

**QUEENSTOWN LAKES DISTRICT COUNCIL**

**Resource Consent application RM 080434  
Totally Tourism Limited**

**Decision of Commissioners J.G. Matthews and L. Overton**

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**A. The application, the site, and the zone.**

Totally Tourism Ltd has applied to the Queenstown Lakes District Council for resource consent in relation to intended helicopter take-offs and landings from a helipad located in Gorge Road, Arthurs Point. The property on which the existing helipad is located is Lot 2 DP 20925, Block XIX, Shotover Survey District owned by Bishopdale Holdings Limited. Lot 2 has itself been subdivided into three allotments, which run one behind the other away from the road, though titles to the 3 sites are not yet available. Lot 2 on that subdivision is being purchased by the applicant and contains a house which is used for accommodation and administrative purposes relating to the applicant's operation, and a helipad.

Lot 1 on the subdivision plan is adjacent to Gorge Road, and is approximately level with the road. There is an unused barn-style building on it. Lot 2 on the subdivision lies to the rear of lot 1. There is a house on Lot 2 which is at about the same level, but from a point rear of the house, Lot 2 on the subdivision slopes down towards the south-east, and the helipad is benched into it and is approximately 3 vertical metres below the ground level of the more northern end of Lot 2. Lot 3 on the subdivision is behind Lot 2 and slopes quite steeply down towards the Shotover River. It has been developed with a building containing commercially operated hotpools and has been purchased by Onsen Holdings Limited. There is a zigzag path down to the hotpool complex immediately adjacent to the existing helipad.

Next door to these properties on the west side is an area of largely undeveloped land owned by Nugget Point Resort. On the western side of this site, some 80 metres from the helipad, there is an unoccupied house. This is the nearest dwelling to the helipad. The Nugget Point Resort itself lies to the west of this.

The land immediately to the east of the helipad is undeveloped and is a natural gully or depression. The applicant company has obtained a flight easement entitling it to access over the airspace of part of this land for the purposes of approaching and leaving the helipad.

Next to lot 1 on the subdivision, on the road frontage is a property operated as Gantleys Restaurant, which comprises a fully restored historic coaching inn, and extensive gardens and grounds which are used as part of the restaurant facilities for outdoor dining, weddings and other functions. There is also an attached manager's flat. To assist with understanding the physical layout of the site and its immediate surrounding area, which is important for this decision, we annex a photograph which shows the helipad and the applicant's house, the Onsen Pool Complex and access path, the undeveloped Nugget Point site, and the flight easement to which we have referred. It also shows the line of the eastern boundary of the properties. The Gantleys Restaurant is not shown in the photo but lies in the trees at the top right, to the east of the barn on lot 1 which is clearly depicted. The residence on the Nugget Point Resort land is also visible towards the upper left of the photograph, as are various other developments in the area.

The site is located in the Arthur's Point Rural Visitor Zone. We will refer to the relevant provisions of this zone later in this decision. It is sufficient at this point to record that Rural Visitor Zones have been set aside in some rural areas of the district to provide visitor accommodation and attractions in locations where the special qualities of the rural areas of the district can be experienced and appreciated by visitors. The objectives, policies and rules for Rural Visitor Zones are set out in Part 12 of the Partially Operative District Plan. Airports, which by definition include helipads, are listed as discretionary

activities in certain Rural Visitor Zones, including the Arthur's Point Rural Visitor Zone, provided they comply with zone standards.

The only zone standard of potential relevance to this application is that relating to noise. It is provided that non-residential activities are to be conducted so that between 8am and 8pm, a noise limit of 50 dBA L<sup>10</sup> is not exceeded at any point within the boundary of the zone. The standard goes on to provide that noise levels are to be measured and assessed in accordance with NZS6801:1991 and NZS6802:1991.

The difficulty with this provision is that neither of these standards relates to noise created by transportation, including noise created by helicopters. The evidence of both Mr. Neville Hegley, an acoustic consultant who gave evidence for the applicant, and Dr. Stephen Chiles, an acoustic consultant who was retained by the consent authority as a reporting consultant, is that these standards cannot be used for measuring helicopter noise. Accordingly, although the plan purports to set out a noise limit for non-residential activities, which would on the face of it would include the landing and taking off of helicopters, it has not achieved that purpose because the mandatory measuring standard is inapplicable and cannot be used. The correct standard to be applied for the measuring of noise generated by helicopters is NZS6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas. The application of this standard was supported by Dr Chiles and Mr Hegley.

It follows that there is no Zone Standard relating to noise which is of relevance, and accordingly, as the application complies with all other Zone Standards, it is to be treated as an application for a discretionary activity.

Two hundred and thirty-one submissions were received on this application, one hundred and thirty-two in support and ninety-nine in opposition. The majority of those in support were from persons living away from the area, and the majority of those in opposition were from persons residing near to the site.

Eight submissions were received after the statutory deadline. The applicant consented to admission of seven of these. Taking into account the matters set out in section 37A of the Act we extend time for their admission. The applicant opposed an extension of time for a late submission by Onsen Pools. We heard argument at the hearing, and after consideration of the applicable principles we extended time for this submission also, giving our reasons which are recorded in the minutes of the hearing and need not be repeated here.

## **B. Relevant Provisions of the Act**

As this is an application for resource consent for a discretionary activity it falls to be considered under Sections 104 and 104B of the Act. Under Section 104, we are required, subject to Part 2 of the Act, to have regard to any actual and potential effects on the environment of allowing the activity, and any relevant provisions of certain specified planning documents, the only relevant one of which is the Queenstown Lakes District Council Partially Operative District Plan. We must also have regard to any other matters which we consider relevant and reasonably necessary to determine the application.

Subsection 2 of Section 104 provides that when forming an opinion in relation to the actual and potential effects on the environment of allowing the activity, we may disregard an adverse effect of the activity on the environment if the Plan permits an activity with that effect. It has been established that this includes activities which are permitted pursuant to a resource consent which is being exercised (*Queenstown Lakes District Council v. Hawthorne Estate Limited and Bailey* CA45/05 – 14<sup>th</sup> March 2006 {Court of Appeal} – para 63):

*“We have earlier expressed our view that the ‘permitted baseline’ has in the previous decisions of this Court been limited to a comparison of the effects of the activity which is the subject of the application for resource consent with the effects of other activities that might be permitted on the subject land, whether by way of right as a permitted activity under the District Plan or whether pursuant to the grant of a resource consent. In the*

*latter case it is only the effects of activities which have been the subject of resource consent already granted that may be considered and the consent authority must decide whether or not to do so: Arrigato Investments Limited v. Auckland Regional Council at [30] and [34-35].*

The importance of this will emerge in our discussion of Section 104(2) in Part D of this decision.

All the issues which we must consider under Section 104 are expressed to be subject to the provisions contained in Part 2 of the Act. Part 2 sets out the purpose of the Act and contains other sections referring us to a number of other issues which must be considered in various ways. Again, we will deal with these issues separately, later in this decision.

Finally, having undertaken that exercise, Section 104B provides that we may grant or refuse the application, and if we grant it, impose conditions under Section 108.

### **C. History of Use of the Site**

On 27<sup>th</sup> May 1991 a company called Danes Shotover Rafts Limited applied to the Council for planning consent under the Town and Country Planning Act 1977, “to operate a helipad to load and off-load Danes clients participating in rafting trips at its new Arthurs Point base facility”. A letter accompanying the application referred to Danes having a long term lease of the building on the site which is closest to the road, the barn referred to earlier, and wishing to use a helipad shown on an accompanying plan for the stated purpose. Significantly there was no reference to using the helipad for any other purpose.

The Council declined the application but on appeal the then Planning Tribunal granted the consent, in June 1993. The Tribunal left it to the parties to agree on the terms of a formal Order incorporating conditions on a number of issues which the Tribunal had identified. It was not until the 30<sup>th</sup> of March 1998 that an Order was sealed.

Notwithstanding the stated purpose of the application, relating solely to the applicant company's clients (sic) participating in rafting trips, the sealed Order was in considerably wider terms. It is necessary to set out the terms of the sealed Order in full.

