

18 January 2011

Brookfields

LAWYERS

BY COURIER

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QLDC
20 JAN 2011
QUEENSTOWN

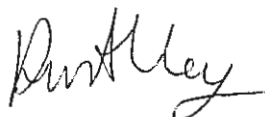
**REMARKABLES PARK LIMITED AND SHOTOVER PARK LIMITED v QUEENSTOWN
LAKES DISTRICT COUNCIL: PLAN CHANGE 35**

We act for Remarkables Park Limited ("RPL") and Shotover Park Limited ("SPL").

Further to our e-mail of 17 January 2011, please find enclosed by way of service a hard copy of the notice of appeal filed by RPL and SPL in respect of Plan Change 35 to the Queenstown Lakes District Council's District Plan.

Please contact us if you have any questions.

Yours faithfully
BROOKFIELDS



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Partner/Solicitor

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Encl

31311596:610944

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14 of the First Schedule to the Act

BETWEEN **REMARKABLES PARK LIMITED AND SHOTOVER PARK LIMITED**

Appellant

AND **QUEENSTOWN LAKES DISTRICT COUNCIL**

Respondent

NOTICE OF APPEAL UNDER CLAUSE 14 OF THE FIRST SCHEDULE TO THE RESOURCE MANAGEMENT ACT 1991

**BROOKFIELDS
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TO: The Registrar
Environment Court
CHRISTCHURCH

- 1. Name of appellant:** Remarkables Park Limited ("RPL") and Shotover Park Limited ("SPL")

RPL and SPL appeal against the decision of the Queenstown Lakes District Council ("QLDC") in respect of proposed Plan Change 35 ("PC35") to the Queenstown Lakes District Council's Operative District Plan ("the District Plan").

- 2. Date of decision appealed against:**

9 November 2010.

- 3. Date of decision received:**

15 November 2010.

- 4. The decision was made by:**

The QLDC.

- 5. Description of the subject matter of the decision appealed:**

PC35 is a private plan change request made by the Queenstown Airport Corporation Limited ("QAC"). The QLDC **adopted** all aspects of PC35 except the proposed "night flights". The QLDC **accepted** those parts of PC35 which provided for "night flights".

PC35 seeks to amend objectives, policies and rules relating to airport operations and neighbouring land use. It also seeks to extend the Air Noise Boundary ("ANB") and Outer Control Boundary ("OCB") to provide for forecasted growth and the proposed "night flights".

The QLDC adopted the recommendations of the independent commissioners appointed to hear submissions to approve PC35 (including modifications made during the Council hearing) with the exception of the proposed "night flights". References to extended hours of operation and night landings were deleted.

The QAC considers that airport noise should be managed via provisions in the District Plan and conditions of the relevant designations. As such, PC35 was heard together with a related notice of requirement that had been notified by the QAC. The QAC has not yet released its decisions on the QLDC's recommendations on the notice of requirement. PC35 and the notice of requirement are inextricably linked. RPL will review QAC's decisions in respect of the notice of requirement once released to determine if an appeal will be lodged. However, this appeal includes some comment on the proposed notice of requirement because RPL and SPL consider that it is preferable that noise management controls be contained solely in the District Plan (rather than using a "dual mechanism" of district plan provisions and designation conditions). It is necessary to comment on the flaws in the QAC's "dual mechanism" approach.

6. The reasons for the appeal are:

- (a) PC35 does not meet the purpose and principles of the Resource Management Act 1991 ("RMA") because it does not;
 - (i) promote sustainable management of natural and physical resources; and
 - (ii) avoid, remedy or mitigate adverse effects of activities on the environment.

In particular, PC35 enables the QAC to generate significant adverse effects rather than requiring that the QAC adopt measures to internalise or minimise adverse effects. RPL considers that the existing noise contours are more than adequate to cater for foreseeable airport growth.

