@lakesenv.co.nz.

A copy of your submission must be served as soon as reasonably practicable on the applicant whose address for service is:

Totally Tourism Limited
Att: Mark Quickfall
C/- McCulloch & Partners
PO Box 634
QUEENSTOWN 9348

LAKES ENVIRONMENTAL LIMITED



(Signed by J Sinclair pursuant to a delegation given under
Section 34 of the Resource Management Act 1991)

Date of Notification: 7 May 2008

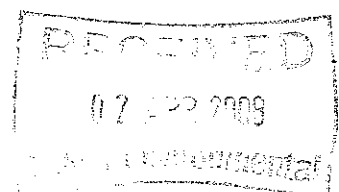
Address for Service for Consent Authority:

**Lakes Environmental
Private Bag 50077
QUEENSTOWN**

**Telephone (03) 450-0300
Facsimile (03) 442-4778
Email enquiries@lakesenv.co.nz**



Arthur's Point
Resource Consent Application



APPLICATION FOR RESOURCE CONSENT**1. Applicant's Detail:**

Applicant	Totally Tourism Limited
Contact Person	Mark Quickfall
Postal Address	PO Box 634, Queenstown
Residential Address	618 Peninsula Road, Queenstown
Registered Office of Company or Incorporated Society	McCulloch & Partners, 34 Camp Street, Queenstown
Full Names of Directors	Mark Quickfall

Phone (B)	03 441 4620	Website	www.totallytourism.co.nz
Phone (H)	03 442 3641	Fax	03 441 4628
Cell Phone	0274 336 576	E-mail	mark@totallytourism.co.nz

2. Landing Site Applied for:

Arthur's Point Helipad, Gorge Road, Arthur's Point, Queenstown

3. Lodgement Fee (For Office Purpose Only)

Attached.

4. Date Received (For Office Purpose Only)

Date Application Received

Application Brief

Totally Tourism applies for retrospective Resource Consent to continue helicopter operations from the helipad recorded in this application.

Resource consent was granted to Danes Shotover Rafting to operate this helipad as recorded in Planning Tribunal Decision no. A 55/93, 2 June 1993. Danes Shotover Rafts Limited (RMA 250/92, annexed hereto and marked A.

Owner of Property: Bishopdale Holdings. Contact: Barry Ford. 0274 926 646
Totally Tourism has purchased Lot 2 of the property from Bishopdale Holdings and awaiting title to be granted. Lot 2 is the land the helipad is located on. Bishopdale Holdings approves to this application for a new helipad Resource Consent.

Occupier: Totally Tourism Limited, PO Box 634, Queenstown.

Location: Gorge Road, Arthur's Point, Queenstown.

Legal Description of Property: Gorge Road, Arthur's Point, described as Lot 2 DP 20925, Block XIX, Shotover Survey District

Helicopters have operated from the Arthur's Point Helipad since 1993.

The present owner of Danes Rafting is Totally Tourism Limited.

Totally Tourism Limited contracts The Helicopter Line to fly clients from this helipad.

Non-rafting clients have also flown from this helipad as it was interpreted they were covered under the Danes Resource Consent. This was based on the consent order set of conditions that had been sealed by the court, annexed hereto and marked B. The council and council's legal advisor supported this interpretation. Letter from council's legal advisor NS Marquet, annexed hereto and marked C.

The Environment Court in September 2007 ruled that only visitors participating in rafting trips be flown from the helipad as that is what was applied for in the original application. Decision No W 77/2007, annexed hereto and marked D.

As a result Totally Tourism applied for a variation to the current consent. Lakes Environmental processed the application and Planner Wendy Rolls recommended that the application be processed without public notification, annexed hereto and marked E. This was referred to an Independent Commissioners Hearing for Notification Determination, annexed hereto and marked F. Their decision has resulted in this new consent application.

Application

Activity

Totally Tourism seeks consent to fly visitors participating in sightseeing, rafting and combo trips from this site on a daily basis opposed to the current consent which restricts flights to only visitors participating in rafting trips.

Conditions

Totally Tourism does not seek a new range of conditions and agrees to continue to operate to the conditions set out in the current Resource Consent other than Condition 1. The applicant currently complies with all other conditions. Copy of Conditions annexed hereto and marked B.

The Planning Tribunal in Decision No A 55/93 approved the use of this site for a helipad based on the current conditions that determined concerns with effects were met.

Noise & Frequency

The jurisdiction of the RMA in relation to flights is tied to the land use/helipad activity and concern for noise of helicopters in the course of landing, on the ground and in the course of departing, but does not extend to effects of aircraft while airborne or in flight (see *The Dome Valley District Residents Society Inc v Rodney District Council* Decision No A99/2007 – 14 December 2007) Anything other than the immediate take off and landing manoeuvres, and helicopter sitting on the helipad is considered over flying and is controlled by the CAA.

Information regarding compliance with noise standards is attached as an appendix to this application. The frequency of landings by helicopters at this site will continue within the limits determined as acceptable by the Planning Tribunal in Decision No A 55/93 and by evidence provided to the Tribunal and QLDC by Acoustic Consultants Nevil Hegley and Vern Goodwin. Information annexed hereto and marked G.

Further Information provided to QLDC by Vern Goodwin regarding compliance with noise standards is attached as an appendix to this application. This confirms the frequency of landings by The Helicopter Line at this site will continue within the limits determined as acceptable and found in New Zealand Standard NZS 6807:1994 "Noise management and land use planning for helicopter landing areas".

Changes in Effects

The change in type of visitor will not change the effects as deemed acceptable by the the Planning Tribunal in Decision No A 55/93 as delivery to the property by courtesy coach is the same in all cases and flight paths in the helipad zone are the determining factor for effects and these will not be altered. Regardless of the type of visitor we fly from the helipad, we are required to operate a limited number of flights to remain within the noise limits already set by the consent and acceptable under noise standards. Further details in this application outline the reasons why there will be zero added effects.

Background History of Application

I am the Managing Director of Totally Tourism Limited, a tourism activity operator in Queenstown, Milford Sound, and elsewhere in the South Island, and I am authorised to make this application on behalf of the company.

Set out below is detail regarding the flights that the company has operated from the helipad at Arthur's Point which and which site has been purchased by our company.

In 1993 Danes Shotover Rafts Ltd secured resource consent to fly clients from the helipad.

That resource consent is encapsulated in an Order of the Environment Court dated 30 March 1998, which says, among other things, the following:

That land-use resource consent is granted to permit the establishment and operation of a helipad on the land at Gorge Road, Arthur's Point, described as Lot 2 DP 20925, Block XIX, Shotover Survey District.

Danes Rafts operated raft and adventure "combo" trips (e.g. Awesome Foursome) that included helicopter flights, and Danes Rafts promoted a range of sightseeing activities that also included helicopter flights.

Combos offer visitors options of activities that are co-ordinated into one trip, saving them time and providing convenience.

Combo options that have operated from the Arthur's Point Helipad provide visitors with helicopter flights combined with other tourism activities that either link or operate in the Arthur's Point area and include options of Shotover Jet, Shotover Canyon Swing, Gravity Action Mountain Biking, Skyline Cableway and Rafting.

Totally Tourism Limited (TTL) purchased the Danes Shotover Rafts business from Tourism Holdings Limited in 1999. TTL purchased The Helicopter Line from Tourism Holdings Limited in 2002.

Prior to 1999, I was employed as General Manager of Tourism Holdings Limited's Leisure Division which included Danes Rafting, Queenstown Combos and The Helicopter Line, so I have been familiar with the history of the helipad and the resource consent since its inception.

The Helicopter Line provides the helicopters for flights to and from the helipad at Gorge Road pursuant to the resource consent and has done so since it was granted. Totally Tourism continues to promote and operate helicopter flights from the helipad. TTL contracts The Helicopter Line for these flights.

Totally Tourism renamed and now operates the rafting and adventure business under the "Challenge Rafting" and "Queenstown Combos" brands.

Totally Tourism hosts visitors and co-ordinates some of our adventure combo trips at the site. Previously we hosted and provided shower facilities for rafters at the site; however rafters who use the helipad now shower at the facilities in the vicinity of the

Edith Cavell Bridge due to the closer proximity to the Shotover River where the rafts exit the water.

Helicopter flights for adventure trips that operate in the Shotover River – Arthur's Point area originate from the helipad. We do not operate all flights in this area from the Arthur's Point helipad. We fly some of the raft combos from another pad into the Shotover River.

Although we are entitled to fly all rafting combos from the Arthur's Point pad, in the past we have spread the flights to reduce the impact on neighbours. An estimated 50% of our combos that are operated in the Arthur's Point - Shotover River area are flown from the Arthur's Point helipad with the other 50% flown from the O'Connell's helipad located on the Coronet Peak Road.

By way of an indication of use of the Arthur's Point helipad the number of landings per month are recorded below:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	68	120	104	124	82	102	150	132	158	135	91	150
2007	189	179	110	116	70	57	133	151	151	101	109	173

For the full year in 2006 we landed an average of 3.87 times a day and in 2007 to date we have landed an average of 4.23 times a day.

Usage figures relating to the helipad are logged and provided to the Council.

Although there was no restriction in the number of flights in the Order of the Environment Court referred to above, we have always operated in accordance with the evidence given on behalf of Danes which led to the Planning Tribunal (as it then was) Decision of 2 June 1993 (from which the Consent Order was drawn) whereby we would fly to and from the site up to 12 take offs and landings in the morning and 12 take offs and landing in the afternoon.

The consent permitted the operation of a helipad incidental to tourism business. The flights are incidental to our tourism business, which we are in fact further developing the facilities on site.

At the time of the Planning Tribunal decision the site was in the Tourist Development 2 Zone of the Queenstown Lakes Transitional District Plan.

Our combo clients are hosted at the site and, as mentioned earlier, rafters were showered at the site until this was changed to the Cavell's facility.

In recent times the Arthur's Point site has been improved to better cater to our clients. Bishopdale Holdings Limited purchased the property in 2005 and has subdivided it into three lots.

Totally Tourism has worked with Bishopdale Holdings to expand and improve the tourism facilities on site. Totally Tourism has purchased Lot 2 from Bishopdale Holdings; this includes the helipad and house. The house has been converted for the use of staff and pilots and the two garages store business related equipment.

The gravel drive and grass areas at the properties have been developed with kerb and channelling, sealed roadways and car parking. The development has been completed to a high level to cater for tourism traffic with 24 car parks, fire hydrants and soak pits included. The sewerage system has been upgraded from septic tank to a pump system to hook into the main sewerage system.

Courtesy coach parking and turning area has also been developed along with a seating area for our clients waiting to board the helicopters.

The barn is in the process of being converted into a café, restaurant and bar.

Fencing between our staff house and the café/restaurant/bar and along the boundary between the site and Nugget Point has been completed, this includes a sound barrier. The sound barrier has been erected to reduce noise impacts on the nearest residential house which is located on the Nugget Point site.

A Hot pool business has been developed below the helipad site.

I have been involved with my company and its use of the helipad since 1999 and can confirm the continuity of use of the helipad has been limited to flights incidental to tourism business carried on at the site since that time until the present date.

The reason the tourism business was established at this site was to contain all the activities in the one area. This avoids transporting clients undertaking combos to Queenstown Airport on the other side of Queenstown and then having to fly them back to undertake their next activity e.g. rafting, canyon swing, and skyline. Operating the flights from the Arthur's Point area opposed to the airport reduces the impact of helicopter over flights by an estimated 50%.

For example on an "Awesome Foursome" combo clients ride Shotover Jet, fly into Skippers Canyon and then raft down river before bungy jumping. With the "Shotover High Five" clients ride Shotover Jet, fly from the helipad to Skyline before riding the luge and descending by cableway. Flying from the airport would double the flight time and impacts.