*...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 50dBA Ldn.*

*(b) The Ldn value may be averaged over any one week. The exposure on any single day should not exceed an Ldn of 53dBA.*

*(c) All flights shall be restricted to between the hours of 9am – 6pm 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 created noise effects greater than a Squirrel AS350 helicopter.*

- 2. To that extent, this appealed is allowed and the respondent's decision is cancelled.*
- 3. There is no order for payment of costs.*

Sometime after that, Danes Shotover Rafts ceased operations and the applicant company now carries on the business previously undertaken by Danes, as part of its extensive tourism related business activities. Unlike Danes, it operates several helicopters and offers a range of tourist activity packages which include combinations of rafting, jet boating, sight-seeing and visits to the Skyline facility at the top of the gondola on Bob's Peak. Consequently the use of the helipad increased considerably as tourists were conveyed to and from the areas on these "combo" trips. Significantly more take-offs and landings took place at the Arthurs Point Helipad than had been envisaged in the original consent application and the evidence led in support of it. Evidence given at the hearing in 1993 indicated that the only reason the helipad was needed was to fly rafters into rafting take-off points on the upper reaches of the Shotover River when vehicle access was impeded by inclement weather or problems with the Skippers Road.

This increase in flight numbers raised the ire of a number of local residents and in 2007 Mr Manners-Wood who lives in the area took proceedings in the Environment Court for a declaration to determine the permissible extent of use of the helipad pursuant to its existing resource consent. In its decision the Environment Court made two declarations, thus:

*"Declaration 1.*

*Resource consent RMA250/92 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 helipad for servicing other activities is not in accordance with RMA250/92 and contravenes Section 9 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 RMA250/92. 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 RMA250/92 and accordingly contravenes Section 9 RMA."*

Faced with that decision, the applicant then applied to vary condition 1 of RMA250/92 to enable the inclusion on flights of visitors participating in other activities, which include sight-seeing, rafting, and combo trips as we have related. The consent authority determined that the question of whether or not this application should be publicly notified should be referred to independent commissioners for determination.

After a hearing on 12<sup>th</sup> February 2008 Commissioners David Collins and Jane Taylor released a written decision in which they expressed the view that the consent authority did not have jurisdiction to grant consent to the application in its current form, whether notified or not, as the requested variation to condition 1 would, if made, enable a broadening of the exercise of the consent to activities which were outside the terms of the original application. It will be recalled that in its judgment on Mr Manners-Wood proceedings, the Court had determined that notwithstanding the apparent breadth of the sealed Order on the original application to the planning tribunal, nonetheless the extent of the resource consent granted was as a matter of law confined to the ambit of the resource consent sought, and could not and did not extend to a broader range of tourist activities, as might have appeared to be the position by virtue of condition 1 of the sealed Order of the Planning Tribunal. The commissioners' view was consistent with this ruling.

After considering the Commissioners' decision the applicant elected not to proceed further with the application to vary condition 1, and instead filed the present application.



It was explained to us by Mr Parker, counsel for the applicant, that this is an application for a new resource consent. This point was not completely clear from the terms of the application as it referred, variously, to being for a retrospective consent to continue the existing helicopter operations, and to being an application for a variation of the current resource consent to continue the operations that have taken place for some 14 years since the original consent was given.

Notwithstanding these unfortunate aspects of the wording of the application, however, which led a number of submitters to seek clarification from the applicant and/or us on the precise status of this application, we are satisfied that it is in substance an application for a new resource consent. No further steps have been taken on the previous variation application since the decision of the commissioners relating to its legality, and although this application could (and should) have been more clearly worded in some respects we are satisfied that it is an application for a new consent, and that read as a whole that intention is sufficiently clear from the document to allow it to be dealt with on that basis. That said, the consent sought is to use the helipad for the applicant's tourism operation on the same conditions, bar condition 1, as apply to the existing consent. These conditions are set out above.

Based on this, the applicant's position in presenting its application to us was that there were no adverse environmental effects to be considered, as the only change from the present situation to the proposed new situation would be that the people sitting in the helicopter would be engaged in a different activity from that authorized by the existing consent.

It will be observed from this that the provisions of Section 104(2), which relate to the permitted baseline and are referred to above, are therefore sharply in focus in this case.

#### **D. The Permitted Baseline**

As noted above, Section 104(2) provides that when forming an opinion for the purposes of Subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if the Plan permits an activity with that effect. Subsection (1)(a), which requires a consent authority to have regard to any actual and potential effects on the environment of allowing the activity, is thus potentially narrowed if we exercise the discretion we have under Subsection (2) to disregard any adverse effects of the activity on the environment which are permitted by the Plan.

Activities permitted by the Plan include activities which are permitted pursuant to a resource consent which is being exercised: *Queenstown Lakes District Council v Hawthorn Estates Limited and others*, CA45/05, dated 12<sup>th</sup> June 2006.(above)

This means that we may disregard identified adverse effects of the proposal now before us if those effects are already being caused by the applicant's helicopter activities, to the extent that they are lawfully carried on pursuant to its existing resource consent.

Each type of adverse effect to be considered on this application is already being caused by the applicant during the course of its existing operation. No adverse effects were identified to us which are specific to the proposal before us, which are not already being caused.

As we will describe when dealing with identified adverse effects, the applicant is carrying on its activities at a level which considerably exceeds the level of activity actually permitted under its existing resource consent, so the adverse effects presently being generated (all of which are, in this case, directly proportional to the level of exercise of the consent) are considerably greater than would be the case if the consent were exercised within its required limitations. Put simply, fewer flights means less noise, less smell, less dust and a lesser risk of unsafe operations.

What, exactly, is the applicant permitted to do pursuant to its existing resource consent? Taking into account the interpretation of the consent in declarations 1 and 2 of the judgment of the Environment Court in the *Manners-Wood* case, and by reference to the Sealed Order of the Environment Court dated 30<sup>th</sup> March 1998, the applicant's present resource consent is this:

The applicant is permitted to establish and operate a helipad on the subject site on the following conditions:

- 1) Helicopter usage of the helipad is limited to the purpose of loading and unloading a rafting operators clients participating in rafting trips. It may not be used to service the wider range of activities presented to the Court by the applicant in the *Manners-Wood* proceeding.
- 2) The following noise controls apply to the operation of helicopters as permitted:
  - (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 an Ldn of 53 dBA.
  - (c) All flights are restricted to between the hours of 9am – 6pm each day.
  - (d) The flight paths to and from the helipad are to be generally in accordance with the flight track submitted to the Planning Tribunal's hearing of the appeal, in 1993, copies of which were to be lodged with and held by the QLDC.
  - (e) Measurements are to be carried out in accordance with the requirements of NZS6801:1991 – measurements of sound.
  - (f) The operator is to keep a log of flights from the helipad. This log is to be made available to the Council if requested.
  - (g) The helipad is not to be used for any helicopter creating noise effects

greater than a Squirrel AS350 helicopter.

By the proposal before us the applicants initially sought a resource consent on exactly the same terms, subject only to deletion of the limitations imposed by clause (1) above, namely the limited purpose for which the helipad could be used. It seeks consent for use of the helipad for all its tourism activities, which the Environment Court expressly decided was not the case under the existing consent. Significantly, the applicant does not seek to vary the noise limitations or administrative limitations imposed upon it by the conditions we have listed in paragraph (2). Towards the end of the hearing the applicant submitted an amended set of conditions to which, apart from one matter with which we will deal now, we will return later in this decision.

At the hearing we expressly inquired of the applicant whether it intended to relinquish its existing resource consent if it were granted the consent it now seeks. Both Mr Parker, the applicant's counsel, and Mr Quickfall director of the applicant company, confirmed that it would. In the set of draft conditions put before us by the applicant, draft condition (1) provides that the cumulative noise generated by all helicopters using the site, as measured at the notional boundary of any existing dwelling, excluding the dwelling on the site, shall not exceed a level of 50dBA Ldn. It was explained to us that this was supposed to signify that flights carried on pursuant to the consent now sought would not be in addition to flights carried on pursuant to the existing consent; rather, the stated limitation would apply to all flights whether carried on pursuant to one consent or the other. We will discuss this issue further, below.

On our analysis of the case before us, the differences between this application, and the present consent (as distinct from the present exercise of the consent) are these:

- (1) The helipad would be used for a broader range of tourist activities carried on by the applicant, rather than just rafting trips.
- (2) Assessment of helicopter noise would be conducted in accordance with

NZS6807:1994 and measurements would be carried out in accordance with the requirements of NZS6801:2008.