- (b) PC35 prevents the reasonable use of land. The proposed restrictions on neighbouring land are not necessary in order to provide for the foreseeable future growth of the airport;
- (c) PC35 does not achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. In particular, PC35 is inconsistent with some conditions of the existing airport designation;
- (d) PC35 does not strike an appropriate balance between costs and benefits;

- (e) PC35 does not implement the objectives and policies of the District Plan;
- (f) The existing noise contours are "better" than the proposed noise contours;
- (g) PC35 is inconsistent with the Otago Regional Policy Statement;
- (h) PC35 is inconsistent with the existing and proposed Airport designations;
- (i) PC35 is based on inadequate, speculative and uncertain information, including assumptions regarding land acquisition, the location of activities and the composition of the future aircraft fleet mix. For example, if the QAC does not or cannot acquire land from RPL, the noise contours on the northern side of the airport may need to be expanded.

7. Without derogating from the generality of the above the following further grounds are stated:

7.1 Introduction

- (a) RPL owns and is developing a substantial portion of the land within the Remarkables Park Zone ("RPZ")¹. The RPZ is located on the southern side of the airport. The RPZ provides for a comprehensive and integrated mixed use urban development over approximately 150 hectares. It has enabled the establishment of Queenstown's second town centre and provides for ongoing expansion and development. SPL also owns land adjoining the airport.
- (b) Existing and future development within the RPZ has been planned on the basis of an expectation that the noise contours would not be expanded, or any expansion would only be undertaken by agreement. That expectation is based on the operative RPZ zoning, orders of the Environment Court (to which the QAC was a party) and contractual agreements.
- (c) PC35 proposes to extend the ANB and OCB over the RPZ, and amend provisions within the District Plan that apply to the RPZ. In particular, PC35 extends the ANB over an area of the RPZ which the QAC has expressed an intention to acquire

¹ Diversified New Zealand have purchased the established Remarkables Park shopping centre and are undertaking further development within the shopping centre.

compulsorily, but has not yet done so. RPL is not a willing seller. There is no certainty that the land will be acquired. This matter is addressed in detail below.

- (d) RPL considers that the existing noise contours are more than adequate to cater for foreseeable airport growth. The proposed expansion of the noise contours is not required.

7.2 Air Noise Boundary and Outer Control Boundary

- (e) The ANB is not entirely based on a 65dBA noise contour. It includes a parcel of land currently owned by RPL which the QAC has expressed a desire to compulsorily acquire. RPL is not a willing seller. QAC may not acquire the land as any notice of requirement may be rejected on its merits. Further, it may not wish or be able to finance the compensation payable to RPL. There is currently no agreement as to value and compensation.
- (f) Designation D.2 in the District Plan provides for "Air Noise Boundary Controls" and prohibits;
 - (i) Any activity other than an airport activity unless the prior approval of the QAC has been obtained; and
 - (ii) Noise sensitive activities.

Surprisingly, designation D.2 is not proposed to be amended and, therefore, the restrictions and terminology contained therein are inconsistent with the District Plan and other conditions of the airport designation(s) (for example, the defined term "ASAN" is not used).

- (g) On the basis of the proposed ANB, RPL will be prevented from undertaking any activity on part of its land without the prior approval of QAC by operation of the existing conditions of designation D.2. This is a cynical and unnecessary constraint on RPL's land. It is inconsistent with PC35. The inclusion of land owned by RPL within the ANB is premature and may ultimately be unnecessary.
- (h) The ANB and the OCB extend over the RPZ. Putting to one side RPL's opposition to any expansion of the ANB or OCB over its land, RPL's experts consider that:

- (i) the extent of the ANB and OCB is anomalous. It is overstated in some locations and understated in others. It appears to have been unfairly manipulated; and
- (ii) the extent of the proposed OCB can be reduced by the adoption of flight routes that minimise noise impacts on the RPZ. Given that the QAC is required to internalise or minimise the adverse effects that it generates, flight routes over QAC's land (or, for example, the Shotover Delta) should be adopted.

7.3 Night Flights

- (i) The QLDC's decision deleted "night flights" from PC35. RPL understands that the QAC will not pursue "night flights". Night flights were a key driver for PC35. Night flights attract a considerable noise "penalty" and must have contributed significantly to the extent of the ANB and OCB. The removal of "night flights" must, therefore, enable the contraction of the ANB and OCB. There is no resource management justification for retaining the proposed extended contours so as to create a "noise bucket" that the QAC can utilise as it sees fit.