A range of combos have always operated from the site and regardless of which combo trip clients are undertaking the effects are no different. With both rafting and non-rafting combos clients are driven by courtesy coach to the Arthur's Point Helipad to undertake their flights. Clients are set down by courtesy coach at our parking and turning area. Clients then move to a seating area to wait to board the helicopters. Qualified staff load clients on to helicopters to fly.

The flight paths in the helipad zone are the determining factor. Once clear of the helipad zone our pilots fly within the limits set by CAA and in accordance with our own company standards and those set by the Queenstown Milford Users Group; that is, to fly causing the minimum effects on the environment and third parties.

We exercise significant control of all flights, ensuring that the path of helicopters to and from the helipad fly to and from the site away from residential areas, and pursuant to a "good neighbours flying policy"

The flight paths followed by the helicopters flying to and from the helipad are in accordance with the photo plan, attached hereto and produced by The Helicopter Line Lead Pilot.

Of particular note, in the past we have operated the majority of our rafting combos from another helipad. Since ceasing the operation of the non rafting combos from the Arthur's Point Helipad to comply with the court ruling we have had to relocate all our rafting combos to fly from the Arthur's Point Helipad as permitted by the consent.

The effects will increase at the Arthur's Point Helipad compared to the flights we operated from the helipads prior to the court ruling. The rafting combos flight paths from the helipad in winter will be up and over the Arthur's Point area opposed to the non rafting combos which are out over the Shotover River flying to Skyline away from the Arthur's Point area. This summer we have voluntarily used a longer flight path to the rafting point on the Shotover River in an effort to reduce the effects on Arthur's Point residents. This path is longer and comes at a cost to our business and is an option long term. In winter we will have no option but to fly over Arthur's Point as we use a rafting put in point further down the Shotover River and the direct flight path is our only option.

Attached are two maps showing flight paths from the two helipads we operate combos from and the associated flight paths.

- Map One shows the flight paths when we are able to fly non-rafting combos from the Arthur's Point Helipad.
- Map Two shows the flight paths now that we are operating all rafting combos from the Arthur's Point Helipad. The added issue is that the flight paths on Map Two place our helicopters in conflict with fixed wing aircraft flying to Milford from Queenstown.

Our objective is to have consents in place to reduce the effects of our combo flights. This new consent will assist us in achieving this objective and will result in zero added effects and in fact will reduce adverse effects in the air.

The numbers of flights from the Arthur's Point helipad are similar whether we fly non-rafting or rafting combos from the site.

If we are able to secure this new consent we will be able to return to the flying the Raft Combos from O'Connell's with less effects on all parties.

It is important to note that many other helicopter operators over-fly this general area, as it is a recognised flight path.

Tourist development in the area has increased in the past 2 years with improvements to the hotel opposite and the installation of the ten-pin bowling alley. I understand that this area, including the helipad site, is a rural visitor zone under the present Queenstown-Lakes District Partially Operative District Plan.

In regard to the Environment Court ruling that the resource consent is confined to transporting rafters from the helipad to Skippers Canyon: I had been advised and believed that this was not the meaning of the resource consent and the Consent Order which effects that consent did not restrict the use in that way. As stated

earlier, this was based on the consent order set of conditions that had been sealed by the court. The Council and Council's legal advisor supported this interpretation.

Following the Environment Court's ruling and Independent Commissioners Hearing for Notification Determination Tourism now applies for a variation to the current Resource Consent to continue the operations that have taken place from this helipad for some 14 years and since the original consent was given.

The original consent order and conditions provided to Danes took into account environmental effects and the tribunal judge ruled at that time that the property was zoned tourism and there were positive economic benefits that outweighed the negative effects and consent was granted. Please refer to the Tribunal's decision 2 June 1993. The new consent applied for is no greater in terms of effects than the Tribunal deemed acceptable in the original decision.

The latest ruling is based on the legal ability of the authorities to grant consent conditions wider than the original application and not on the effects of the consent conditions or operation of the consent.

Totally Tourism's consent application seeks to operate in a way that has already been determined by the consenting authorities (Tribunal and QLDC) as acceptable for this site.

Landowners Consent

Signed Consent Form from the landowner is attached:
Bishopdale Holdings
Totally Tourism Limited

Background of Totally Tourism's Helicopter Operation and measures in place to mitigate adverse effects

The Helicopter Line has been operating in New Zealand for over 20 years and is considered to be a senior founder of the tourist flight-seeing and helicopter industry. To operate consistently in the safety conscious aviation environment, The Helicopter Line meets or exceeds all standards of assessment and in the key areas listed below; we are able to demonstrate excellence in our operation:

Civil Aviation Authority of New Zealand (CAA) The government's safety watchdog on New Zealand aviation, CAA has certificated The Helicopter Line as a Part 135 Airline Transport Operator, the highest standard of certification for this type of helicopter operation. This involves regular monitoring and audit of all aspects of the flight business. www.caa.govt.nz

Quality Assurance Programme The Helicopter Line runs a Quality Assurance Programme to audit all aspects of our flight and maintenance operations on a regular basis in addition to CAA audits.

Qualmark The Helicopter Line is Qualmark Endorsed. Qualmark® is New Zealand tourism's official mark of quality. All accommodation and tourism businesses who carry the Qualmark® have been independently assessed as professional and trustworthy. www.qualmark.co.nz

Flight Training and Supervision The Helicopter Line employs a Company Standards Pilot to oversee all company training and conduct all competency assessments. As eight of the companies 14 helicopters are twin engine, additional initial training and a higher level of competency is required to ensure the full benefit of the additional safety these machines offer is obtained. All pilots are issued with a flight category release by the standards pilot, which details what operations they may conduct. This is regardless of experience; be it 1000hrs or 26,500 hrs. Annual competency checks include all aspects of mountain flying and company flight routes. Our Standards Pilot has many years of experience in this region with thousands of flight hours both locally and worldwide. The Helicopter Line is Part 141 certified to conduct training for other operators who willing seek the level of expertise offered by our training staff. Please refer to our Company Exposition & Training manual online for full details. Username and password available on request.

User Groups Local aviation operators meet regularly and are dedicated to safety issues and the efficient conduct of flight operations. The Helicopter Line is actively involved in these groups at the forefront of all safety matters. The Helicopter Line is also a member of the Tourist Flight Operators of NZ group, which has similar goals to promote safety standards in aviation. www.touristflightoperators.co.nz

Safety and Quality Assurance Manager We have a specialist safety and quality assurance manager who is an experienced senior person and has been tasked with managing and pro-actively encouraging our safety culture. Along with pilot safety meetings, a dedicated company Safety & Auditing system has been put in place with going reviews of internal and operator-wide procedures and practices. Please refer to our Quality Assurance Manual online for full details.

Maintenance Requirements The Helicopter Line follows all manufacturers' & CAA's recommended practices in the maintenance of our aircraft. All our passenger aircraft undergo regular 100 hourly check-ups as part of their specified maintenance inspection schedules. The maintenance work is carried out by qualified and licensed engineers at CAA approved engineering bases to strict guidelines laid down by aviation regulations and manufacturer's requirements. Please refer to our Maintenance manual online for full details.

The Helicopter Line is a long established, tourism helicopter operator with operating bases at Queenstown, Mount Cook, Twizel, Franz Josef and Fox Glacier. As well as Wanaka & Methven during the winter season.

The Helicopter Line Limited was formed in 1986 and has been owned and operated by Mark Quickfall since 2002, purchasing the business from Tourism Holdings Limited.

In addition to operating scenic flights, The Helicopter Line undertakes a variety of other flying including heli skiing, heli hiking, adventure combos, charters, filming, search and rescue and commercial work. The company employs 16 fulltime pilots and another eight regular part timers to meet seasonal demands.

The Helicopter Line Limited is a privately owned business. Its shareholders Mark and Jackie Quickfall, also own and operate Totally Tourism Limited. The Helicopter Line and other tourism businesses operate within the Totally Tourism Group.

Mark Quickfall, as CEO of The Helicopter Line and Managing Director of Totally Tourism has extensive experience in managing tourism and aviation businesses.

General background information relating to The Helicopter Line and Totally Tourism businesses is provided with the application. Totally Tourism also operates Glacier Helicopters, Milford Sound Scenic Flights, Wanaka Flightseeing, Challenge Rafting, Queenstown Combos, Harris Mountains Heli-Ski, Kiwi Magic Movie and the Queenstown and Station Information Centres (Info Centres 50% JV with Ngai Tahu Tourism).

The Helicopter Line and Totally Tourism holds, or has held, concessions in relation to many national parks, areas of conservation estate and pastoral leases and on private properties, and has operations in a wide range of areas including at Mount Cook, Methven, West Coast, Wanaka, Queenstown and Fiordland.

The Helicopter Line divisional structure, as set out in the Operations Manual is attached. Totally Tourism's Management Structure is also attached.

Details of The Helicopter Line may be found at www.helicopter.co.nz. A copy of our current brochure is included. Further details for Totally Tourism may also be found at www.totallytourism.co.nz.

The Helicopter Line has a strong operational network in relation to both its flight operations and other infrastructure. The Helicopter Line's existing structure includes all staff necessary for the continued conduct of the helicopter scenic flying activity and its existing staff has a wealth of combined experience in the running of all aspects of the operation.

The support of Totally Tourism in the management of the business is important and provides financial strength and overall governance. Regular management meetings are held to audit the business against Totally Tourism's business audit.

Unlike compliance audits conducted by authorities TTL's audits the overall performance of the business including general management, operations, customer service, accounting and administration and sales and marketing.

The Helicopter Line has well established and highly professional arrangements in place for basing its helicopters, their maintenance, and of all aspects of the care of its clients prior to, during, and after flights. By way indication of the infrastructure involved for flights in Queenstown, the following are noted:

Queenstown Office – The Helicopter Line's Queenstown base operates from the Queenstown Airport, Lucas Place, Frankton and is situated 10 minutes drive from the Queenstown Township

Fuel - Facilities supplied and maintained by Air BP and Gilbarco.

Hangers - Company hanger and maintenance facilities are located on site next to The Helicopter Line's office on Lucas Place.

Staff accommodation - There is an acute shortage of rental accommodation in the area. The company recognises this and has invested in staff accommodation.

Communications – There are radio systems in place covering THL operational areas in the Wakatipu, Aspiring & Fiordland National Parks and surrounding regions. Helicopters are equipped with GPS and when required satellite phones are carried on board.

The Helicopter Line has all required safety and emergency procedures documented, audited, and proved by longstanding operation.

As a major helicopter operator, The Helicopter Line is able to maintain a stable pilot pool by being able to undertake to provide acceptable hours to full time pilots – including transferring to other duties in low season for scenic flying. The Helicopter Line does not rely on low hour pilots, and has established training and induction programmes even for experienced pilots joining the team. Attached pilots details demonstrate the quality of these staff.

The overall structure of The Helicopter Line's parent, Totally Tourism Limited, gives The Helicopter Line the ability to assure the continued operation of the business, and its ability to afford continuous improvement and adherence to potentially profit limiting environmental policies.

Other sections of this application refer to The Helicopter Line's extensive track record in the provision of tourism flying activity in New Zealand. The Helicopter Line asks that the material in other sections of this application be referred to in support of the assessment of its experience.

The Helicopter Line believes its record of safe, and environmentally responsible practice, is not bettered by any other operator. The Helicopter Line's position as a responsible leader in the field is reflected in its reputation, and in its thoroughly documented policies and procedures, and its guaranteed ability to ensure internal compliance with such policies.

The Helicopter Line understands and accepts the desirability of monitoring of activities, and has actively participated in the development and implementation of environmental monitoring processes.

The company's record has led to widespread recognition and support from other operations and industry bodies. Detailed testimonials from such parties can be available to demonstrate industry recognition of The Helicopter Line's achievements in the areas of safety and observance of environmentally appropriate practices.