- (3) The flight paths to be used by helicopters operating from the helipad would be in accordance with flight tracks as submitted with this application.
- (4) There would be no reference to the use of the helipad being prohibited for any helicopter creating noise affects greater than a Squirrel AS350 helicopter.
- (5) The operations would be carried out pursuant to a Noise Management Plan. We will discuss the applicant's proposals for this plan later in this decision, but note that it would cover such matters as flight tracks, idling times, helicopter types, number of allowable flights, information to be recorded in the flight log, certain methodology in relation to noise measurements, and liaison and complaint procedures.

Of these differences, only the second, the third and fourth have the potential to create different environmental effects from those of the present operation. The first cannot: there is no different effect on the environment if a passenger in a helicopter is going to or from a rafting trip, or just, for example, sight-seeing. The fifth is a proposed difference in the way the applicant's operations are defined, monitored and enforced.

The second difference, relating to measurements of sound, will not in our opinion, and of itself, make any material difference in terms of environmental effects. The maximum permitted noise levels would remain the same. The condition on the present consent refers to a noise standard which does not in fact apply to helicopters, but was uplifted from the District Plan, presumably without that point being noticed. The standards which are now proposed as reference points are the correct and current standards for helicopter flight operations.

Removal of the limitation on use of the helipad by any helicopter noisier than a Squirrel AS350 could potentially have the effect of creating a more significant adverse effect on the environment by way of additional noise. That is highly unlikely to be the case, however, because the actual noise level limitations would remain the same as those in the existing consent. In any event, and with all due respect to the Court which approved the condition, it is a problematic limitation in any event. There are a number of models of Squirrel AS350 helicopters, which have different theoretical sound outputs, so the condition lacks clarity. Further, it serves little by way of a useful purpose because noise outputs depend on a number of other factors including loading and the way the machine is flown. Therefore we think that removing this limitation from any new consent will make no difference to the adverse effects of the operation on the environment.

The proposed flight paths between the helipad and the locations of the points at which the applicant wishes to off-load or pick-up passengers are, with the exception only of the final approach and initial take-off paths, outside the jurisdiction of the consent authority (we will discuss the decision in the *Dome* case below). Under the existing consent there are no detailed flight paths for the initial take-off and final descent tracks. Under the proposed consent, there could be. This difference is not an adverse environmental effect; potentially it could be a positive one when compared with the existing consent.

In our opinion, although we have a discretion as to whether to consider all the adverse effects of the proposal now before us, or only those over and above the adverse effects of the presently consented operation, we must in this case elect the latter course. As Mr Parker for the applicant correctly submitted, “a decision to exercise (your) power to disregard such baseline effects has to be deliberately made and in a reasoned way for the purpose for which the power is given”. Here, the proposal before us is substantially similar to the consent for the existing operation and differs from it only in the ways which we have just identified. To completely disregard the effects of the existing consent and treat this as a new application would in our view be illogical and unfair.

In considering our decision on this point, it must be borne in mind that it is only the effects of the applicant's **consented** activities which we will take as the starting point for consideration of additional adverse effects. The applicant's activities during September and October, which we will shortly canvass, manifestly exceed the level of activity that may be lawfully carried on, and we make it quite clear that this unauthorized level of activity is not the baseline against which we consider the effects of the new operation. If we do not grant this consent, the enforcement arm of the consent authority is legally bound to curtail the applicant's operations to the level lawfully permitted under its existing consent which means far fewer flights than were carried on during the period of observation presented to us in evidence.

## **E. Adverse Effects of the Proposal**

Submitters in opposition to the application identified a number of adverse effects of the applicant's present helicopter operation, which they maintained would continue if the present resource consent application is successful. Submitters in support identified positive effects related to the viability and importance to the region and the country of the tourism industry, which this consent is said to promote.

Having considered the evidence given and the views expressed to us, in our opinion there are five significant adverse effects of the applicant's operation. These are:

- The smell of fumes from the helicopters on or in the vicinity of the helipad.
- The dust created by landing and take-off procedures.
- Safety issues relating to the proximity of the helicopters to the land owned by Nugget Point, immediately next door, and to the Onsen Pool Complex on Lot 3 of the subdivision.
- The noise created by helicopters taking off, landing, idling on the

- helipad and hovering whilst awaiting a landing spot on the helipad.
- The noise of over-flying by helicopters on the way to or from the helipad in the course of the applicant's tourist operations, which we have described.

Before dealing with each of these in turn, it is necessary to give as context to the discussion the extent to which the helipad is presently being used. As we have said, the Environment Court has declared that the existing resource consent only permits the applicant to use the helipad for the purposes of rafting operations, and accordingly the maximum number of flights which can lawfully be undertaken is limited to the number of flights to and from the helipad for the purposes of rafting trips. Although we asked Mr Quickfall, the managing director of the applicant company, early in the hearing to provide us with the number of flights being undertaken which related solely to rafting trips, he did not in fact provide that information by the end of the hearing, late on the third day. Instead, he provided some other figures that we did not ask for. Nor, to our knowledge, has the information we sought ever been provided to the reporting planner, Wendy Rolls of Lakes Environmental. Thus it is not clear to us whether all the trips presently being undertaken relate solely to rafting, as they should if the consent is being lawfully exercised (in that respect), or whether the applicant is acting outside the ambit of that consent. As a comment, if all the trips the company is flying relate to rafting, as they are supposed to, it should have been a simple response to give us the present flight numbers as answering this enquiry.

We are not sitting in the capacity of an enforcement authority so we do not need to know this information for enforcement purposes. We sought it however so we could understand how many of the present trips relate to rafting, and are thus able to be exercised under the existing consent (subject to existing noise limitations), and how many trips relate to other activities and would thus be the subject of the consent now sought.

There is however another issue relating to exercise of the existing consent. As noted above, under the present consent it is a condition that 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, which may be averaged over any week. The exposure on any single day shall not exceed an Ldn of 53 dBA. According to the evidence of both Mr Hegley and Dr Chiles, measurement of the noise created by one flight movement (produced by averaging the observed noise levels of a number of flight movements) will allow a close estimate to be made of the number of flights per day and per week which can be made within these limitations. We will discuss this in more detail when considering noise as an adverse effect. For present purposes, we record that the numbers of flights are presently assessed on the evidence as between two and four per day.

We were given evidence by Mr Ian Mill the owner of the Gantleys property, of observations made of helicopter movements in and out of the site from 11<sup>th</sup> September 2008 to 20<sup>th</sup> October 2008 and recorded on a security camera mounted on the fence of the Onsen Pools building and set to observe the helipad. This covered a period of 40 days. On 12 of those days there were no flights and on 1 of the days there was a malfunction of the equipment. On 19 of the days there were 4 or more movements (a movement being an arrival, stand-by, and departure). Of those, on 4 days there were 4 movements, on 4 days there were 5 movements, on 3 days there were 6 movements, on 4 days there were 7 movements, on 2 days there were 8 movements, on 1 day there were 9 movements, and on 1 day there were 12 movements. Dr Chiles confirmed that movements in these numbers would definitely breach both the weekly average and the daily noise maxima.

No issue was taken with these figures, or Dr. Chiles' conclusion on them, by the applicant (Mr. Quickfall gave supplementary evidence in reply, but did not refer to this evidence) so for present purposes we accept them as correct.

Their importance is two-fold. First, it shows that the level of noise to which submitters are being subjected substantially exceeds the limits imposed by the applicant's existing consent. Accordingly, residents are not experiencing, at present, a level of noise

governed by the terms of that consent. This means that the noise which would be experienced if this consent were granted is not the noise which is being experienced now.

That of course presupposes the second point of relevance of this information: if the existing resource consent is not being lawfully exercised, which it is not, not to mention monitored and enforced, any new consent must be in terms which are clear and readily able to be monitored and enforced. We do not know the reason the existing consent is not being enforced but suspect it may be because it is conditional on noise limitations rather than on flight number limitations and there is no constant monitoring system in place. Whatever the reason may be, the situation is not satisfactory from the point of view of adverse submitters and one can readily understand their anguish at the applicant's operations given the very substantial excesses of those operations over and above the permitted activities, as governed by the existing resource consent.

Some submitters noted that there had been a lessening in the number of flights since the Court decision, but on the evidence before us the current condition of consent relating to noise is not being observed.

