

BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH



IN THE MATTER of of an Appeal under Section
120 of the Resource
Management Act 1991

BETWEEN ✓ CLIVE MANNERS WOOD

AND ✓ KENNETH MITCHELL

AND ✓ JEFFREY JONES

AND ✓ BRENDA BATY

AND ✓ SIMON LYNN

AND ✓ LIZ LA ROCHE

AND ✓ MIKE BOYD

AND ✓ EDWARD ANTHONY
CRUIKSHANK

AND ✓ BARRY WALTERS

AND ✓ KARL JAMES MENZIES

AND ✓ WARWICK DICKER

AND ✓ ELISABETH LOUISE DICKER

AND ✓ MICHAEL CLARK

AND ✓ CRAIG FERGUSON

AND ✓ RICHARD GARDEN

AND ✓ SIMON HERBERT BEALE

AND ✓ TONY CURTIS

AND ✓ LINDA CURTIS

AND ✓ BETH FOOKES

AND ✓ ELISABET STREAT

AND ✓ CG & EL STREAT FAMILY
TRUST

AND ARTHUR'S POINT
PROTECTION SOCIETY
INCORPORATED
(yet to be formed).

Appellants

AND ✓ QUEENSTOWN LAKES
DISTRICT COUNCIL

Respondent

NOTICE OF APPEAL

ANDERSON LLOYD
LAWYERS
QUEENSTOWN

Solicitor: Vanessa Walker

Level 1,
13 Camp Street,
PO Box 201,
QUEENSTOWN 9348
Tel 03 450 0700
Fax 03 450 0799

TO: The Registrar
 Environment Court
 CHRISTCHURCH

1. Clive Manners Wood, Kenneth Mitchell, Jeffrey Jones, Brenda Baty, Simon Lynn, Liz La Roche, Mike Boyd, Edward Anthony Cruikshank, Barry Walters, Karl James Menzies, Warwick Dicker, Elisabeth Louise Dicker, Michael Clark, Craig Ferguson, Richard Garden, Simon Herbert Beale, Tony Curtis, Linda Curtis, Beth Fookes, Elisabet Streat, C G and E L Streat Family Trust ("the Submitters") and the Arthur's Point Protection Society Incorporated (collectively called "the Appellants") appeal the decision on the following matter:

RM080434 – an application by Totally Tourism Limited in relation to intended helicopter take-offs and landings from a helipad in Gorge Road, Arthurs Point ("the Application").

2. The Submitters submitted on the resource consent application and are in the process of forming an incorporated society, the Arthur's Point Protection Society Incorporated, which will be a successor to the Submitters' appeal.
3. The Submitters' received notice of the decision on 2 December 2008.
4. The decision was made by Independent Commissions JG Mathews and L Overton on behalf of the Queenstown Lakes District Council ("QLDC"), dated 30 November 2008.
5. The decision that the Appellants are appealing is the decision of the QLDC to grant resource consent for the Application.

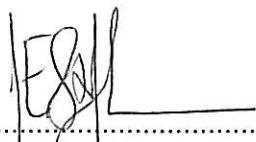
6. The land affected is located at Gorge Road, Arthurs Point, Wakatipu Basin and is legally described as Lot 2, DP20925, Block XIX, Shotover Survey District.
7. The reasons for the appeal are as follows:
 - a. The consent authority erred in exercising its discretion to disregard effects arising from the existing resource consent referred to as the "permitted base line", for the following reasons:
 - i. The case before the consent authority was not supported with cogent evidence to indicate the permitted baseline should be invoked. The consent authority found that it was appropriate to consider only the extent of the adverse effects which exceed the adverse effects of the existing operation (when lawfully carried out). The effects were not quantified; overall, the evidence fell short of establishing and predicting the true effects of the proposed activity and the existing consented activity. Accordingly, the evidence was not sufficient to allow for an adequate comparison of adverse effects under the paragraph referred to.
 - ii. The consent authority incorrectly refers to the decision *Queenstown Lakes District Council v Hawthorn Estates Limited* CA45-05 when relying on section 104(2) of the Resource Management Act 1991. The Court of Appeal in that case was considering an earlier version of Section 104 and was discussing the receiving environment.
 - iii. In exercising its discretion the consent authority failed to adequately consider the changing environment in particular, the increase in residential activity in the area compared to the time when the Consent Order for the existing operation RMA250/92 was issued.
 - iv. The application of the "permitted baseline" has the effect of overriding Part 2 of the Act.