As a pioneer of scenic helicopter flying within New Zealand's tourism industry, The Helicopter Line has an acute awareness of the potential adverse effects on natural values and on tourists and visitors. The identified potential effects are noise, visual impact and rubbish/contamination effects. These are addressed in what follows with summaries of measures taken in relation to each category of adverse effects.

The Helicopter Line's long involvement with scenic flying in sensitive environments has seen its understanding of potential adverse effects, and its commitment to appropriately managing them, develop over time. This development has been very much alongside the increasing understanding the Department of Conservation itself, and that of others charged with protection of the environment. The Helicopter Line

believes it can claim to have been at the forefront of, and fully co-operative with, discussions intended to explore the appropriate balancing of the interests of the various interested parties.

The Helicopter Line keeps itself fully informed on developing discussions of the issues. This claim is supported by the past and current involvement of the company's owner and senior staff in User Groups.

The Helicopter Line is authorised under the provisions of Civil Aviation Rule Part 119 to perform the following operations under Rule Part 135:

Air Transport Operations
Commercial Transport Operations
Ground and Flight Training
Testing and checking of competence of personnel

The Helicopter Line's CAA certification requires The Helicopter Line to operate with extensive safety and operational plans in place. The plans are audited on an ongoing basis and at least annually by CAA. The Helicopter Line also operates a quality assurance program to ensure all aspects of the plans are being adhered to.

CAA Audit

Audit is one tool for monitoring the health of civil aviation in New Zealand. Other tools include spot checks, Field Safety Adviser reports, analysis of incidents, and assessing our client's organisational changes.

Auditing involves the GA Group checking each certificated operator over a period of time.

At each visit the operator is examined to ensure that they are operating to their own established procedures. This enables the GA Group to assist clients in improving their systems, and it also allows the Group to contribute to the role of monitoring, which the CAA completes on behalf of the Government and the public of New Zealand.

To completely understand The Helicopter Lines management competence the consenting authority may wish to review our manuals and systems on line. Access is restricted and passwords are required. Passwords can be provided separately to this application and on a confidential basis by Mark Quickfall.

So far as the general issues of flight paths and flight altitudes are concerned, The Helicopter Line notes that these are governed by Civil Aviation Rules and also controlled to a significant extent by the local aircraft user group.

The User Group has established operating procedures. These have been adopted by the company and expressly incorporated into its Operating Procedures. The Queenstown Milford Users Group (QMUG) has established procedures. The Helicopter Line has also adopted specific flight paths in consultation with the relevant authorities.

Controlling adverse effects of Noise

Flight Paths. Attached to this application is the flight paths that will used to and from this site.

By way of summary of the foregoing as it relates to control of noise impacts, and without detracting from the company's undertaking to work directly with others and as part of QMUG on continuous improvement, the following existing measures are highlighted:

Strict adherence to the spirit of acceptable flying practises thus ensuring THL's contribution to overall noise is within the framework of acceptable benchmarks;

Adherence to Civil Aviation Rules requirements of maintaining minimum heights, i.e. maintaining desirable distance from land based activities;

Adherence, as company policy, to User Groups Environmental Policy and agreements on flight paths and other controls as developed on a continuous basis;

Observance, as company policy, of the requirements of the Fly Neighbourly Guide;

Continuation of operating procedures more strict than civil aviation requirements, which minimise noise effects on established groupings of people and on others wherever they are encountered;

Avoiding all forms of more extreme flying capable of excessive noise generation;

Use of experienced and stable pilot pool, achievable through company size and ability to offer pilots full and rewarding flying careers. Strict requirements of compliance by pilots and others through arrangements, which make breaches of policy actionable in the employment context;

Use of training and technology (Altair system) as means of ensuring adherence to noise avoidance in flying techniques;

Selection of equipment with environmental impact as key criteria. The company's existing agreement with its helicopter supplier includes provisions to promote this, and the company's scale of operations places it in a financial position to adopt new machines and technologies.

Ongoing commitment to support and engage in monitoring processes.

The impact of noise on others can be mitigated by the choice of flight paths and flight methods.

Visual, social and cumulative Effects.

Please refer to the Line Procedures and SOP's in our Operations Manual online for further details on flight practices that have been adopted to mitigate adverse effects.

Visual Effects

The Helicopter Line believes the visual impacts of helicopter operations are already well understood, and also believes that visitors and residents expect to see aircraft operating in the areas landing sites have been applied for and access opportunities are important from a tourism and economic perspective.

Many of the considerations applying to noise mitigation also reduce visual impact, including:

Flight path selection;

Flight above minimum heights;

Operating Procedures, which avoid coming into proximity of others.

Contamination Control

The Helicopter Line's detailed staff requirements include controls over all risks of harm to the environment through fuel spills or the inappropriate disposal of rubbish.

It is confirmed that the fuelling facilities are rigorously controlled by fuel company and regulatory requirements, and are subject to regular inspection.

All necessary measures are in place to prevent any rubbish being left at landing sites. Pilots and other staff provide detailed briefings to passengers on a range of issues, including the requirement that nothing is left behind. This is strictly monitored by pilots.

General

The adverse physical impacts to sites are low.

The landing of helicopters will impact on landing sites, but these impacts will be temporary in nature and will not constitute significant detrimental effects on conservation values.

There is minimal effect on vegetation, habitats or plants or animals or the existing ecosystem.

The activity is visible for short periods of time and there are short periods of sound associated with the activity.

The noise of helicopters will for short periods impinge on the natural quietness however there is an expectation of noise from not only aircraft but also coaches, cars and people.

The assessment of the applicant in respect of actual or potential effects on the environment are that there will be minimal effects other than an increased level of noise from aircraft.

Aircraft activity currently exists in the area and is therefore expected to be part of the local experience.

Fauna or flora values affected by this activity is likely to be limited.

No historical sites or archaeological sites are affected.

The proposed landing sites are not inconsistent to landing sites currently operated in other similar locations in the area.

Flight activity will be spread over the full year.

All proposed flight paths follow routes currently in use by other aircraft.

The social impacts of the flight paths are assessed to be low.

There are no known considerations relevant to Ngai Tahu values specific to this assessment.

Effects are reduced through management control systems of our operations and activities and staff education and employment requirements.

Regular Management meetings are held to review operating performance and compliance.

Documented operating procedures that are audited on a regular basis and no less than annually are in place.

Quality Assurance programmes that identifies all operational activity and compliance issues are in place.

Continued Co-operation

The Helicopter Line records its ongoing commitment to working in good faith with the consenting authority towards avoiding, remedying and mitigating adverse effects of its aircraft on others.

The range of means available to achieve those outcomes is likely to develop over time... By this application, The Helicopter Line does not seek to provide an exclusive list of steps which it would be willing to take. Rather, it records its commitment to taking all reasonable steps that can be identified to address adverse effects. It also records its commitment to work, in good faith to identify what those reasonable steps may be.

User Groups

So far as the general issues of flight paths and flight altitudes are concerned, The Helicopter Line notes that these are governed by Civil Aviation Rules and also controlled to a significant extent by the local aircraft user group – the Queenstown Milford User Group.

From the time of their establishment, User Groups have always been intentionally divorced from the commercial interests of operators. As time has passed their initial focus on safety issues has expanded to the point where the Groups are now also: a forum for addressing environmental issues and the use of aircraft as a means of allowing experiences while minimising adverse effects.

An interface between aircraft operators and related parties including consenting authorities.

In broad overview, the procedures (including flight paths and altitudes) need to be common to all operators, and to be agreed between operators through the User Group.

The Helicopter Line believes it can claim to be recognised as a responsible member, and significant contributor to the activities of the User Group. Among helicopter operators, The Helicopter Line can claim by far the most regular attendance and

contributor to user group meetings and activity. Totally Tourism Group Managing Director Mark Quickfall has been instrumental in working with the Department of Conservation as the interface with the User Group on aircraft issues relating to the revised Fiordland National Park Plan and QLDC in regard to local aviation issues. The Helicopter Line's Operations Manager Grant Gillespie and Standards Pilot Richard Desborough are both past Chairs of User Groups.

The Helicopter Line is committed to continuing to work with, and exercise leadership in, the User Group with a view to ensuring that all and any concerns regarding adverse effects can be addressed and responded to.

The User Group has established operating procedures. This has been adopted by the company and expressly incorporated into its Operating Procedures.

National Involvement in Best Practice

The Helicopter Line is active in national organisations, which include in their activities the exploration of best practice in helicopter and wider tourist operations. Totally Tourism is active in working with Qualmark New Zealand and all its operations including The Helicopter Line are Qualmark Endorsed. Qualmark certification has the support of Tourism New Zealand and the New Zealand Tourism Industry Association. CEO Mark Quickfall is a long standing Board Member of the Inbound Tour Operators Council and past chairman of Destination Queenstown. All of these involvements highlight the company's willingness to invest time and money in the continuous improvement of its operations.

Totally Tourism and The Helicopter Line are involved with the following organisations:

- Tourist Flight Operators Group
- Aviation Industry Association of NZ
- Tourism New Zealand
- New Zealand Tourism Industry Association
- Inbound Tourism Operators Council
- Qualmark New Zealand
- Mount Cook and Westland National Parks Resident Aircraft User Group
- Queenstown Milford Users Group
- Fiordland Aircraft Users Group
- Destination Queenstown
- West Coast Tourism
- MacKenzie Country Tourism
- Lake Wanaka Tourism

Flying Practices

The Helicopter Line has always been a significant leader in the area of the adoption of flying practices which promote safety, and the addressing of adverse effects on others. It believes it can claim responsibility for the introduction of the Fly Neighbourly Guide into the local tourist-flying scene, and relies on it to establish appropriate flying practices.

Fly Neighbourly is a program developed by the Helicopter Association International designed to be implemented worldwide by local helicopter operators. Fly Neighbourly offers technical information for the use of existing helicopter technology as quietly as possible. Fly Neighbourly is expressly incorporated into the company's

operations manual and its practices are part of the company's training and pilot testing regime.

In addition, The Helicopter Line's internal policies address the controlling of adverse effects on the environment. In addition to the standard procedures for safety purposes, the procedures contain significant requirements directed to the mitigation of adverse effects on others. To be noted in particular are the requirements of avoidance of over flying private houses and the requirement that "flying over climbers, trampers, etc and huts is to be avoided at all costs."

The company's procedures also incorporate by express reference the environmental policy adopted by the user group. The detailed flight procedures demonstrate the specifics of the embodiment of the Code of Practice in The Helicopter Line operation.

Adherence by Staff

The commitment of The Helicopter Line to compliance by Pilots and other staff is manifest in the employment arrangements between the company and its pilots. It may be noted that the procedures are actually signed off by individual pilots upon their engagement. This represents the company's insistence on them being adhered to. The Helicopter Line is able to give the highest level of commitment that the policies it adopts and promulgates will be observed in practice.

The Helicopter Line does not accept arrangements, which encourage the flouting of its procedures – either those established for safety, or for environmental impact management purposes. In particular, its standard employment arrangements with pilots do not include incentive provisions, which promote the cutting of corners for the purpose of maximum passenger throughput. Failure by any staff member to adhere to the promulgated policies, and to overall environmental responsibility, is regarded as a serious matter.

Sustainable Tourism

The natural environment, our communities, cultures and businesses are all part of what makes up the tourism industry. Sustainable tourism is about protecting and enhancing the natural environment and resources for future generations, whilst at the same time ensuring long-term economic and socio-cultural benefits.

Our company is active in working towards sustainable tourism and uses information provided under Government and Tourism Industry initiatives to check on we can improvement our operations. www.tourism.govt.nz/sustainability

Helicopter Type

The Helicopter Line operates Aerospatiale Squirrel helicopters. These are recognised as ideal aircraft for scenic flying purposes and enable greater passenger numbers without increasing adverse effects.