We turn now to the identified adverse effects.

**a) Fumes**

A number of submitters complained of the smell of jet fuel from the applicant's operations. In some cases this is regarded as being unpleasant and in more extreme cases it is said to have caused headaches and other adverse effects on health. We smelt jet fuel ourselves at our site inspection. That morning a light breeze was blowing and the smell was not particularly strong, downwind of the helipad, nor discernable at all upwind of it. We were told that on still days the smell can be very strong on neighbouring properties. The applicant was unable to offer any technical explanation as to why there is a smell of this kind but we are aware that it is not uncommon in the presence of helicopters during the idling phase. This adverse effect can be mitigated by requiring best engineering practice to minimize it.

**b) Dust**

We heard evidence that significant quantities of dust are created by the take-off and landing procedures of the applicant, though Mr Quickfall maintained that this only occurred because of excavations by Onsen Pools which have exposed dusty un-grassed areas which were whipped up into dust clouds by the landing and take-off procedures. The helipad itself is grassed and some submitters said the dust comes from the grassed area and has not only been evident since the Onsen site works were undertaken. Mr Quickfall pointed out that it is in the operator's best interest to ensure that there is no dust created by its helicopters as this can be sucked into the machinery and cause damage. Nonetheless, nothing has been done to lessen or prevent this problem.

**c) Safety**

We have described and annexed a photograph showing the proximity of the Onsen Pools complex, and the walkway to it, to the helipad. The applicant said it is not allowed to over-fly the Onsen Pools complex or the access track so has obtained an easement over the next door property as we have described. We understand, without any verification having been put before us, that use of this flight path will comply with Civil Aviation Authority requirements.

One submitter, Mr. D. B. Sampson, described to us how close the applicant's helicopters fly to his nearby property, which he said was well under the Civil Aviation Authority minimum flying height of 500 feet above the ground, within 150 horizontal metres, and was a disruption in terms of noise, invasion of privacy and safety. He produced photographs showing this.

The applicant said that the trees which are beneath the easement area are to be felled which will enable a lower flight approach to the helipad from the south-east, and also provide an opportunity for a rotation descent in the event of an emergency during a landing or take-off procedure. No explanation was given for the proximity of the flight photographed by Mr. Sampson.

There was insufficient evidence before us on technical aspects of safety for us to reach any conclusion on whether or not the applicant's operations at this helipad are safe. For example, neither the applicant nor any submitters called an aviation expert to assist us with these issues. The evidence showed that the CAA does not allow the applicant company to fly over the Onsen Pool Complex or any other buildings during the landing or take-off stages, and that it is required to maintain a minimum altitude of 500 feet over clear ground and 1000 feet over built up areas, except during the course of landing or take-off. We think we are entitled to assume that the CAA will be made aware of the applicant's intended flight path into and out of the helipad, namely over the easement area and that it will not permit it to fly unless it meets required safety standards.

**d. Noise- Landing, idling, taking off and over-flying**

Many of the submitters who appeared before us, and many others who made written submissions only, raised serious concerns about the noise, in particular, and to a lesser extent the invasion of privacy, caused by over-flying. As we explained at the hearing, this is not a matter of which we have any jurisdiction, for the following reasons.

Ordinarily, an adverse effect of an activity carried out on land, which is experienced elsewhere, is nonetheless an adverse effect of the activity which can be taken into account when considering an application for a resource consent for that activity. In the case of over-flying of residences by helicopters flying to or from a helipad, this is not the case. This has been decided by the Environment Court in *The Dome Valley District Residents' Society Incorporated and Skywork Helicopters Limited v. Rodney District Council*, Decision A099/2007 Dated 14<sup>th</sup> December 2007. In that case the Court was called upon to determine whether the adverse effects of over-flying by helicopters could be taken into account on a resource consent application. At paragraph 69 the Court said:

*"So, reading Section 104(1) in its context, we infer that the scope of effects of allowing a helicopter base activity to which consent authorities are to have regard includes the noise of helicopters in the course of landing at the base, on the ground, and in the course*

*of departing from the base; but is not intended to extend to effects generated by helicopters (or other aircraft) while airborne or in flight. That is our understanding of how Section 104(1) applies to Skywork's application."*

There is an obvious difficulty in applying that mandate in practice: when is a machine in the course of landing or in the course of departing from the base? No expert evidence was given to us on this point, nor were we referred to any decisions of the Court where the matter had been discussed or decided. It may be that there is no definitive answer and that practical considerations will dictate the answer in any given case. That of course is of little assistance when considering the adverse effects of noise in a case such as this.

Two suggestions were made to us in evidence. Dr Chiles suggested that we should consider a landing as having commenced, and a take-off as having been completed, when the machine is at a point when its noise registers at 50dBA at the nearest dwelling, that being the noise standard in NZS6807. One submitter pointed to the fact that as helicopters were not allowed to over-fly at below 500 feet, descending below that altitude (or climbing to it) were therefore necessarily a landing and take-off procedure respectively. Both these suggestions appear to have merit, as well as difficulties in application. The latter is preferable to the former, in our view. In the end though we do not think we need to decide the point. If the applicant is over-flying at an altitude permitted by the CAA (as noted above) any noise thereby created is outside our jurisdiction. If it is over-flying below those altitudes that is a matter to be taken up with the CAA, as it may constitute a breach of relevant regulations (there was evidence, including photographic evidence, that that is the case but we are not concerned with it on this application, beyond taking it into account when considering conditions of consent, if consent is granted).

The evidence demonstrated that the adverse noise effects generated by the landing and take-off procedures apply only for a few seconds either side of touch-down. Whilst the noise levels experienced for those periods are extremely high and, as isolated events, are without question significantly adverse, and whilst they can be heard as identifiable noise

events by many submitters living quite some distance away (perhaps up to 1.5 kilometres), we do not think we need to define a precise cut-off point between those noise effects and over-flying. This is because the adverse noise effects of landing and take-off, and to a lesser extent idling, are such that if they cannot be appropriately controlled or mitigated by the imposition of enforceable conditions, resource consent should be declined.

We think it would be inappropriate to impose a condition that related to noise generated below a certain height above ground level, as enforcement would involve factual correlation between altitude measured in the helicopter, and contemporaneous measurement of noise on the ground, and that would be particularly difficult to enforce. Noise level recordings produced to us in reports and evidence showed that measurements can be taken which relate to these taking off, idling and landing movements without a precisely defined cut-off point, and therefore it is possible to devise conditions based on such recordings that confine the limits of noise exposure on any given day, and over a period, to levels which are within the applicable standards and are acceptable.

Because the activities of the applicant on this site have been the subject of numerous complaints from nearby residents over recent years the noise created by the applicant's operations has been the subject of scrutiny from the consent authority's enforcement arm. With the officer's report, we were given three reports commissioned by Lakes Environmental Ltd and its predecessor from Mr Vern Goodwin on the noise created by the applicant's operations, dated 28<sup>th</sup> February 2007, 20<sup>th</sup> December 2007 and 27<sup>th</sup> June 2008. The reports are lengthy and it would add unduly to the length of this decision if we were to summarize all the findings made by Mr Goodwin in detail. Rather we deal with the relevant findings, and particularly the more recent.

For the purposes of preparing these reports, Mr Goodwin conducted tests to establish the noise created by the applicant in accordance with NZS6807:1994 which he said was, at the time he conducted these measurements, the appropriate standard to apply to helicopter landing and take-off manoeuvres. The standard is described as "noise

management and land-use planning for helicopter areas". As its date indicates, this standard was not in existence at the time of the 1993 hearing in front of the Planning Tribunal and, given the terms of the conditions ultimately attached to that consent in 1998, does not appear to have been brought to the attention of those involved at that time. Nor is the standard referred to in the District Plan. Nonetheless it is the appropriate standard to be applied for assessment of noise effects, not only as indicated in the reports of Mr Goodwin, but also on the evidence of Dr Chiles and Mr Hegley.

The standard recommends a maximum noise level of 50dBA Ldn at the notional boundary of the nearest residential unit not on the subject site. The notional boundary is 20 metres from that residence. Noise emissions are to be averaged over a week and assessed against the 50dBA Ldn maximum. A daily maximum of 53 dBA is also imposed.