7.4 Figure 2 for the RPZ

- (j) The notified version of PC35 did not include an amended Figure 2 for the RPZ. However, the QLDC's decision has amended Figure 2. RPL and SPL consider that there is no scope for that amendment to be made.
- (k) The amended Figure 2 reflects the proposed ANB and includes the parcel of land currently owned by RPL which the QAC has expressed a desire to compulsorily acquire. ASAN's are therefore proposed to be prohibited within that parcel of land despite a significant portion of it being outside the 65dBA noise contour.
- (l) The proposed Figure 2 appears to impose restrictions based on a 58dBA noise contour. It also significantly alters the Legend on Figure 2. Activity Table 12.11.3.6 refers to "semi-hatched areas" which cannot be identified with any certainty on Figure 2. Figure 2 also proposes to expand the "No Building Area" without any compensation to RPL (or consultation as the proposed Figure 2 was not included in

the notified documentation). In short, proposed Figure 2 is extremely confusing and was not part of the notified version of PC35.

7.5 District Plan and designations

- (m) The QAC has adopted "dual mechanisms" to manage airport noise. Some controls are contained within the relevant zone provisions while others are contained in the designation chapter of the District Plan. RPL and SPL consider that noise should be managed via the relevant zone provisions rather than under conditions of a designation. A hybrid of both mechanisms is confusing and cumbersome.
- (n) Further, as already noted, the proposed zone provisions are not consistent with the existing conditions of the airport designations. There is a lack of integration.
- (o) Of particular concern to RPL and SPL is the proposal to include the requirements of the Noise Management Plan ("NMP") within the conditions of the airport designations. The relevant conditions can be altered at anytime without public notice. RPL and SPL consider that the matters to be addressed in the NMP should be included in the District Plan. This matter is commented on further below.

7.6 Planning horizon

- (p) PC35 purports to provide for airport growth to 2037.
- (q) RPL and SPL consider that the 2037 planning horizon is too distant. Technological advances will occur over such a long planning period. The aircraft fleet mix cannot be predicted with any certainty, other than to suggest that the noisier aircraft will be retired. However, the QAC's noise modelling includes noisy aircraft that are unlikely to be part of the future aircraft fleet mix.
- (r) Technological advances will most likely minimise noise emissions and associated effects, and reduce or remove the need for expanded noise contours and restrictions on land use. The uncertainty associated with technological advances should not be relied upon to impose restrictions on the use of land. Rather, it is a reason for reducing restrictions on the use land because they may not be necessary.

- (s) In any case, RPL and SPL consider that foreseeable airport growth can be accommodated within the existing southern noise contours.

7.7 Noise Management Plan

- (t) The QAC considers that the NMP should be provided for under the conditions of the airport designation. RPL and SPL consider that the NMP should be provided for within the District Plan.
- (u) The NMP is a key mechanism for managing noise and enabling input from adjoining landowners. The NMP has only been advanced in draft form. A final version has not been produced. RPL and SPL consider that key aspects of the NMP should be confirmed and recorded in the District Plan. The key aspects of the NMP include (but are not limited to):
 - (i) An RPL representative on the proposed liaison committee;
 - (ii) "Flight friendly" flight paths and rules to minimise noise emissions on adjoining landowners; and
 - (iii) Cost of acoustic treatment. RPL and SPL consider that the QAC should fund all acoustic treatment required for existing zoned opportunities. PC35 should not remove or restrict existing operative zonings.

7.8 Definition of ASAN

- (v) PC35 proposes a definition of "ASAN" that is inconsistent with Plan Change 19.
- (w) RPL and SPL oppose a definition of "ASAN" that compromises any existing zoned development opportunities.

7.9 Adverse effects

- (x) PC35 will generate significant adverse noise and amenity effects. It is advanced on the basis that those significant adverse effects should be tolerated by landowners, or remedied or mitigated by landowners. The acoustic mitigation proposals still place a cost burden on adjoining landowners.

- (y) When preparing a rule, regard must be had to actual and potential effects on the environment. Noise insulation measures (including ventilation), if found to be an acceptable and sustainable mitigation measure, should be funded by the QAC for all existing and future activities undertaken in reliance on current zonings (operative and proposed). It is for the QAC to internalise or mitigate any economic and/or environmental effects generated by it.