Equipment Selection

As a major operator of helicopters, The Helicopter Line has the ability to be an early adopter of new technologies when they become available. The Aerospatiale Squirrel is regarded as a significantly better aircraft for scenic flying purposes than the

Hughes 500 or Robinson 44, and enables greater passenger numbers without increasing adverse effects.

The Helicopter Line is carrying out trials with a range of helicopters and believes that it has potential for significant improvements by selecting helicopters that are viable to operate, provide suitable performance and best mitigate adverse effects. The noise profile of helicopters operating with various engine types may be significantly different from that of the existing Squirrel helicopters. The Helicopter Line's size and infrastructure makes it more likely than most other operators to be in a position to pursue such technology changes if indeed they can be shown to have overall improved outcomes.

The Helicopter Line is monitoring their range of helicopters to determine the most suitable power plant and helicopter model. The helicopters currently being compared follow:

- Eurocopter Squirrel AS350 B2
- Eurocopter Squirrel AS355 Twin
- Eurocopter Squirrel Super D (Lycoming engine)
- Eurocopter Squirrel Super D2 (Lycoming engine)
- Eurocopter Squirrel FX1

Through Totally Tourism's shareholding in Glacier Helicopters on the West Coast and partnership with fellow shareholder Helicopter New Zealand Limited we are also operating and evaluating helicopter types. Glacier Helicopters operates four Squirrels and HNZ operate a fleet of 38 helicopters.

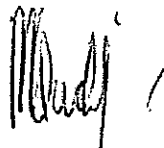
Glacier Helicopters
www.glacierhelicopters.co.nz

Helicopters NZ
www.helicoptersnz.co.nz

Declaration

I Mark Quickfall

Director/Owner/Operator of Totally Tourism Limited do hereby certify that, to the best of my knowledge and belief, the information given in this application is complete, true and correct. I undertake to pay all reasonable costs incurred by Lakes Environmental.



Signed _____

Dated: 20 March 2008

Magic Reef

From: "Barry Ford" <barryford@xtra.co.nz>
To: <magicreef@oyster.net.ck>
Sent: Saturday, 2 July 1904 11:24 a.m.
Subject: BISHOPDALE F

DUNSTAN PARK LTD
P. O. BOX 240
WANAKA
NEW ZEALAND

Phone 64 3 443 7404
Fax 64 3 443 7402

11 th October 2005

Brad Patterson
Totally Tourism
P. O. Box 634
Queenstown

Fax 0064 3 441 4619 > two x pages


Att: Brad Patterson

Dear Brad,

RE: 160 ARTHURS POINT RD QUEENSTOWN LOT 2 HELICOPTER LINE CONSENT

Please receive a signed Landowners Consent on behalf of Bishopdale Holdings Ltd re the Helipad.

Yours faithfully,




Barry Ford

11/10/2007

Brad Patterson
Sales Executive
Totally Tourism
PO Box 634
Queenstown
Phone: 84 3 441 4694
Fax: 84 3 441 4619
Mobile: 021 615 048
Email: brad@totallytourism.co.nz
Web: www.totallytourism.co.nz

In the interest of minimising the wastage of paper please consider the environment before printing this email.

LANDOWNERS CONSENT 

I/We (applicant): BISHOPDALE HANDINGS LTD
 Or (address): P.O. BOX 260 WANAKA
 On behalf of (insert name of body/company if applicable): _____

As the owners/occupiers of (insert address location, legal description etc):
160 HARTWELL POINT RD
OTIIC/875 OTAGO
LOT 2 D/P PLAN 20925

Type of Activity: HELIPORT & HELICOPTER
HANDINGS

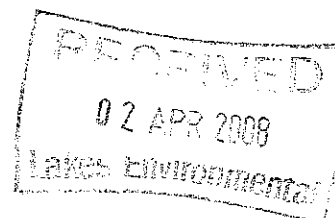
Reason why Queenstown Lakes District Council consent is required: _____

I/We attach the following:

- Application form and fee of \$125.00
- Location map showing site of proposal and Council land affected
- Plans of the proposal (plans must be to scale)
- Plans must clearly show measurements of encroachments etc
- Consent from other adjoining landowners
- Photographs of the site (where applicable)

Signed: [Signature] Dated: 11/10/07
 Phone Number: 03-443-7406 (Home): 0274 926666
 Fax Number: 03-443-7403 E-mail: BARRY@BISHOPDALEHANDINGS.CO.NZ

Signed for Queenstown Lakes District Council: _____ Date: _____



COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952

Search Copy



R. W. Muir
Registrar-General
of Land

Identifier **OT12C/875**
Land Registration District **Otago**
Date Issued **01 May 1989**

Prior References OT9A/174

Estate **Fee Simple**
Area **7767 square metres more or less**
Legal Description **Lot 2 Deposited Plan 20925**
Proprietors
Bishopdale Holdings Limited

Interests

471986.1 Transfer creating the following easements

Type	Servient Tenement	Easement Area	Dominant Tenement	Statutory Restriction
Take and convey water	Lot 2 Deposited Plan 20925 - herein	Line water pipeline, Transfer 471986.1	Lot 2 Deposited Plan 15344 - CT OT6A/612	
Take and convey water	Lot 2 Deposited Plan 20925 - herein	Line water pipeline, Transfer 471986.1	Lot 1 Deposited Plan 16043 - CT OT6D/1425	
Take and convey water	Lot 2 Deposited Plan 20925 - herein	Line water pipeline, Transfer 471986.1	Lot 2 Deposited Plan 16043 - CT OT6D/1426	

727527.1 Easement Certificate specifying the following easements - 1.5.1989

Type	Servient Tenement	Easement Area	Dominant Tenement	Statutory Restriction
Convey water	Lot 1 Deposited Plan 20925 - CT OT12C/874	A DP 20925	Lot 2 Deposited Plan 20925 - herein	Section 309(1)(a) Local Government Act 1974
Convey water	Lot 1 Deposited Plan 20925 - CT OT12C/874	B DP 20925	Lot 2 Deposited Plan 20925 - herein	Section 309(1)(a) Local Government Act 1974
Convey water	Lot 2 Deposited Plan 20925 - herein	C DP 20925	Lot 1 Deposited Plan 20925 - CT OT12C/874	Section 309(1)(a) Local Government Act 1974

6379990.4 Mortgage to Raymond Sullivan Solicitors Nominee Company Limited - 13.4.2005 at 9:00 am

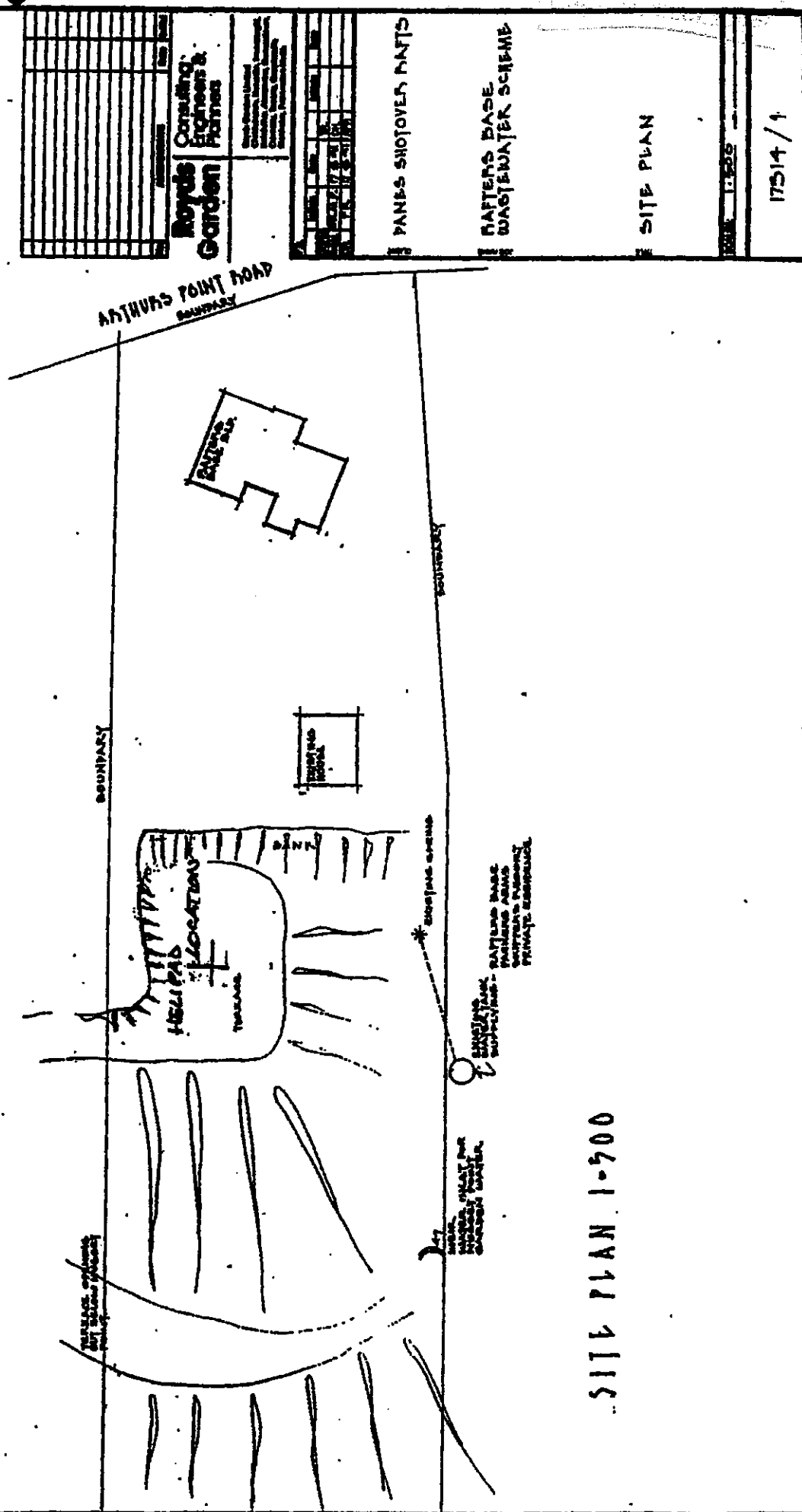
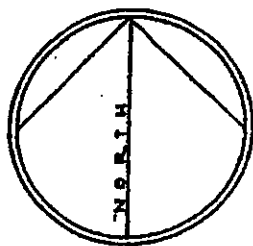
7066055.1 CAVEAT BY TOTALLY TOURISM LIMITED - 11.10.2006 at 9:00 am

7130747.1 CAVEAT BY AURORA ENERGY LIMITED - 24.11.2006 at 9:00 am

OT12C/875

Search Copy Dated 8/10/07 9:15 am, Page 2 of 2

02 - 22 2023



17514 / 9.