Although the applicant uses "Squirrel" helicopters, it owns and operates a number of different models within the Squirrel range and all have a propensity to emit different levels of noise. Further, it was clear on the evidence that noise can be increased or decreased considerably depending on the way a helicopter is flown. For these reasons noise recording over a period is necessary if average noise emission is to be established with a statistical degree of accuracy.

Mr Goodwin's February 2007 report was based on data captured on a site visit on 19<sup>th</sup> January when sound levels were recorded without the knowledge of the pilots of the helicopters concerned. Four flights were observed, each flight representing a landing, idling, and take-off manoeuvre, though the first landing was not recorded on the sound monitoring equipment. From the data gathered Mr Goodwin found that an Ldn dBA of 52.7 was recorded, and he modelled a level of 52.9 for the four manoeuvres by extrapolating an additional landing. In either event this was just inside the daily limit of 53dBA. On the basis of this information, derived from two AS355 F1 type Squirrel helicopters, Mr Goodwin reported that if only those helicopters were used during the week, 32 flights would fill the available noise allocation for a week. In this report Mr.

Goodwin was using the term “flight” as one movement – that is to say a landing, or a take-off. As most of the evidence dealt with a landing, idling and take-off as one unit, we prefer to do so in this decision and therefore translate Mr Goodwin’s report to mean that there could be 16 such operations in a week, with 2 such operations having virtually reached the permitted daily sound level of 53dBA.

Mr Goodwin went on to recommend that a barrier fence be erected on the boundary with Nugget Point Resort on the basis that in his view this would decrease the sound received at the notional boundary point at which readings were being taken.

By the time the second report was prepared on 20<sup>th</sup> December 2007, recording sound checks made on 18<sup>th</sup> and 19<sup>th</sup> October 2007, a fence had been built. It was noted that the fence made no significant difference to the level of noise emitted by helicopter arrivals but Mr Goodwin said it did decrease received noise from departures, and idling. It will be recalled that the helipad is about 3 metres below the surrounding ground level. In relation to departure noise the reduction in recorded noise resulted from a reduced duration of the maximum impact of the noise while the helicopter was “hidden” as it were, behind the fence the fence. In relation to idling, the helicopter was behind the fence throughout, so the sound of this part of the operation was masked.

For this report, sounds were recorded from as AS355 F1 helicopter, as before, and also an AS350 Super D helicopter. The result of Mr Goodwin’s tests were, subject to his expressing limited confidence due to the small range of samples received, that subject to verification from a larger data set, every two flights of a Super D aircraft is equal to one flight of an AS355 at this helipad, with the noise barrier in place.

Further monitoring was undertaken without notice to the applicant company on 25<sup>th</sup> May 2008. This time the original measuring site was used plus an additional measuring site 20 metres from the staff accommodation unit attached to Gantleys Restaurant. This site is 102 metres from the helipad, whereas the original site on the Nugget Point land is 82 metres from the helipad. Earlier Mr Goodwin had expressed the view that this difference



in distance would make a significant difference to recorded noise levels. This time, 6 helicopter movements (in/idle/out) were recorded. At Nugget Point the sound level recorded was 54.7 Ldn dBA and at Gantleys 54.8. Both levels exceeded the maximum daily limit of 53dBA, (though technically that maximum only applied to the Nugget Point site as that is the notional boundary of the nearest dwelling). One aircraft was an AS355 F1 and the other was an AS350 Super D. In his report Mr Goodwin said:

*“These measurements of helicopters carrying full passenger loads in non-windy conditions and made without knowledge of the pilots can be considered as fairly representative of normal flight operations and sound exposure levels for use of the Arthurs Point landing area operated by Totally Tourism Ltd”.*

Mr Goodwin went on to express the view that *“my tentative conclusion that the fence reduced departure noise has been revised with the benefit of additional data, and the fence has unobvious effect on either arrival or departure noise.* However, he said that the fence is an effective barrier to idling noise.

Mr Goodwin then went on to produce a table giving comparative figures for the two types of aircraft. This time, the table showed flight numbers (in/idle/out) rather than separate numbers for “in” and “out” as in his earlier report. Based on the sound recordings he had made, Mr Goodwin said:

*“Table 2 shows that the maximum number of flights daily within consent noise limits is either four AS355 type flights or three AS350 Super D model flights. Limited combinations are possible within the maximum daily limit within any seven days and the overall rolling seven day limits.”*

The table also showed that the weekly limit would be 14 flights of the AS355 F1 or 13 flights of the AS350 BA Super D.

Mr Goodwin commented that observation of flight operations over the period of preparing all his reports showed a relatively high consistency in approach and departure profiles but a significant variation in final flight manoeuvres immediately prior to set-down, which could make a significant difference to the sound level received on the ground. We mention this because, as we have already recorded, the applicant intends to use a very specific approach line to the helipad, once the trees on the easement area have been removed, which it believes will minimize received noise. We cannot speculate on whether it will or not, but observe that the proposed path appears to be about 20 metres, or thereabouts, closer to the Gantleys land than a path directly in over the Onsen Pool Complex would be, and that is a factor which appears likely to affect noise levels received at that site. However the measurement of noise is too complex a procedure to speculate; the significance of this will nonetheless emerge later in this decision.

The final point to note from Mr Goodwin's reports is that the longer the duration of the flight manoeuvres in question, the greater sound exposure, so reducing to a minimum the time spent hovering will reduce the level of received sound.

Before leaving the reports of Mr Goodwin, it is important to refer again to how significantly the permitted number of flights calculated by him differs from the number of flights undertaken, as recorded on the camera at Onsen Pools. Earlier we have referred to the number of flights recorded on certain days, which exceeded the daily noise allowance. The excessive number of movements in a week is also evident. Between 25<sup>th</sup> September and 1st October, inclusive, a period of 7 days, there were flights on 5 days amounting to 72 in/idle/out movements against the weekly limit of either 13 or 14 flights depending on which helicopter was used – over 5 times the permissible limit. In the period of 7 days from 11<sup>th</sup> September to 17<sup>th</sup> September inclusive, 102 movements were recorded, despite the recording equipment having been out of service for half a day. That is over 7 times the permitted maximum. The relevance of these statistics to the question of whether a condition can safely be imposed on any resource consent granted, which involves the applicant self-monitoring flight numbers in order to comply with noise level limits, is self-evident.

Notwithstanding this, in paragraph 3.5 of his evidence, Mr Hegley said “I believe the only acoustic issue is the number of helicopters that may be flown to ensure compliance with the requirements of the Helicopter Standard. Even this issue should not cause any significant concern to Council, as their (*sic*) only concern should be if the activity would comply with 50dBA Ldn. The number of flights is an operator/management issue”. We agree that this should be the case, but either management has not grasped the issue, or it has grasped it but has chosen to ignore it.

Mr Hegley told us that he had been advised that both Mr Goodwin and Dr Chiles, who generally agreed with Mr Goodwin’s figures, had measured helicopters which were being flown without any specific attention to noise control. He told us that it is proposed to fly “in a different manner to that tested”. He said that Mr Quickfall had told him that it would be practical to alter the flight path as recently measured so the existing screen fence would remain effective for at least the majority of the take-off and landing. This, he said, would significantly reduce the noise exposure at the closest notional boundary. He said that Mr Goodwin’s report showed that the fence had been measured to reduce the noise by 8dBA while it screened the helicopter, so “in general terms, approaching and departing so the screen fence is effective will reduce the noise measurements undertaken by Council to date by typically 8 dBA”.

With respect to Mr Hegley that is not what Mr Goodwin said. We have set it out above. His initial conclusion was that it made up to 7 dBA difference on departure, and no difference to noise measured from arrivals. On further data becoming available he said it made no difference on departure. However, based on his interpretation of Mr Goodwin’s report, Mr Hegley suggested that further conditions should be included on any resource consent granted, “that would guarantee the correct procedures are followed to control the noise”. He said these conditions would also satisfy the requirements of Section 16 of the Resource Management Act.

The difficulty is that there has not been any actual testing of noise under changed flight methods. Nor, of course, could there have been by the time of the hearing, as the easement had only just been negotiated and none of the intended tree felling had been undertaken, so changed flight paths and near-ground flight techniques had not been tested on site.

