

**STREAT DESIGN LTD**

89 Arthur's Point Rd, RD1, Queenstown, [streatcdg@xtra.co.nz](mailto:streatcdg@xtra.co.nz), tel. 03 4426789, Cell 0274 856236

1<sup>st</sup> September 2010

The Registrar  
Environment Court  
P.O. Box 2069  
Christchurch 8140

Attention: Chris Jordan  
Email: [chris.jordan@justice.govt.nz](mailto:chris.jordan@justice.govt.nz)

CC Mr R. A. Makgill, Counsel, Totally Tourism Ltd.  
Email [RMakgill@nsenvironmentallaw.com](mailto:RMakgill@nsenvironmentallaw.com)

CC Jayne Macdonald, Counsel, QLDC.  
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A hard mailed copy of this letter and attachments can be sent on request.

**Application for Costs pursuant to Decision No. [2010] NZEnvC 277**  
**In the matter of:** APPS Inc and Barry Walters vs QLDC (ENV 2009 CHC 003)

**Appellant:** Arthurs Point Protection Society Inc. (The Society) & Mr B Walters.

**Respondent:** Queenstown Lakes District Council

**Applicant:** Totally Tourism Ltd

1. The Appellant seeks full costs from the Applicant, Totally Tourism Ltd, in the amount of **\$40,839** as detailed in the Table below. A copy of the invoices in the Table are attached herein.
2. The reasons for the Society, its members, and Mr Walters seeking costs are listed below.
3. Totally Tourism Ltd's counsel filed a late appeal ENV-2010-CHC-88 on 12<sup>th</sup> March 2010 without prior notification to the Society, despite the Society being at this 12<sup>th</sup> March date in the process of preparation of evidence in this appeal ENV 2009 CHC 003.
4. The late appeal ENV-2010-CHC-88 failed, the Society was awarded costs, and subsequently Totally Tourism withdrew their application RM 080434, the subject of this appeal ENV 2009 CHC 003.
5. The Society's evidence was delivered to the Respondent on 2<sup>nd</sup> April 2010 in accordance with Judge Jackson's Notice with evidence schedule dated 22 January 2010.

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6. The preparation of the Society's evidence for the now cancelled October Hearing for ENV 2009 CHC 003 has been unnecessary, due to the Applicant withdrawing their application, and Judge Jackson subsequently allowing the Society's appeal in this matter.
7. The Society submits that Totally Tourism Ltd has not conducted the case in a responsible manner, which subsequently caused the Society unnecessary cost.
8. Totally Tourisms case was poorly presented, acoustic evidence presented a month late, waiver sought for time periods for rebuttal evidence, rebuttal evidence was never presented. Waiver filing for late appeal. Totally Tourism Ltd abused the Court process.
9. RMA s285(2) gives the Court a discretion to award costs and expenses, in particular where a party fails to proceed to a hearing.
10. The Court practice note published [2006] NZRMA 357, para 4.5.1 states "*Where an appeal is withdrawn after being set down for a hearing, the Court will normally award costs against the appellant in favour of the other parties in respect of the hearing.*" Although this note does not strictly refer to an applicant withdrawing an application, the same principal should apply in these proceedings.
11. For the application of noise rules and assessment of the status activity, Totally Tourisms acoustic evidence without substance stated that the notional boundary is the measuring point whereas the boundary point is the measuring point in the application site. The application site is in a built up area.
12. We refer the Courts Costs Decision [2010] NZEnvC 229 in Totally Tourism vs QLDC (ENV 2010 CHC 0088) where the principle was applied from the *Barrie v CODC* decision [1996] NZRMA 272 C/96 page 3, that Streat Design Ltd could include their costs in this matter as advocate for the Society and Mr Walters.
13. Several APPS Inc members have included invoice payments for cost incurred on behalf of the Society in the Table below. We rely on the Authority of the High Court in *Tairua Marine Ltd vs Waikato Regional Council* [NZRMA 2006 p485-487]. Paragraphs 16-27 and 44-47 of this Decision are of particular assistance in establishing reimbursement to the APPS Inc members.
14. Costs have not been claimed herein for the Society's succession procedural issue or mediation in this appeal ENV 2009 CHC 003.
15. Costs have not been claimed herein for matters relating to the late appeal ENV-2010-CHC-88.

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## 16. Table of Attachments

Invoice	Date	Amount	To
<b>Legal costs</b>			
1. Dr Kenneth Palmer	2 May 2009	1000	APPS Inc
2. Dr Kenneth Palmer	6 Aug 2010	2400	APPS Inc
3. Anderson Lloyd	22 Dec 2008	1600	CG & EL Streat Family Trust
4. Anderson Lloyd	27 Feb 2010	2350	APPS Inc
5. Anderson Lloyd	30 Jan 2009	1235	Mr Clive Manners-Wood
6. Anderson Lloyd	20 Apr 2010	2803	APPS Inc
7. Streat Design Ltd	1 Sept 2010	6750	APPS inc
<b>Planner</b>			
8. Hovell Env. Planning	6 May 2010	4982	APPS Inc
9. Hovell Env. Planning	6 May 2010	3000	Kahu Trust
<b>Acoustic</b>			
10. Via Strada Ltd	3 May 2010	5000	Continental Restaurants
11. Via Strada Ltd	3 May 2010	5000	CG & EL Streat Family Trust
12. Via Strada Ltd	3 May 2010	4137	Nugget Point Ltd
<b>Helicopter Safety</b>			
13. Neil Scott CAA Flight Examiner	15 Apr 2010	450	APPS Inc
<b>Photocopying</b>			
14. Duplicator Ltd (Qtn)	6 Jun 2010	132	APPS Inc
<b>Total</b>		<b>40,839</b>	<b>GST Inc</b>

Thank you for considering these matters.

Yours faithfully,



Chris Streat  
BSurv (hons)  
Director  
Streat Design Ltd

On behalf APPS Inc and Mr Walters