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LAKES ENVIRONMENTAL



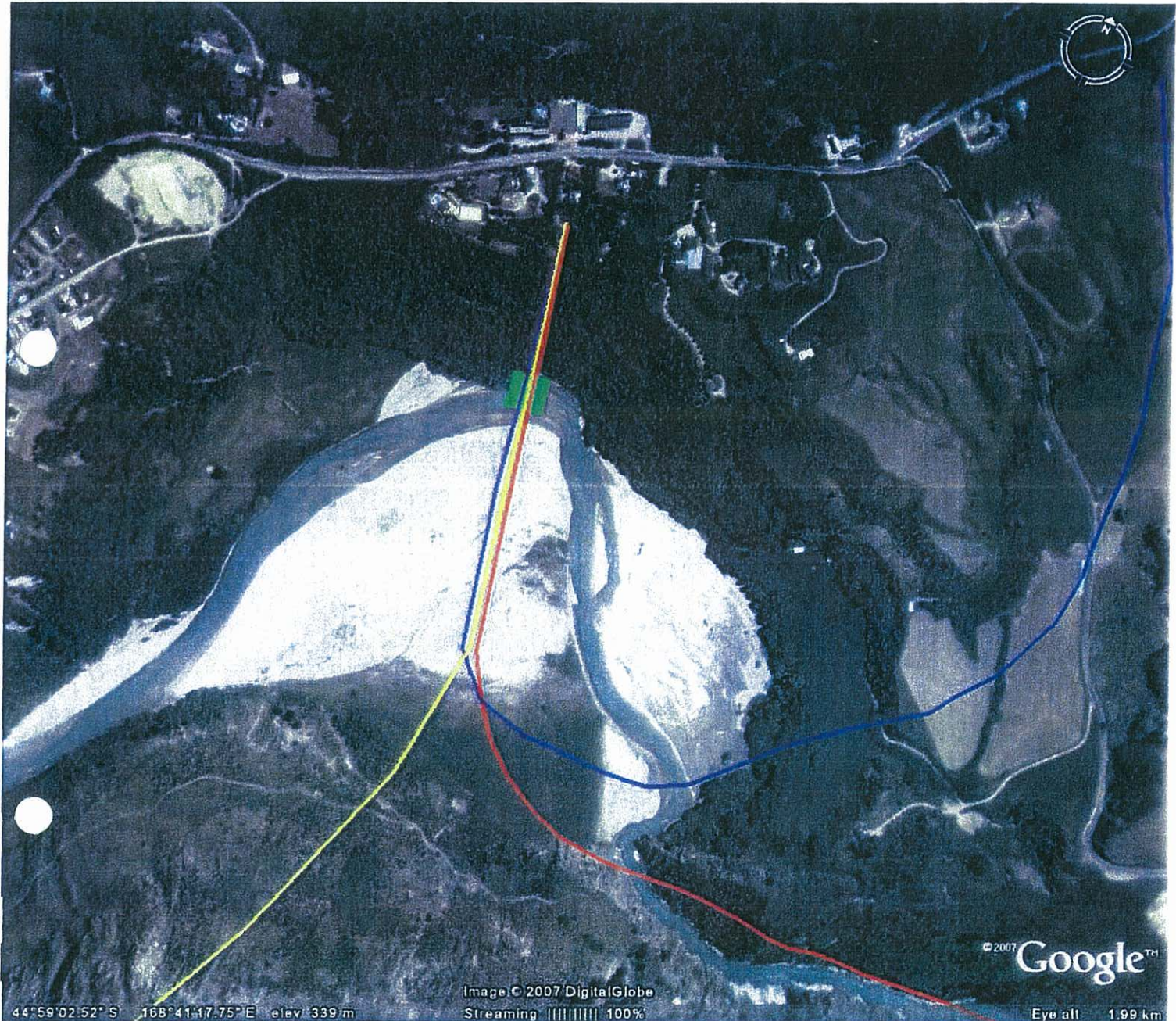
Proposed RoW (Road Access)

Subdivision boundary





Arthur's Point Flight Paths



Skyline Departure and Return
Flight Path



500 Ft

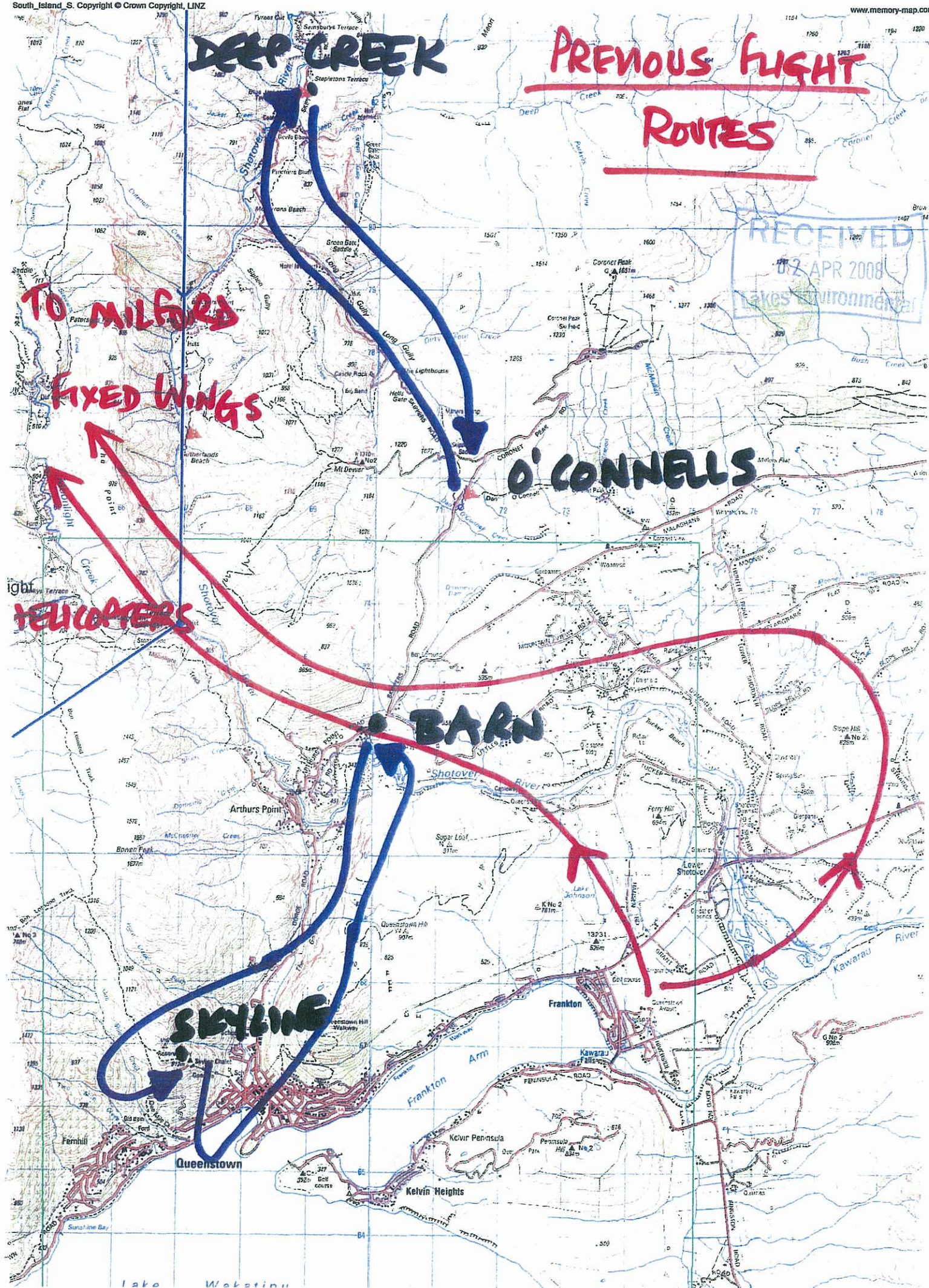


Entry from Queenstown Airport



Rafting Departure and Return
Flight Path





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02 APR 2008
1263
Lakes Environmental

FIXED WINGS

O'CONNELLS

HELICOPTERS

TRIN

2500-4000

SKYLINE

3000

3000

3500

Franklin

Kawar

SULPHUR ROAD

15

A micrograph showing a cross-section of a blood vessel. A blue arrow points to the intima, the innermost layer of the vessel wall.

837

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

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.

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.

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.

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



(between 10:00 am and 11:30 am) and 12 in the afternoon (between 1:30 pm and 3:00 pm). At other times of the year, there would be considerably fewer flights. Current occupiers or the occupiers of the nearest properties had given their consents to the proposal.

Noise effects of helicopters using the proposed helipad had been assessed by Mr N 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.

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.

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.

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



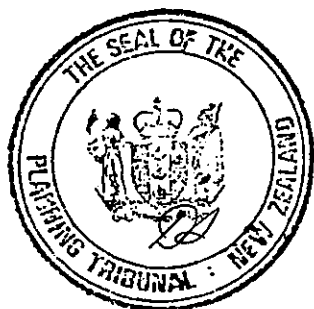
extent to the community generally. The community is (as the plan contemplated) already exposed to noise from helicopter operations. Noise from use of the proposed helipad could be appropriately controlled by imposition of conditions such as those suggested by Mr Hegley.

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



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)



IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN

DANES SHOTOVER RAFTS
LIMITED

(RMA 250/92)

Appellant

AND

THE QUEENSTOWN LAKES
DISTRICT COUNCIL

Respondent

BEFORE ENVIRONMENT COURT

Environment Judge D F G Sheppard

IN CHAMBERS at AUCKLAND on 30 March 1998

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, L_{dn} .
 - (b) The L_{dn} value may be averaged over any one week. The exposure on any single day should not exceed an L_{dn} 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.



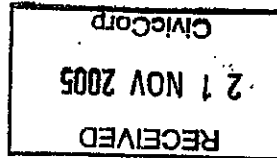
Telephone: (03) 477-8048
 Facsimile: (03) 477-6998
 E-mail: lawyer@rossdowling.co.nz
 Postal Address: PO. Box 1144, Dunedin, New Zealand.
 DX YP80015
 Office Address: Second Floor, Savoy Building, 50 Princes Street,
 Dunedin, New Zealand
 Trust Account: WestpacTrust, 030903 0231264 00

ROSS DOWLING MARQUET GRIFFIN
 BARRISTERS AND SOLICITORS

Partners: Les Z. Griffin LL.B.
 Alastair Logan LL.B. B.A. (Hons)
 Simon Anderson LL.B (Hons)
 Susan McLeod LL.B
 Consultants: Neville Marquet LL.B
 Hugh Ross B.A. LL.B
 John Dowling LL.B

15 November 2005

Mr Tim Francis
 Principal: Monitoring and Compliance
 Civic Corporation Limited
 Private Bag 50077
 QUEENSTOWN



Legal Opinion

Dear Sir

Helipad - Arthurs Point - Danes Shotover Rafts Limited

- 1 On 13 March 1998 the Environment Court sealed an Order granting Danes Shotover Rafts Limited land-use resource consent in the following terms:

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: ...*
- 2 This decision was issued under the hand of DFC Sheppard, Environment Judge in implementation of the consent granted by the Judge's Court under decision A55/93 dated 2 June 1993 following a hearing before Court on 5 May before the Judge and Mrs Greig and Mrs N T Johnston, Commissioners.
- 3 You asked for my legal opinion on:

The extent of the use of the site today as a helipad knowing that Danes Shotover Rafts Limited no longer base their operations and office from the site, in fact Danes Shotover Rafts Limited no longer exists as an entity.

Opinion

- 4 It is my opinion that the current owners of the above Lot 2 DP 20925 are entitled to use and operate the helipad for flights conducted by it incidental to "tourism business" carried on at the site. The tourism business now conducted therefrom by Totally Tourism Limited ie. heliskiing, helibiking and rafting and combination helicopter flights

that have a rafting component, would fall within that definition. That is one issue. A second or secondary issue is what is meant by the words "*business carried on at the site*". The question is what quality of business is required – is the loading and unloading of passengers and associated paraphernalia sufficient. I discuss this below.