7.10 Sustainability and efficiency

- (z) Accepting an ongoing trend of increased noise from the airport is not sustainable, particularly given its location within strategically important flat developable land. The land surrounding the airport is critical to managing urban growth in Queenstown. The location of the airport requires a sustainable and balanced approach to noise effects.
- (aa) As technology advances it is expected that aircraft will get quieter rather than noisier. However, PC35 is advanced on the presumption that noise can (or will) only increase, and should be enabled to increase. Enabling increased noise effects will not promote the efficient operation of the airport. The sustainable management purpose of the RMA is not met by enabling increased noise emissions.
- (ab) Previous studies regarding the location of the airport were based on existing noise contours and the operations that gave rise to them. If the airport now wishes to generate further noise, its location may need to be reconsidered. That matter has not been considered by the QAC. The QAC has not given meaningful consideration to alternatives.

7.11 Property boundaries

- (ac) The ANB and OCB follows property boundaries in some locations but not in others. RPL and SPL consider that PC35 is unfairly selective in this regard. RPL and SPL seek that their land on the southern side of the airport be rationalised so that the ANB and/or the OCB follow the property boundaries (in a manner that reduces the extent of the ANB or OCB). In particular, RPL and SPL seek that the land owned by SPL be excluded from the ANB (as recorded in contractual agreements).

8. Relief Sought

8.1 General Relief

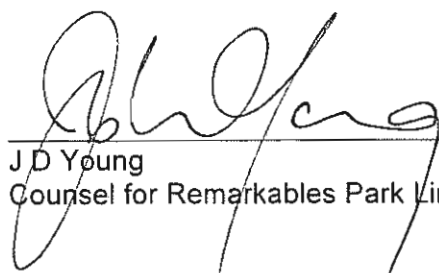
- (a) RPL and SPL seek the following general relief to give effect to the matters raised above:
- (i) PC35 be rejected; or
 - (ii) PC35 be rejected as it relates to the RPZ.

8.2 Specific Relief

- (a) Without derogating from the generality of the above, RPL seeks the following more specific relief to give effect to the matters raised above:
- (i) The ANB be removed from the parcel of land currently owned by RPL which the QAC may compulsorily acquire;
 - (ii) The ANB follow the existing 65dBA noise contour over the RPZ;
 - (iii) The OCB follow the existing 55dBA noise contour over the RPZ;
 - (iv) Figure 2 should not be amended and should remain as currently shown in the District Plan;
 - (v) All other proposed modifications to the RPZ be deleted;
 - (vi) The key aspects of the NMP be confirmed and recorded in the District Plan, including (but not limited to):
 - An RPL representative on the proposed liaison committee;
 - "Flight friendly" rules to minimise noise emissions on adjoining landowners; and

- QAC funding all acoustic treatment required for existing zoned opportunities.
- (vii) The possible expansion of the noise contours on the northern side of the airport to accommodate airport activities being relocated to the northern side because the QAC is unable to acquire RPL's land;
- (viii) The land owned by SPL be excluded from the ANB; and
- (ix) Any further and consequential relief required to give effect to the matters raised in this notice of appeal.

DATED the 17th day of January 2011.



J D Young
Counsel for Remarkables Park Limited and Shotover Park Limited

THIS NOTICE OF APPEAL is filed by **JOHN DYLAN YOUNG**, solicitor for the appellants. The address for service of the appellant is at the offices of Brookfields, Lawyers, 11th Floor, 19 Victoria Street West, Auckland 1

Documents for service on the appellant may be left at the address for service or may be:

1. Posted to the solicitor at P O Box 240, Auckland 1
2. Left for the solicitor at Document Exchange for direction to DX CP24134
3. Transmitted to the solicitor by facsimile to 09 379 3224

ANNEXURES

- (a) A copy of the appellant's submissions and further submissions marked "A".
- (b) A copy of the QLDC's decisions on submissions marked "B".
- (c) A list of the names and addresses of persons to be served with a copy of this notice marked "C".

How to become a party to proceedings

If you wish to become a party to the appeal, you must lodge a notice in form 33 with the Environment Court within 15 working days after this was lodged with the Environment Court. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Christchurch at:

83 Armagh Street
CHRISTCHURCH

Its postal address is:

P O Box 2069
CHRISTCHURCH

and its telephone and fax numbers are:

Telephone: (03) 962 4170
Fax: (09) 962 4171