- b. The consent authority erred in assessing the proposal as a discretionary activity rather than a non-complying activity as the proposal breaches the District Plan Zone Standard in respect of noise limits.
- c. The consent authority erred in finding that the noise standard for non-residential activities was not applicable and that the only relevant noise standard is NZS6807:1994 Noise Management and Land Use Planning for helicopter landing areas. The District Plan Zone Standard is a relevant consideration particularly in determining the monitoring points for noise limits.
- d. The consent authority erred in finding that compliance with NZS6807:1994 would sufficiently mitigate adverse effects. Neither the Standards Act 1998 or the Act gives New Zealand standards any status that would bind a consent authority to use them as a basis for deciding a resource consent application if they are not specified in the District Plan. The standards provide guidance and are not decisive. A consent authority may rely on the level set in the standard unless it is asserted, as in this case, that significant adverse effects on the environment would occur despite application of the standard.
- e. The consent authority failed to give adequate weight to the "receiving environment" when assessing the adverse effects of the proposal on the environment pursuant to Section 104 of the Act.
- f. The consent authority was correct in finding that noise levels experience from the helipad operations are "without question significantly adverse". However, the consent authority erred in finding that in this case substantial effects from noise from a helipad can be mitigated by flying techniques, appropriate closed in-flight plans, appropriate selection of helicopters and strict adherence to maximum noise levels set on resource consent. There was no conclusive evidence to support this finding. The Applicant's evidence was largely based on assumption, for example;

- i. It was acknowledge in the decision that there are a number of factors which could in the future alter noise levels and there is no certainty as to what those noise levels would be.
 - ii. The consent authority acknowledged that the Applicant was unable to offer any technical explanation as to why there is a strong smell of fumes and erred in concluding that this adverse effect can be sufficiently mitigated by requiring best engineering practices.
 - iii. It was also acknowledged in the decision that nothing has been done to lessen or prevent the dust problem. Furthermore, there was insufficient evidence before the consent authority on technical aspects of safety for the consent authority to reach any conclusion on whether or not the Applicant's operations at this heli-pad are safe.
- g. The consent authority was correct in finding that this proposal would not maintain the quality of the environment and certainly would not enhance it, however, the consent authority erred in finding that *"the adverse effects of the proposal can be managed and mitigated in a way which will enable the use of the helipad as requested but governed the imposition of clear, realistic and enforceable conditions which appropriately govern the Applicant's activities to a level which is acceptable to the community..."*.
- h. The consent authority erred in failing to reflect in the conditions its findings in respect of adverse effects, conditions have been imposed that are uncertain, unreasonable and unenforceable (for example Conditions 7 and 11 lack clarity).
- i. The consent authority was correct in concluding that the assessment matters to which they were referred do not support the Applicant's proposal, however, the consent authority erred in placing inadequate weight on this conclusion when exercising its discretion to grant consent.
- j. Positive effects do not sufficiently outweigh the significant adverse effects of this proposal.

- k. The consent authority failed to adequately take into account the relevant objectives and policies of the District Plan. The proposal is contrary to relevant objectives and policies of the District Plan.
 - l. The consent authority failed to adequately take into account relevant consideration pursuant to Part 2 of the Act including the effects on the social and economic well being of the residents of Arthurs Point. The proposal will not provide for the sustainable management of natural and physical resource and does not satisfy the matters in Part 2 of the Act.
8. The Appellants seek the following relief:
- a. That the appeal be allowed and consent to the Application be declined;
 - b. That the Respondent be required to pay the Appellant's costs.
9. The following documents are attached to this Notice:
- a. A copy of the relevant decision;
 - b. A list of names and addresses of persons to be served with a copy of this Notice; and
 - c. A copy of the Appellants' submissions on the Application; and
 - d. A copy of the consent Application.

Dated this 12 January 2008


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V J Walker/J E St John
Counsel for the Appellants