Brief history of the site

- 5 The date of first operation of the helipad at this site is not known but land-use resource consent was granted by the Environment Court under decision A55/93 as noted above. Danes Shotover Rafts Limited had applied for consent to operate the helipad in 1992 and the Council refused consent following a hearing at which four objectors of 37 appeared to oppose the application.
- 6 At that time the use was non-complying because the zone rules made no provision for helipads. Danes Shotover Rafts Limited appealed to the Environment Court. Danes Shotover Rafts Limited and I appeared for the Council at the hearing on 5 May. A decision granting consent being issued on 2 June 1993. The then zoning was Tourist Development Zone 2. The Court noted that helipads were predominant uses in the rural zone but not within the Tourist Development 2 Zone. Danes had a long established business conducting commercial river rafting trips on the Shotover River and others. The decision notes that the company's base for making those trips was on the subject property at Gorge Road and included changing rooms, showers, drying rooms for gear and wetsuits and a restaurant, bar and shop and storage. The launching pads for rafting on Shotover was at Boulder Beach or Sullivans Beach and helicopter transport was needed during the winter to take patrons to the launch site.
- 7 With suitable weather the total number of customers could involve 12 takeoffs and landings in the morning and 12 takeoffs and landings in the afternoon. The noise expert gave evidence which indicated that compliance would be had with the acoustic noise guidelines for up to about 15 takeoffs and landings and that provided machines no noisier than Squirrel AS350 type was used.

- 8 The Court accepted Mr Hegley's evidence:

Particularly because it is incidental to a tourist activity in a tourist development 2 zone.

The Court said that noise from the use could be appropriately controlled by the imposition of conditions and these are set out in paragraph 2 of the conditions which I have not cited. The Court said:

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.

The Court found then that the threshold conditions of minor effect and that the activity was not contrary to the objectives and policies of the plan, consents should be granted. The Court in closing said:

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 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.

- 9 In my opinion the second paragraph is the dominant paragraph as the Court there describes what should be included as a condition in the Order. **The important descriptor is the use of the helipad to flights incidental to tourism business carried on the site.** The Court was aware of the provisions of the Transitional District Plan. The Plan notes at page 310:

There are pockets of development which cater for tourist entertainment and amusement. These areas are close to main traffic routes and make a major contribution to district resources for entertainment and amusement and identifies the Arthurs Point zone. The use involves outdoor environment, surrounding landscape, adjacent rural users and opportunity for the recreation and enjoyment of the outdoor environment and the committee notes its intention to promote the development of this area.

- 10 The sealed Order I believe it is important in that the wording used in condition 1 is general in nature, the only words of limitation being "tourism business carried on at the site". It may be relevant to note that the definite article "the" does not proceed the word tourism.
- 11 The consent attaches to the site (section 134 RMA). The choice of the site would seem to have some significance at least in identifying that the site is within the tourist development zone.
- 12 The present operator Totally Tourism Limited owns the land, having purchased this business of Danes Shotover Rafts Limited. The present operation is a rafting and adventure business and is promoted under the Challenge Rafting and Queenstown Combo brands. Totally Tourism continues exclusively to operate helicopter flights from the helipad. The company hosts visitors and co-ordinates sightseeing and adventure combo trips at the site. Equipment is also housed on the site. Notably the present average use is 3-4 loads per day. This, of course, is well below the total numbers permitted under the resource consent. I am advised there are plans for further development.
- 13 All of the flights are incidental to the company's tourism business, a part of which is necessarily carried on at the site and which includes the receiving and dispatching of flights.
- 14 In my opinion of condition (1) was to ensure that the operator used the helipad for flights associated with "tourism" and not some other commercial feature such as goods, delivery or passenger or airline service. This is my interpretation of the clause and of the word "incidental".
- 15 In your letter of 4 October you say:

There is concern from some residents in the adjacent area now that Danes Shotover Rafts Limited no longer occupy the site ie. office and base etc as it was occupied when this decision was made that the authority to use the heliport on this site must lapse as

the helicopter operations could not be considered incidental to the appellants business.

I believe there is no doubt that business from that helipad is incidental to the tourist business of the present incumbent. I am advised that present flight numbers may be less than that envisaged in 1993. There is of course no limitation of numbers in the Order, the control coming via the imposition of the noise limits. See condition 2 a, b, c and e.

As I have said I am in no doubt that the present business operated from the helipad is incidental to the tourist business of the present incumbent. The issue of whether the substratum has gone may be arguable but in my opinion there is no difference in the nature of the helicopter activity. Its present range has been extended in terms of sphere of operations but the order never contained any limitation in this respect.

16 I shall be pleased to confer further.

A copy of the Court Order is attached and I shall be pleased to confer.

Yours faithfully
ROSS DOWLING MARQUET GRIFFIN
 Per



N S Marquet
 Consultant

Email: neville.marquet@rossdowling.co.nz

cc **Mr Duncan Field**
Queenstown Lakes District Council
Private Bag 50072
QUEENSTOWN

Email: duncan.field@qldc.govt.nz

Decision No. W 77/2007

D.

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

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.

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 1992. 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.

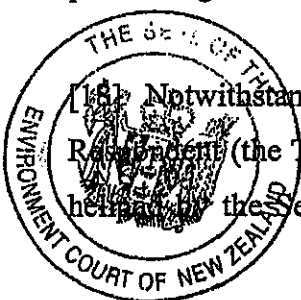


[15] Mr MacDonald testified to the Tribunal that Danes' rafting activities were conducted from Boulder Beach which is accessed by Skippers Road. Skippers Road was commonly closed due to winter conditions between May and September so that it was necessary to use a helicopter to fly rafting clients into 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.



It is 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

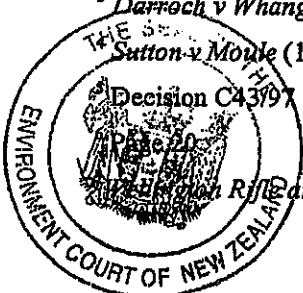
³ *Darroch v Whangarei District Council*, Decision A18/93 (Page 27)

⁴ *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.



[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.

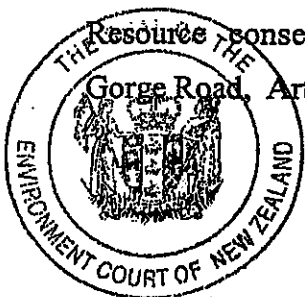
[37] We now turn to consider the remaining Declarations 1-3.

[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.

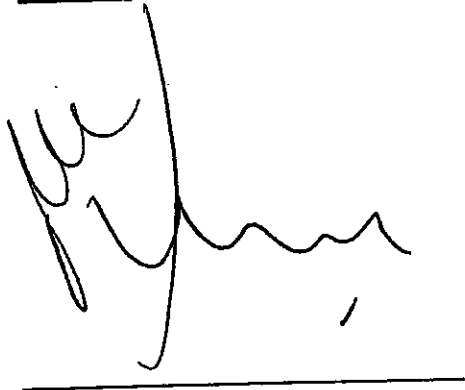
Declaration 2

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





REFERENCE:	RM070941
APPLICANT:	Totally Tourism Ltd
ACTIVITY:	Notification determination for an application to vary consent RM910025
ZONING:	Rural Visitor zone (Partially Operative District Plan)
LOCATION:	160 Arthurs Point Road, Arthurs Point
LEGAL DESCRIPTION:	Lot 2 DP 20925

1.0 PROPOSAL & SITE DESCRIPTION

1.1 PROPOSAL

Consent is sought to vary condition 1 of resource consent RM910025 granted by the Environment Court under decision RMA 250/92 on 30 March 1998 to establish a helipad. The variation is to enable the inclusion of visitors participating in sightseeing, rafting and combo trips as opposed to the current consent which only includes visitors participating in rafting trips. The rafting trip customers are flown to the start of the rafting trip at Deep Creek. The sightseeing and combo customers are flown to the top of the Skyline Gondola.

Condition 1 reads:

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

1.2 BACKGROUND

The condition 1 the applicant seeks to vary does not seem to preclude the use of the helipad for visitors participating in sightseeing, rafting and combo trips. However, the application made in 1991 by Danes rafting (RM910025) specifically referred only to visitors participating in rafting trips.

This matter was recently referred to the Environment Court as an enforcement matter by Clive Manners-Wood, a resident of the Wakatipu Basin. In its decision, referenced W77/2007, the judge considered one factor to override any other evidence, namely: "...every resource consent is limited by the terms of its application. A resource consent which purports to grant more than what is sought in the application is ultra vires to that extent."

As a result of that decision, the applicant is making this application for variation.

It is noted that until such time as the declaration was sought from the Environment Court by Mr Manners-Wood, the Council and the applicant believed that the helicopter activity from the heli-pad was in accordance with the terms of the resource consent granted

1.3 SITE DESCRIPTION

The subject site is located at 160 Arthurs Point Road, Arthurs Point and is legally described as Lot 2 DP 20925. It is a rectangular site located between two other rectangular sites. The subject site contains a helipad and a dwelling owned by Totally Tourism Ltd. The adjoining sites contain a barn which is being converted into a café and hot pools. A sound barrier has recently been erected between the helipad and the dwelling. At the time of granting of the original consent the three sites were one site and they have only recently been subdivided. The subject site is used to host the combo clients and store equipment.

1.4 LOCALITY DESCRIPTION

The site is located within the Rural Visitor zone at Arthurs Point. Development within the vicinity includes a number of large visitor accommodation facilities and a restaurant.

2.0 ZONING PROVISIONS

2.1 THE PARTIALLY OPERATIVE DISTRICT PLAN

The subject site is zoned Rural Visitor zone and requires resource consent for the following reasons:

- 1 A **discretionary** activity consent pursuant to section 127(3)(a) of the Resource Management Act 1991, which deems any application to change or cancel consent conditions to be a discretionary activity.

Overall, the application is considered to be a **discretionary** activity.

3.0 SECTION 94 ASSESSMENT

Section 3 of the Resource Management Act 1991 and the applicant's assessment of effects have been considered when determining the adverse effects of the activity on the environment and those persons who may be adversely affected.

After an analysis of the application, the following matters are considered to be relevant -

3.1 ADVERSE EFFECTS ASSESSMENT

Adverse Effect On	Magnitude of Effect/s (section 94A)	Extent of Effect/s (Section 94B)	Other Comments
	<i>nil, de minimus (insignificant), minor, more than minor, positive, permitted baseline)</i>	<i>Internal – wholly within subject property, adjacent – number of affected abutting sites External – effects abutting sites and beyond</i>	<i>(If effects "permitted baseline, give reasons for this – e.g. "although building is tall and dominant, it meets all relevant site and zone standards. Consider consequential effects arising from a non-compliance – e.g. yard infringement resulting in a larger, more dominant building that could be established as of right.) It is helpful within table to identify whether the applicant has obtained the required written approval or not.</i>

Land, Flora and Fauna:

Trees	Nil		
Fauna/Wildlife	Nil		

Landform	Nil		
Waterbodies	Nil		
Groundwater	Nil		

Infrastructure:

Water Supply	Nil		
Effluent Disposal	Nil		
Stormwater Control	Nil		
Energy Supply	Nil		
Telecommunication	Nil		
Pollution	Nil		

Natural Hazards:

Land Stability	Nil		
Rock Fall	Nil		
Faultlines	Nil		
Flooding	Nil		

People and Built Form:

Shadowing	Nil		
Privacy	Nil		
Dominance	Nil		
Character	Nil		
Building Coverage/Density	Nil		
Amenity	Nil		
Views and Outlook	Nil		
Streetscape	Nil		
Socio-Economic	Nil		

Culture:

Heritage	Nil		
Heritage Precincts	Nil		
Archaeology	Nil		
Takata Whenua	Nil		

Traffic Generation and Vehicle Movements:

On-site Parking	Nil		
On-Street Parking	Nil		
Driver Safety	Nil		
Pedestrian Safety	Nil		
Traffic Generation	Nil		
Roading Capacity	Nil		
Noise	Nil		
Vehicle Movements	Nil		

Visitors taking part in rafting trips are transported by minivan from the Edith Cavell Bridge site to the subject site. Visitors taking part in combo trips or sightseeing are transported from Edith Cavell Bridge site to the subject site by minivan. There is no difference in effects between the two groups of visitors.