Mr Hegley went on to state that it is practical to use a flight track that would optimize the screening effect of the fence to the closest neighbour and hence would reduce the noise exposure of individual flights. By doing this, and using helicopters which are slightly quieter than the AS350, he said it would be practical for a number of flights greater than are suggested in the reports of Mr Goodwin and Dr Chiles to take place within the daily and weekly noise limits. Thus he recommended imposing a condition requiring a noise management plan which would settle the type of helicopters to be used and establish a number of flights to ensure that the 50dBA Ldn level would be complied with at all times. Further, he recommended that the applicant ensure that all pilots fly in accordance with the "I Fly Neighbourly Guidelines" which recommends certain flying techniques designed and proved to reduce noise emission.

Mr Hegley referred to Dr Chiles' recommendation that 10 operation cycles should be tested for each type of helicopter in order to establish the sound levels produced by each. Mr Hegley thought that was unnecessary as the noise for each type of helicopter would be similar if the pilot was aware of the noise controls. He said that a much greater influence would be the introduction of a noise management plan and the "I Fly Neighbourly Guidelines".

Mr Hegley went on to suggest a suite of conditions which should be attached to a resource consent. We will return to discussion of this issue later in this decision.

As a final comment on Mr Hegley's report at this point, we note that in his part 6 he took issue with an observation of Ms Rolls', which is at page 16 of her planner's report, in relation to helicopter noise drowning out conversation. Ms Rolls had pointed out that Mr

Goodwin's measurements show peak noise levels at landing between 80 and 85dBA, during idling between 60 and 67dBA and during take-off between 75 and 90dBA. She then said at over 65dBA conversation would be completely drowned out, and over 55dBA normal conversation is substantially affected, so concluded that at both the dwellings at which measurements were taken for Mr. Goodwin's final report, every landing and take-off will drown out conversation.

Mr Hegley said at 6.3 "this suggests the noise would be very high and this is not the case. As a guide, if you stand on the side of the road (such as Frankton Road) the average traffic noise is exposure over the 24 hour period is around 65 – 68dBA. This level of noise does not prohibit conversation". That may well be the position over a 24 hour period but Ms Rolls was talking about isolated noise events. It is not clear to us why this apparently inapplicable comparison was drawn.

## **F. Discussion of Effects**

We consider the adverse effects which have been identified to be very significant. Perhaps at the lower end of the scale, but by no means insignificant, are the dust and fumes accompanying the applicant's operation. Although the helipad is in a Rural Visitor Zone, as we will discuss in more detail shortly, it is anticipated that people will be present in the zone possibly in significant numbers. Some will live there, some will stay there. If resource consent is to be granted these adverse effects must be avoided or mitigated.

Turning to noise, this is in our view a very significant adverse effect of this operation. Put simply, helicopters are very noisy machines. Equally, they are an integral part of many tourism operations including those of the applicant. Tourism is a very significant industry in this region. If tourism activities based on the use of helicopters are to be carried out and remain viable provision must be made for them to take-off and land in places where they are needed. A level of acceptance of this is required on the part of the community. That level should be determined on professional advice, and in accordance with accepted New Zealand standards. Here, that has been done. Mitigation of the

potentially substantial effects of the noise from a helipad can be achieved by flying techniques, appropriate close in flight paths, appropriate selection of helicopters and strict adherence to maximum noise levels set on resource consents. We will return to these matters later.

Although, as we have related, we had a good deal of evidence before us about recorded noise levels to date, there are in our view a number of factors which could in the future alter the noise levels received at the nearest dwelling, as assessed in accordance with NZS6807. First, Mr Walters of Nugget Point told us that the empty dwelling on his company's site, which is presently the nearest dwelling, is to be demolished, and on the vacant land adjacent to the helipad site his company intends to build a tourist accommodation block right up to the boundary with the applicant's site. This will mean that the nearest dwelling is the Gantley's staff accommodation unit. It will also mean that there is a hard surface on the boundary, to an unknown height, which may deflect sound from the applicant's operations towards the Gantley's property.

Secondly, felling of the trees in the easement area will enable the applicant to settle on a final approach and initial departure path which, it is predicted, will have a bearing on noise levels received at the nearest dwelling (wherever that may be). Whilst this may lower the flight path so the fence is more effective in decreasing noise received at the Nugget Point dwelling, we have already noted that the proposed flight path appears to be some 20 metres closer to Gantleys than a direct fly-in over the Onsen Pool Site would have been.

Thirdly, Mr Quickfall told us he intends to investigate the effect of building an acoustic fence on the Gantley's boundary. We are not sure whether his property and Gantleys share a boundary, and whether this is possible, nor do we have any notion of its likely effectiveness if built. From our observations of the area however it would appear that the Gantleys site is perhaps 3 metres or so higher than the helipad so it is conceivable that the combined effect of a 2 metre acoustic barrier and this difference of level, together with

the proposed flight paths, could be a reduction in noise received at the notional boundary with the Gantleys' dwelling.

The existence of these variables is material to our consideration of this application, as they may to some degree render the historical figures out of date.

Considered without reference to the effects of the existing operation, the adverse environmental effects of the current proposal are substantial. We have considered and expressed each of them individually. Cumulatively, they are, in our opinion, at a level at which we would decline resource consent, notwithstanding the fact that the operation of a helipad is a discretionary activity within the Rural Visitor Zone, and the significant positive effects of the use of helicopters for tourism activities.

However, this is not a greenfields application, and for reasons given we have found that it is appropriate to consider only the extent of the adverse effects which exceed the adverse effects of the existing operation (when lawfully carried out). Those adverse effects, to the extent that they can be identified to exist at all, must be classified as minor.

## **G. The QLDC Partially Operative District Plan**

The helipad is located in the Rural Visitor Zone. As recorded above this is an application for a discretionary activity. Part 12.5.2 sets out certain assessment matters, and in relation to the Airports as a discretionary activity, it requires assessment of the extent to which noise from aircraft:

- i) Will be compatible with the character of the surrounding area.
- ii) Will adversely affect the present use and enjoyment of the surrounding environment by residents and visitors.
- iii) Will adversely affect the quality of the experience of people partaking in recreational and other activities.

The only other assessment matter of relevance is the frequency and type of aircraft activities.

It will be noted that references are made to the surrounding area and the surrounding environment, as distinct from the zone in which it is located. This part of the Arthurs Point area is very different, now, from the way it was in 1993 when the use of this helipad first came before the Council and the Planning Tribunal. Then, the only tourist activities of significance in the immediate vicinity of the helipad were the Danes Rafting Barn, which was the applicant for the consent, the “Cattledrome” visitor experience further to the east, Gantleys Restaurant, Nugget Point Resort and the Coronet Peak Hotel over the road. The area now known as the Rural Visitor Zone was in its infancy.

Further, and of greater significance, the residential settlement of Arthurs Point was principally confined to the slopes lying on the western side of the Shotover River, in the general vicinity of the Edith Cavell Bridge. There were isolated residences between the bridge and the subject site. However, it was not until the last few years that the land between the old Arthurs Point settlement and the Rural Visitor Zone has been intensively developed for residential purposes and built on. At the time the original consent was applied for, the view from Nugget Point back towards Queenstown was across empty paddocks to the Arthurs Point settlement on the hill across the river. Now all of those paddocks are developed. The residential area of Arthurs Point has been developed across the terraces above the river as far as the Rural Visitor Zone, and within a few hundred metres of the helipad.

Further, the Rural Visitor Zone itself has become substantially more built up with extensions to the Crown Plaza Hotel and a number of other new buildings including a large accommodation block. As noted earlier, other developments are on the drawing board.



The combined effect of all these matters is that there is a far greater number of people in close proximity to the helipad than was the case in 1993. Although we acknowledge that those who come to an existing operation must be more prepared to endure its adverse effects than those who have the effects imposed on them by an operation established later, nonetheless the surrounding area and the surrounding environment, as referred to in the assessment matters, are manifestly different from the way they were when helicopters first flew to this helipad.

The character of the surrounding area, now, is one of visitor accommodation and visitor attractions in the immediate vicinity of the site and a substantial residential area lying to the west/south-west.

In our opinion, notwithstanding the classification of a helipad as a discretionary use in the Rural Visitor Zone, it is not compatible with the character of the surrounding area as it now exists. In our view, the relationship of this Rural Visitor area with the surrounding rural area has been diminished to a degree by the encroachment of residential areas. The purpose of Rural Visitor Zones is stated to be “to complement the existing range of visitor accommodation opportunities in the district and provide for increased opportunity for people to experience the rural character, heritage and amenity of the rural area”. Once, that certainly applied to this zone. Now, that is less so, though there remain substantial elements of rural character and amenity to the north, west and south of the zone.