Nuisance:

Odour	Nil		
Noise	Nil		
Hours of Operation	Nil		
Dust	Nil		
Air Discharges	Nil		
Vibration	Nil		

It is common ground that noise effects of an aircraft (either fixed wing or helicopter) may be considered under the Resource Management Act. However, there is some controversy over noise in the air. In his report dated February 2007, VC Goodwin of Environmental Noise Analysis and Advice Service commented as follows on the noise effects:

[page 13]

59. The effect of s.9 of the Act is that any person may use their land as they think fit unless that contravenes a rule in a district plan. There is an exception to the use of airspace. Section 9(8) of the Act states:

"The application of this section to overflying by aircraft shall be limited to any noise emission controls that may be prescribed by a territorial authority in relation to the use of airports."

60. Remarks in obiter by the Environment Court in aviation related cases, acknowledge there are potential legal arguments about interpretation of s.9(8) of the Act, however the sub-section has remained un-amended since 7 July 1993. Since that time, the effect of the s.9(8) exemption has not hindered application of NZS 6805:1992 *Airport noise management and land use planning*, to all major airports in New Zealand. Neither has the exemption prevented the Courts making determinations on Appeals, References, and Notices of Requirement in relation to airports, airstrips or granting consents for helicopter landing areas and application of NZS 6807/1994 *Noise management and land use planning for helicopter landing areas*, whether or not associated with land subject to designations under Part 8 of the Act.

61. There is a general recognition that if controls on flying off-site are prescribed, perhaps through conditions of a resource consent, or plan provisions, then some degree of control appears to be vires, but there remains uncertainty as to how far the control goes given, *".....the exact intent of subsection 8 is not evident."*¹³

62. There does not appear to be any limitation to "overflying by aircraft," in the operative or proposed District Plan in this district except in relation to airports, given there are other laws governing statutory control of aviation, including treaties and international conventions.

63. The words of s.9(8) "in relation to the use of airports," have generally been construed to treat transit through "off-site" airspace by aircraft, as ancillary to use of a parcel of land by aircraft, and use of airspace directly over that land below 500 feet, while undertaking approach and departure manoeuvres imminent to contact with the land itself.

64. In *Minister of Conservation*¹⁴ the Court conjectured,

*".....accepting for the purposes of this case that we would probably be unable to control the proposed flight paths beyond the approach and landing phase....."*¹⁵

Recognising its inability to control the flight paths beyond approach and departure manoeuvres, but goes on immediately in the same sentence to state,

"we consider that for planning purposes we are entitled to have regard to the consequences of allowing the landing pad, and indeed the applicant's operation as a whole to become established on the proposed site."

The Court then took into account evidence about noise from helicopter overflight of land and water away from the proposed landing pad and the application was refused.

65. On appeal in relation to the extent of the Planning Tribunals powers in relation to some aviation matters the High Court held that it "is open to the Tribunal to require a higher degree

¹³ Kaikoura District Council, C119/02, 7 NZED 846, [34]

¹⁴ *Minister of Conservation et al v Waitaki District Council*, C65/91 (a case under s.69, Town and Country Planning Act 1977)

¹⁵ *ibid* page 14, paragraph 2

of safety that that required by the Director" (of Civil Aviation)¹⁶. In *McBride*, a 2005 case relating to a helicopter landing area, the Court considered whether Council could take onto itself jurisdiction and stated.

*"that it is possible for the Council to impose condition that mirror requirements of other authorities, provided they do not seem to take on jurisdiction the Council does not have, or of course, derogate from the requirements of the Civil Aviation Authorities."*¹⁷

Mr Goodwin then details another method, not yet tested by the Courts. Then on pages 15 and 16 he points out that the excessive noise provisions detailed in section 16 of the RMA expressly exclude

S16(a) Aircraft being operated during, or immediately before or after flight;..

Mr Goodwin concludes in his report [page 19] that overflight of properties away from the immediate vicinity of the helicopter landing area is a contentious issue because of some uncertainty about jurisdiction between Civil Aviation and Resource Management Act law and the extent the later can be applied away from aerodromes. A new argument that has been raised may extend the area outside an aerodrome environs that should be considered, but this may not extend as far as including effects upon the Manners-Wood dwelling some 1.5 km distant.

During the enforcement case (W77/2007) it was acknowledged that there were no copies of the flight paths discussed at the hearing for RMA205/92. The flightpaths submitted with this application show the take off and landing flightpaths to be identical regardless of whether the destination is Deep Creek or the Skyline. Therefore there is no change and it is considered there is no effect in terms of noise.

3.1.1 Summary of Effects

This variation seeks only to change the persons that are permitted to be helicoptered to and from the site. Currently only visitors participating in rafting activities may be transported by helicopter. The number of flights permissible for any one day and week are restricted by way of the noise limitations in condition 2 of the consent.

This variation will not increase the number of flights, nor would not granting it decrease the number of flights. This variation will not change the flight path for the landings or take offs.

Overall, the adverse effects on the environment of the activity for which consent is sought will be nil.

3.2 WRITTEN APPROVALS OF AFFECTED PARTIES

There are no persons considered to be adversely affected by the proposal.

3.3 SPECIAL CIRCUMSTANCES

It is considered that there are no special circumstances that warrant notification of the proposal; OR

4.0 SECTION 93/94 RECOMMENDATION

(1) That Pursuant to Section 93/94 of the Resource Management Act 1991, this application should be processed without public notice because:

- 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.

¹⁶ *Director of Civil Aviation v Planning Tribunal*, 27/6/1997, Ellis J, HC Wellington, CP128/95, 2 NZED 534 [1997]

¹⁷ *Director of Civil Aviation v The Planning Tribunal* [1997] NZRMA 513 (HC) at 517 cited in *McBride v Westland DC* C097/05

(2) That pursuant to section 94(2), this application be processed on a non-notified basis as:

- There are no persons considered to be adversely affected by the granting of this resource consent.

Report prepared by

Report reviewed by

Wendy Rolls
PLANNER

Paula Costello
PLANNER

PLANNER'S RECOMMENDATION

For the reasons set out in the above assessment, this application for resource consent shall be processed on a non-notified basis.

Report Dated: 2 December 2007

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

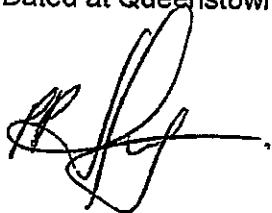
Queenstown Milford Users Group; that is, to fly causing the minimum effects on the environment and third parties. However, the company has given no formal undertakings by way of volunteered conditions that might ensure that its present operational behaviour is able to be enforced. Ultimately, we understand 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)

Mark Quickfall

Subject: FW: RM071205/1204

-----Original Message-----

From: Wendy Rolls [mailto:Wendy.Rolls@lakesenv.co.nz]

Sent: Monday, 7 January 2008 5:49 p.m.

To: Mark Quickfall

Subject: RE: RM071205/1204

Evening Mark,

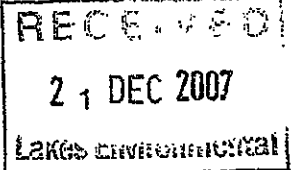
RM070941 (Arthurs Point): The Vern Goodwin report that Tim F. commissioned has arrived and I attach a copy. It only concerns Arthur's Point. It is unclear to me whether you have commissioned other reports? But I am assuming not. The guts of the report is that from the initial research of the site with the noise barrier the average number of daily flights with a AS355 F1 would be 3.46, the maximum 6.90 and the weekly limit 24.19 flights. With a Super D machine these are doubled - so the average number of daily flights is 6.92, the maximum daily is 13.8 and the weekly limit is 48.38 flights. (with a flight being an in AND outbound journey). These numbers are qualified in that the measurements were taken for test flights as opposed to genuine operational flights with passengers. Vern is intending to do some further research which will likely amend the table and increase the certainty with which it can be applied.

Cheers Wendy

Wendy Rolls
Policy Planner
Lakes Environmental
Private Bag 50077
Queenstown

p. 03 450 0356
f. 03 442 4778
e. wendy.rolls@lakesenv.co.nz
www.lakesenvironmental.co.nz

Please note that I work part-time. I am usually in the office all day on Tuesday and Thursday. If you leave me a phone message or send an email I will respond asap.



Environmental Noise Analysis and Advice Service

Formerly National Environmental Noise Service (1996-2000) and Regional Noise Control Office, Department of Health (1974-1996)

20 December 2007

APdec07.doc

VirtualFax 0832 68899

International Fax 64 832 68899

03 388 8536

027 4353 269

Tim Francis
Lakes Environmental
Fax # 03 442 4778

noise@chch.planet.org.nz
P.O. Box 18-885
Christchurch
NEW ZEALAND 8641

Dear Tim

Arthurs Point monitoring

1. I apologise for late delivery of this report and transmission by fax because of computer problems.
2. As requested, arrangements were made with The Helicopter Line to simulate flights into their Arthurs Point helicopter landing area to enable checking of sound exposure levels for aircraft types using the helicopter landing area. This landing area is subject to a resource consent granted in 1993 that has been subject of clarification by the Court in decision W 77/2007.
3. Checks were made on 18-19 October 2007 after the noise barrier had been installed and completed in the manner referred to in my supplementary affidavit dated 22 August for Council in the Manners-Wood declaration proceedings. These flights were simulations of typical flight operations rather than measurements of actual operations as had been the case for January and August flights measured.

Effect of the fence

4. The only direct comparison between sound exposure at the assessment point for an identical aircraft before and after installation of the fence, can be made for the AS355N aircraft ZK-HML. Before the fence was installed, departure sound exposure levels were 96 dB A-frequency weighted sound exposure level, in decibels (ASEL dB), whereas after the fence installation, the level was reduced to 89 dB ASEL—a significant reduction in sound exposure level which would reduce annoyance for the nearest affected resident in the house to the Northwest.
5. However, the fence made no significant difference to arrival levels based on the small dataset available for analysis. As monitoring data accumulates, this aspect can be re-checked.
6. The sound level of aircraft idling on the landing area was markedly reduced by the fence from a typical steady sound level of 66 dB before the fence installation, to 55

dB after the fence installation. In terms of loudness, the departure and the idling noise reductions could each be said to have halved because of the fence acting as a partial barrier to sound propagation towards the West.

7. For the nearest affected resident, the most obvious effect of the fence would be the reduced duration and level of departure noise and significant reduction of idling sound level to a point where it would be masked by road traffic noise on Gorge Road, except when no vehicles were driving by.
8. The reason for no significant difference in arrival noise is because the loudest portion of arrival noise occurs as the aircraft slows to a hover before a vertical descent onto the landing pad area. The fence affords no screening of the noisiest part of that manoeuvre.
9. Uncertainty for the results of this testing caused by aircraft loading variables and pilot influences would be greater than any uncertainty due to the instrumentation used or environmental conditions.

Aircraft numbers

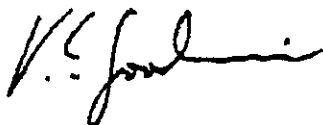
10. The only aircraft types checked were AS355 and AS350 Super D types. Other aircraft types were assessed, but not on the Arthurs Point landing area. Because of the unique characteristics of that site, I determined that measurements at other locations were irrelevant. Each aircraft variant in the AS 350 series has slightly different characteristics, mainly because of differences in engine noise emissions. It is understood fleet replacement plans will replace AS350 BA and B2 model variants with more Super D models.
11. The reduction in sound exposure level at the assessment location at the notional boundary of the house to the Northwest can be as used to re-assess daily and weekly flight numbers within the restrictions imposed by the resource consent for the two types of aircraft. It is intended to re-check actual flight operations early in 2008.
12. Variances in sound exposure levels for aircraft movements of similar or identical aircraft can be expected for a small dataset. The only obvious pattern in the data is that variance for arrival is about +/- 1 dB SEL for arrivals and 2-3 dB for Departures. Although the dataset is too small for any robust statistical deductions, the limited approach/departure paths at this site give little room for significant variations in arrival /departure manoeuvres. The number of passengers and their size and the extent of any loads carried would also be a factor. To provide a margin of safety in the calculations
13. Based on the tests made, the daily sound exposure limits for each aircraft type and the number of movements can be calculated from the following table using Pa²s units of sound exposure which can be arithmetically added, avoiding the more complex calculations required for decibels. Helicopter Line staff should be easily able to tally daily flights and manage compliance within the noise "budget" available every week, reducing flights in other days if any single day's exposure exceeds the maximum daily limit for total flights. Because aircraft do not remain on the site overnight all calculations and data are based on "flights" ie one arrival and one departure operation.

Timeframe and AS 350 Aircraft type variant	Consent exposure limit daily	Multiplier factor For each flight (ARR + DEP)	Consent exposure limit daily
	L_{DN} dB		Pa^2s
Daily limit	50	-	3.46
Max daily	53	-	6.90
Weekly limit	58.5	-	24.19
AS 350 Super D	-	0.5	#Super D flights x 0.5 plus #AS355 F1 flights
AS 355 F1	-	1	# AS355 F1s flights plus #Super D flight flights x 0.5

Table showing data enabling management by calculation of flights within sound exposure limits for Arthurs Point helicopter landing area

14. Simply put, and subject to verification from a larger dataset, every 2 flights of a super D aircraft is equal to one flight of a AS355 using the Arthurs Point landing area with its unique features and its noise barrier in place. It should not be assumed other aircraft types will have equivalent sound exposure values and these values will not apply at any other site.
15. I will write regarding other matters after Christmas.

Yours faithfully,



VC Goodwin
Environmental Noise Analysis and Advice Service



**HEGLEY ACOUSTIC
CONSULTANTS**

2 April 2007

Mark Quickfull
Totally Tourism
P O Box 634
QUEENSTOWN

Dear Mark

HELIPAD SCREENING

As requested I have considered the screening effects of the noise from helicopters located on the helipad at Arthurs Point. In the analysis I have relied on the base information provided by Mr Goodwin. He has advised me that he has measured the helicopter noise on site. From this information, it is understood that a reduction of around 6dBA is required when the helicopter is on the ground. This can be achieved at the monitoring point located 87m from the helipad by constructing a barrier that will cut the line of sight between the receiver point and the helicopters.

The necessary screening can be achieved by constructing a barrier a minimum of 20m long and 1.8m high at approximately 12 - 15m from the centre of the helipads. The barrier should be constructed equally each side to a line between the centre of the helipads and the house. The material should have a surface density of at least 12kg/m². A minimum of 25mm thick timber is one suitable material. Any timber construction should have the joints butted with battens placed over the joints or the joints lapped to ensure gaps do not open up as the timber dries out and shrinks. The barrier should not have any gap at the base unless the design has been checked.

By screening the helicopters with the above screen there will be a minimum of 8dBA reduction in the level of noise while the helicopters are on the ground.

Should you have any questions regarding the above please do not hesitate to contact me.

Yours faithfully
Hegley Acoustic Consultants

Nevil Hegley

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

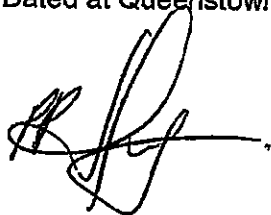
Queenstown Milford Users Group; that is, to fly causing the minimum effects on the environment and third parties. However, the company has given no formal undertakings by way of volunteered conditions that might ensure that its present operational behaviour is able to be enforced. Ultimately, we understand 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)

Mark Quickfall**Subject:** FW: RM071205/1204

-----Original Message-----

From: Wendy Rolls [mailto:Wendy.Rolls@lakesenv.co.nz]**Sent:** Monday, 7 January 2008 5:49 p.m.**To:** Mark Quickfall**Subject:** RE: RM071205/1204

Evening Mark,

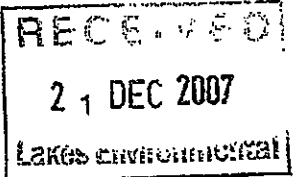
RM070941 (Arthurs Point): The Vern Goodwin report that Tim F. commissioned has arrived and I attach a copy. It only concerns Arthur's Point. It is unclear to me whether you have commissioned other reports? But I am assuming not. The guts of the report is that from the initial research of the site with the noise barrier the average number of daily flights with a AS355 F1 would be 3.46, the maximum 6.90 and the weekly limit 24.19 flights. With a Super D machine these are doubled - so the average number of daily flights is 6.92, the maximum daily is 13.8 and the weekly limit is 48.38 flights. (with a flight being an in AND outbound journey). These numbers are qualified in that the measurements were taken for test flights as opposed to genuine operational flights with passengers. Vern is intending to do some further research which will likely amend the table and increase the certainty with which it can be applied.

Cheers Wendy

Wendy Rolls
Policy Planner
Lakes Environmental
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Queenstown

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e. wendy.rolls@lakesenv.co.nz
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Please note that I work part-time. I am usually in the office all day on Tuesday and Thursday. If you leave me a phone message or send an email I will respond asap.



Environmental Noise Analysis and Advice Service

Formerly National Environmental Noise Service (1998-2000) and Regional Noise Control Office, Department of Health (1974-1996)

20 December 2007

APdec07.doc

VirtualFax 0832 68899

International Fax 64 832 68899

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027 4353 269

Tim Francis
Lakes Environmental
Fax # 03 442 4778

noise@chch.planet.org.nz
P.O. Box 18-885
Christchurch
NEW ZEALAND 8641

Dear Tim

Arthurs Point monitoring

1. I apologise for late delivery of this report and transmission by fax because of computer problems.
2. As requested, arrangements were made with The Helicopter Line to simulate flights into their Arthurs Point helicopter landing area to enable checking of sound exposure levels for aircraft types using the helicopter landing area. This landing area is subject to a resource consent granted in 1993 that has been subject of clarification by the Court in decision W 77/2007.
3. Checks were made on 18-19 October 2007 after the noise barrier had been installed and completed in the manner referred to in my supplementary affidavit dated 22 August for Council in the Manners-Wood declaration proceedings. These flights were simulations of typical flight operations rather than measurements of actual operations as had been the case for January and August flights measured.

Effect of the fence

4. The only direct comparison between sound exposure at the assessment point for an identical aircraft before and after installation of the fence, can be made for the AS355N aircraft ZK-HML. Before the fence was installed, departure sound exposure levels were 96 dB A-frequency weighted sound exposure level, in decibels (ASEL dB), whereas after the fence installation, the level was reduced to 89 dB ASEL—a significant reduction in sound exposure level which would reduce annoyance for the nearest affected resident in the house to the Northwest.
5. However, the fence made no significant difference to arrival levels based on the small dataset available for analysis. As monitoring data accumulates, this aspect can be re-checked.
6. The sound level of aircraft idling on the landing area was markedly reduced by the fence from a typical steady sound level of 66 dB before the fence installation, to 55

dB after the fence installation. In terms of loudness, the departure and the idling noise reductions could each be said to have halved because of the fence acting as a partial barrier to sound propagation towards the West.

7. For the nearest affected resident, the most obvious effect of the fence would be the reduced duration and level of departure noise and significant reduction of idling sound level to a point where it would be masked by road traffic noise on Gorge Road, except when no vehicles were driving by.
8. The reason for no significant difference in arrival noise is because the loudest portion of arrival noise occurs as the aircraft slows to a hover before a vertical descent onto the landing pad area. The fence affords no screening of the noisiest part of that manoeuvre.
9. Uncertainty for the results of this testing caused by aircraft loading variables and pilot influences would be greater than any uncertainty due to the instrumentation used or environmental conditions.

Aircraft numbers

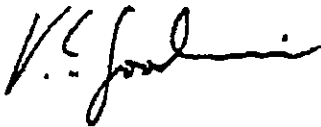
10. The only aircraft types checked were AS355 and AS350 Super D types. Other aircraft types were assessed, but not on the Arthurs Point landing area. Because of the unique characteristics of that site, I determined that measurements at other locations were irrelevant. Each aircraft variant in the AS 350 series has slightly different characteristics, mainly because of differences in engine noise emissions. It is understood fleet replacement plans will replace AS350 BA and B2 model variants with more Super D models.
11. The reduction in sound exposure level at the assessment location at the notional boundary of the house to the Northwest can be as used to re-assess daily and weekly flight numbers within the restrictions imposed by the resource consent for the two types of aircraft. It is intended to re-check actual flight operations early in 2008.
12. Variances in sound exposure levels for aircraft movements of similar or identical aircraft can be expected for a small dataset. The only obvious pattern in the data is that variance for arrival is about +/- 1 dB SEL for arrivals and 2-3 dB for Departures. Although the dataset is too small for any robust statistical deductions, the limited approach/departure paths at this site give little room for significant variations in arrival /departure manoeuvres. The number of passengers and their size and the extent of any loads carried would also be a factor. To provide a margin of safety in the calculations
13. Based on the tests made, the daily sound exposure limits for each aircraft type and the number of movements can be calculated from the following table using Pa^2s units of sound exposure which can be arithmetically added, avoiding the more complex calculations required for decibels. Helicopter Line staff should be easily able to tally daily flights and manage compliance within the noise "budget" available every week, reducing flights in other days if any single day's exposure exceeds the maximum daily limit for total flights. Because aircraft do not remain on the site overnight all calculations and data are based on "flights" i.e. one arrival and one departure operation.

Timeframe and AS 350 Aircraft type variant	Consent exposure limit daily	Multiplier factor For each flight (ARR + DEP)	Consent exposure limit daily
	L_{DN} dB		Pa^2s
Daily limit	50	-	3.46
Max daily	53	-	6.90
Weekly limit	58.5	-	24.19
AS 350 Super D	-	0.5	#Super D flights x 0.5 plus #AS355 F1 flights
AS 355 F1	-	1	# AS355 F1s flights plus #Super D flight flights x 0.5

Table showing data enabling management by calculation of flights within sound exposure limits for Arthurs Point helicopter landing area

14. Simply put, and subject to verification from a larger dataset, every 2 flights of a super D aircraft is equal to one flight of a AS355 using the Arthurs Point landing area with its unique features and its noise barrier in place. It should not be assumed other aircraft types will have equivalent sound exposure values and these values will not apply at any other site.
15. I will write regarding other matters after Christmas.

Yours faithfully,



VC Goodwin
Environmental Noise Analysis and Advice Service



**HEGLEY ACOUSTIC
CONSULTANTS**

2 April 2007

Mark Quickfull
Totally Tourism
P O Box 634
QUEENSTOWN

Dear Mark

HELIPAD SCREENING

As requested I have considered the screening effects of the noise from helicopters located on the helipad at Arthurs Point. In the analysis I have relied on the base information provided by Mr Goodwin. He has advised me that he has measured the helicopter noise on site. From this information, it is understood that a reduction of around 6dBA is required when the helicopter is on the ground. This can be achieved at the monitoring point located 87m from the helipad by constructing a barrier that will cut the line of sight between the receiver point and the helicopters.

The necessary screening can be achieved by constructing a barrier a minimum of 20m long and 1.8m high at approximately 12 - 15m from the centre of the helipads. The barrier should be constructed equally each side to a line between the centre of the helipads and the house. The material should have a surface density of at least 12kg/m². A minimum of 25mm thick timber is one suitable material. Any timber construction should have the joints butted with battens placed over the joints or the joints lapped to ensure gaps do not open up as the timber dries out and shrinks. The barrier should not have any gap at the base unless the design has been checked.

By screening the helicopters with the above screen there will be a minimum of 8dBA reduction in the level of noise while the helicopters are on the ground.

Should you have any questions regarding the above please do not hesitate to contact me.

Yours faithfully
Hegley Acoustic Consultants

Nevil Hegley