The applicant’s proposal would adversely affect the present use and enjoyment of the surrounding environment by residents and visitors, as the applicant’s present operation does. It follows therefore that the assessment matters to which we have referred do not support the applicant’s proposal.

There is one objective of relevance, namely provision for the ongoing operation of the existing visitor areas recognizing their operational needs and avoiding, remedying or

mitigating adverse effects on landscape, water quality and natural values. Scope for extension of activities in the Rural Visitor Zones.(sic).

Ms Rolls reported that in her view the application is in accordance with this objective, and we agree.

Policy 1, in support of this objective, is to recognize the existing and proposed visitor and recreation facilities in the rural visitor area and to provide for their continued operation and expansion. Clearly this application is consistent with this policy.

Policy 2 is to ensure development, existing and new, has regard to the landscape values which surround all the rural visitor areas. In our view, noise has the potential to adversely affect the landscape values of this area but it is not proposed by the applicant to increase the use of the helipad by this application so this policy is of limited relevance. We will deal with issues of the existing consent when discussing the permitted base line in the next part of this decision. No other policies are relevant to this application.

## **H. Part 2 of the Act**

Our consideration of the effects on the environment of allowing the proposed activity, and the relevant provisions of certain statutory planning documents, together with any other matters which we consider relevant and reasonably necessary to determine the application, are subject to Part 2 of the Act. Part 2 comprises Sections 5 to 8 inclusive. Section 5 sets out the purpose of the Act – to promote the sustainable management of natural and physical resources. Sustainable management is defined to mean managing the use, development and protection of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and b) safe-guarding the life supporting capacity of air, water, soil and eco-systems; and c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

Promoting the sustainable management of natural and physical resources is the key duty upon us, and all other issues, including the remaining sections of Part 2, must be considered subject to this mandate.

Section 6 sets out certain matters of national importance, which we are to recognize and provide for. None of them is specifically relevant to the application before us. Section 7 sets out a range of other matters to which we are directed to have particular regard. Again, in our view, none of these is directly relevant to the application before us, save for the maintenance and enhancement of the quality of the environment. Viewed as an application without regard to the existing consent, we do not consider that this proposal would maintain the quality of the environment, and it certainly would not enhance it. However, for reasons given, that is not the way we consider that we must view it.

No issues of relevance were raised under Section 8, relating to the principles of the Treaty of Waitangi.

We return therefore to the purpose of the Act. Much has been written in numerous decisions from the Environment Court and commissioners on the qualities of the environment in the region, and the opportunities it present for recreation, sporting and other exciting activities, and the appreciation of natural beauty. The applicant, along with many other companies, is engaged in a business designed to facilitate participation in adventure sports and sight-seeing. To the extent that its activities create adverse effects, they must either be prohibited or controlled in such a way that they are kept to an acceptable level. In our opinion the adverse effects of the applicant's use of the helipad can be managed and mitigated in a way which will enable the use of the helipad as requested but governed by the imposition of clear, realistic and enforceable conditions which appropriately govern the applicant's activities to a level which is acceptable to the community, whilst permitting the applicant to operate its business on a sound commercial footing and thereby contribute to the economic welfare of the region through its contribution to the tourism economy.

## **I. Outcome**

Taking all matters into account, as discussed in this decision, we grant a resource consent to the applicant to use the existing helipad on Lot 2 of a subdivision of Lot 2 DP20925 Block XIX Shotover Survey District, in Gorge Road, Arthurs Point, Queenstown, to fly visitors by helicopter who are participating in sight-seeing, rafting and other trips involving a combination of tourist activities. We do so on conditions imposed pursuant to Section 108 of the Resource Management Act as listed in the schedule. An explanation for these proposed conditions is contained in the next part of this decision.

We have referred to a number of issues on which steps are yet to be taken by the applicant, including work on the easement area to remove trees, and the consequent settling of the most appropriate approach and departure tracks in order to minimize noise, as well as some testing and assessment on the possible effects of building a fence on the boundary with Gantleys Restaurant. These are matters that may result in less or more noise being experienced at the boundary of the present nearest residence, and at the Gantleys accommodation (which may at some point become the nearest residence if the present one is demolished as intended) It is not in our opinion safe to act on the possible effects on recorded noise that the steps proposed (flight path alteration) and to be investigated (fence on Gantley's boundary) by the applicant may have. In this respect we need only refer to the earlier expectations of Mr. Goodwin in relation to the effect of building a fence on the Nugget Point boundary, which, whilst no doubt well thought out in advance, proved to be wrong. We note, too, that the evidence fell short of establishing or even predicting what the effect on noise at Gantleys will be when the flight path is moved further east, over the easement area.

To that mix of actions with uncertain effects must be added the expressed intention of Nugget Point to build a new accommodation block on the boundary with the subject site. That would block the clear path for sound to the present nearest house on the Nugget Point site, even if it were not demolished as intended, and in our view, may also act as a

reflecting surface to direct sound to the Gantleys site. The effect of this on noise received at the accommodation on that site, which may then be the nearest, is completely unknown.

We have therefore considered whether we should call for more evidence on measured sound after the above steps are taken, and delay our decision until we have that material. The alternative to proceeding this way is to issue a final decision now, and impose conditions limiting flight numbers that reflect the evidence of noise output which we presently have. The applicant and Mr Hegley speculated that the intended changes in flight path to and from the helipad may result in less noise recorded at the present nearest house, thereby allowing more flights within the noise limitations which they accepted should be applied. They were, however, only speculating, no doubt with professional expertise in Mr. Hegley's case, as it is not possible to take measurements in circumstances which do not exist.

Our decision, as explained in the next part of this decision, is to set maximum flight number as a condition of the consent, rather than requiring a management plan to be prepared containing that information, which means that there could be a need for the applicant to apply to vary the condition some time after the grant if the new steps taken do reduce the noise of flights and could allow more flights per day and week. Conversely, it could result in the consent authority having to serve notice of a review of conditions also, if the result of the changes proposed, coupled with demolition of the Nugget Point house, is to increase noise received at the (then) nearest dwelling at Gantleys. It would in some respects be preferable to defer a final decision on this application until the results of all the above described actions have been assessed. We think it preferable not to delay an outcome. There is no certainty when the applicant will be in a position to re-assess noise levels as a result of the actions it referred to, and in any event the actions predicated by Nugget Point, which are outside the control of the applicant, may also have an effect necessitating the re-visiting of the conditions, and there is no certainty when or whether they will occur. The applicant and submitters are entitled to the certainty of a decision on

the basis of matters as they presently stand. There are statutory rights to seek review of conditions if there should at some point be grounds to do so.

Finally, a number of submitters asked us to revoke the existing consent. We do not have statutory power to do so. It will be seen, however, that the new consent is in substitution for the present one, as a result of condition 1 of consent.

## **J. Explanation of conditions**

Earlier in this decision we have expressed our conclusions in relation to the applicant's present exercise of its existing resource consent. We have also set out a number of other matters which have led us to the conclusion that although we can impose conditions now on the exercise of this consent which are supported by the evidence presently to hand, pending changes in circumstances may direct that changes to the conditions are necessary or desirable. For these reasons we are imposing conditions which accord with the evidence presently before us but have included a detailed review condition to which we will shortly turn.

## **K. Conditions**

1. Exercise of this consent shall not occur until the consent holder has surrendered in whole consent RM910025 granted by the Environment Court under Decision RMA250/92, pursuant to Section 138 of the Resource Management Act, and that surrender has been accepted by written notice of acceptance by the consent authority.

### **Explanation - Condition 1.**

As noted earlier in this decision the applicant accepted that the existing resource consent would be surrendered upon the grant of this consent. It was suggested that a condition setting a cumulative noise level for all helicopters using this site would have this effect. We accept that it would, in one sense, but it would be a clumsy and unworkable way of going about it. It would be extremely difficult, if not impossible, to determine whether any given flight into and out of the helipad was pursuant to the the former consent, and subject to the conditions on it, or pursuant to and on the conditions of this consent, if both consents remain on foot. We are not prepared to set up a situation where those difficulties have any prospect of arising. Accordingly we have imposed condition 1 in terms which reflect the agreement of the applicant at the hearing. We draw the attention of both the applicant and the relevant officers of the consent authority to the obligations under Section 138 imposed on both the applicant and that authority.

2. The cumulative noise generated by all helicopters using the site as measured at the notional boundary of any dwelling (excluding the dwelling on the helipad site):
  - a) Shall not exceed a level of 50dBA Ldn, which may be averaged over any period of seven (7) consecutive days.
  - b) Shall not exceed 53dBA Ldn on any single day.

#### **Explanation - Condition 2**

This condition sets out the noise limitations applying to the consent and accords with the evidence given at the hearing.

3. Notwithstanding the limitation on cumulative noise set by condition 2, exercise of this consent shall be limited to the following maximum numbers of flights (each flight being defined as an approach, landing, idling, take-off and departure):

- (a) Per day:
- (b) Per continuous period of seven days:

Maximum daily flights		
AS 355 F1	AS 350 Super D	Total
0	3	3
1	2	3
2	2	4
3	1	4
4	0	4

Maximum weekly flights		
AS 355 F1	AS 350 Super D	Total
0	13	13
1	12	13
2	11	13
3	10	13
4	9	13
5	8	13
6	7	13
7	7	14
8	6	14
9	5	14
10	4	14
11	3	14
12	2	14
13	1	14
14	0	14

**Explanation – Condition 3**



The applicant asked that noise levels be controlled by a condition in terms of condition 2 above, and a noise management plan which would set flight numbers among other matters. However, we are most concerned that conditions on this consent should be clear and readily enforced, given the fact that the applicant has been operating well outside the limits on its present consent, indeed at several times the permitted noise output. A condition that contains noise limits in similar terms, without more, cannot be easily referenced to observable and recorded flight numbers. Given the evidence referred to, and the substantial community concern about the applicant's operations as shown in the submissions, this is not acceptable and it is appropriate to impose a clear flight number limitation that accords with the evidence before us. It is appropriate that this be recorded as a condition of the decision where it can be readily enforced if there is any breach of the limit imposed.

The numbers imposed were drawn from the evidence. After the hearing we asked Dr. Chiles to calculate, from the evidence, the flight numbers for a rolling seven day period using either of the 2 helicopters whose noise outputs were measured. The table in this condition was received from him, and was then referred to the applicant. In its response no issue was taken with the figures in the table, though the applicant alleged the figures were drawn from unreliable and contradictory readings. That is not how we find the readings to have been. We acknowledge that there may be variations between sound levels recorded for different flights due to different flying practices of pilots, but we rely on the evidence before us which is as recorded in the table. The applicant had ample opportunity to assess noise from its operations, and to lead evidence. It did so. We have accepted and relied on the reports of Mr Goodwin and the evidence of Dr. Chiles.

If changes to flight paths or other factors, to which we have referred, lead the applicant to believe that it can operate more flights within the daily and seven day noise limits in condition 2 it can apply to vary this condition under section 127, a public process which is appropriate in the circumstances of this case. Likewise the consent authority may review the conditions under section 128 in the event of the predicted changes to the physical environment nearby: see condition 13 below.

Given our view that flight numbers should be set out in this condition we do not see it as necessary to also require a flight management plan. It is for the applicant to comply with the terms we have set.

4. By the 7<sup>th</sup> of every month the consent holder shall file with the consent authority a report for the previous calendar month setting out:
  - (a) The number of flights utilizing the helipad each day and the times of landing of each flight.
  - (b) The type of helicopter used for each flight.

**Explanation – Condition 4**

This condition is imposed to assist the consent authority to monitor compliance with condition 3.

5. Assessment of helicopter noise shall be conducted in accordance with the requirements of NZS6807:1994 *Noise Management and Land Use Planning for Helicopter Landing Areas*. Measurements shall be carried out in accordance with the requirements of NZS6801:2008 *Acoustics – Measurement of Environmental Sound*.

**Explanation - Condition 5**

This condition incorporates references to the current assessment and measurement standards.

6. Subject only to any directions from the Civil Aviation Authority and operational requirements of any particular flight, including such factors as weather and wind speed and direction:

- a) All flights to the helipad shall approach the helipad over the flight easement area shown on the attached plan before turning to a generally west/north-west direction to touch down.
- b) All take-offs from the helipad shall follow the course outlined in paragraph (a) in reverse.
- c) No helicopter shall hover in a location which is below 500 feet above ground level and within 500 horizontal metres of the helipad other than momentarily in the course of a landing or take-off maneuver.
- d) Only one helicopter with its engine running shall be on the helipad at any time.

**Note:** nothing in this condition shall be interpreted as detracting from the requirement to comply with the limitations imposed by conditions 2 and 3.

**Explanation - Condition 6**

This condition embodies the evidence of the applicant on the way it intends to approach and leave the helipad in order to minimize the emission of noise from the helipad area. Although it is directive in its terms, rather than phrased permissively, by reference to a required environmental outcome, we consider it appropriate in the circumstances of this case where the fine detail of the landing and taking off operation can, on the evidence, have a profound effect on the amount of noise emitted, and the procedure set out in this condition is, on the applicant's case, the most likely to minimize noise.

- 7. The consent holder shall take all reasonably practicable steps to minimize idling time on the helipad.

**Explanation - Condition 7**

This condition reflects the view expressed in the report of Mr. Goodwin, with which no issue was taken: that the longer the idling time, the greater the noise created.

8. All flights shall be restricted to the hours of 9am to 6pm each day.

**Explanation - Condition 8**

This condition is self-explanatory and was volunteered by the applicant.

9. All helicopter operations shall be in accordance with the recommendations of the Helicopter Association International's Fly Neighbourly Guide 2007.

**Explanation - Condition 9**

This condition reflects the evidence given at the hearing and was volunteered by the applicant.

10. No part of any approach path to, or departure track from the helipad shall take a helicopter over any part of any property occupied for residential purposes. For the purposes of this condition, an approach path and a departure track are, respectively, the portion of a flight when the helicopter is lawfully flying below 500 vertical feet above surface for the purposes of landing or take-off, as permitted by CAA Rules.

**Explanation - Condition 10**

On the applicant's evidence it is not necessary for any approach path to go over any residence or residential property and this condition requires that not to occur, in order to mitigate adverse effects of noise, in particular, as well as privacy and safety.

11. The applicant shall use engineering best practice at all times in relation to every helicopter operating from the helipad to minimize the emission of fumes from unburnt aviation fuel in the vicinity of the helipad.

**Explanation - Condition 11**

This condition is intended to deal with the adverse effects of the smell of unburnt aviation fuel which is an adverse effect identified and discussed in the decision.

12. Within two (2) calendar months of exercising this resource consent the applicant shall take such steps as are necessary to ensure that all sources of dust which may be blown into the air by its helicopter operations are removed or covered so that no dust is created by landing, idling or take-off manoeuvres.

**Explanation - Condition 12**

It is appropriate that there is a condition specifically directed to ensuring that the adverse effects of dust are discontinued.

13. At any of the following times:

- (a) Within two (2) calendar months of the consent authority becoming aware of the demolition of the house located on the neighbouring property occupied by Nugget Point Resort, and
- (b) Within two (2) calendar months of the consent authority becoming aware of the erection of a wall or other structure on or adjacent to the eastern boundary of the site occupied by Nugget Point Resort neighbouring the subject site, and
- (c) Within 20 working days of each annual anniversary of this decision

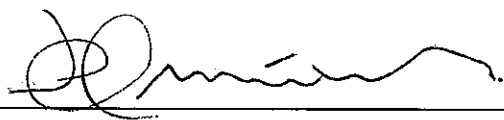
the consent authority may in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:

- i. To deal with any adverse effects on the environment that may arise from the exercise of the consent which it is appropriate to deal with at a later stage.
- ii. To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.
- iii. To avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances, or which may be more appropriately addressed as a result of a change in circumstances.

**Explanation – Condition 13**

It is appropriate to include a condition reflecting the right given to the consent authority by section 128 to review consent conditions, and particularly so because of the predicted changes to the physical environment in the immediate vicinity of the helipad, to which we have referred.

**Dated 30<sup>th</sup> November 2008.**



J. G. Matthews

Chairman on behalf of Commissioners.



QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLANS: RM 080427

30/1/08

Initials

SR



Flight Easement

Boundary Estimate