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14 February 2011

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REMARKABLES PARK LIMITED AND SHOTOVER PARK LIMITED v QUEENSTOWN AIRPORT CORPORATION: NOTICE OF REQUIREMENT – ALTERATIONS TO DESIGNATION 2; AERODROME DESIGNATION

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

Please find **enclosed** by way of service a copy of the notice of appeal filed by RPL and SPL in respect of the Queenstown Airport Corporation's decision on its Notice of Requirement for Alterations to Designation 2: Aerodrome Designation.

Please note that we have not enclosed any of the documents attached to the notices filed with the Environment Court. If you would like copies of any of these documents please contact us.

Please contact us if you have any questions.

Yours faithfully
BROOKFIELDS



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Encl

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under section 174 of the Act

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

Appellant

AND **QUEENSTOWN AIRPORT CORPORATION**

Respondent

NOTICE OF APPEAL UNDER SECTION 174 OF THE RESOURCE MANAGEMENT ACT 1991

**BROOKFIELDS
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TO: The Registrar
Environment Court
CHRISTCHURCH

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

RPL and SPL appeal against the decision of Queenstown Airport Corporation ("QAC") on its Notice of Requirement to alter Designation 2; Aerodrome Designation, ("the NOR) under section 172 of the Resource Management Act 1991 ("the RMA").

2. **Date of decision appealed against:**

16 December 2010.

3. **Date of decision received:**

20 January 2010.

4. **The decision was made by:**

The QAC.

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

The alterations to Designation 2; Aerodrome Designation are intended to manage Airport Operations and mitigate noise. This includes the provision for airport noise controls, noise monitoring and engine testing as well as requiring the development of a Noise Management Plan, which is to include the mitigation requirements for properties affected by airport noise.

As well as the NOR, the QAC have also pursued a private Plan Change (Plan Change 35 "PC35") to amend the existing airport air noise boundaries and associated District Plan provisions. The NOR was heard together with PC35. The Queenstown Lakes District Council ("QLDC") adopted the recommendations of the independent commissioners appointed to hear submissions to approve PC35 (including numerous 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. RPL and SPL have appealed the Queenstown Lakes District Council's decision on PC35.

The Independent Commissioners also provided recommendations to QLDC on the NOR. The Commissioners recommended to the QAC that the NOR be modified. The QAC accepted the Council's recommendation in part and rejected it in part.

PC35 and the NOR are inextricably linked. 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). This appeal therefore also comments briefly on PC35. This appeal and the PC35 appeal will be considered together.

6. The reasons of the appeal are:

- (a) The NOR 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, the NOR enables the QAC to generate significant adverse effects rather than requiring that the QAC adopt measures to internalise or minimise adverse effects;

- (b) It does not have particular regard to the District Plan;
- (c) Adequate consideration has not been given to alternative sites, routes and methods;
- (d) The NOR will have a significant adverse effect on the environment;
- (e) The NOR is not reasonably necessary for achieving the objectives of the QAC;

- (f) The NOR 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;
- (g) The NOR prevents the reasonable use of surrounding land. The significant adverse effects permitted by the designation will affect the use to which the land surrounding the Airport may be put. In particular, the effects of the designation are incompatible with the operative zoning of surrounding land;
- (h) The restrictions on adjoining land are not necessary for the safe or efficient functioning of the Airport; and
- (i) The NOR 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 (which is relevant to noise generation).

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 owns land adjoining the airport.
- (b) Existing and future development has been planned on the basis of the existing Airport noise contours and a legitimate expectation that the noise contours would not be expanded. The legitimate expectation arises from both the operative zoning of the RPZ (established by a consent order to which the QAC was a party) and contractual agreements with the QAC.

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

- (c) The NOR compromises and undermines existing and future development within the RPZ. As an operative zoning, the NOR must have particular regard to the RPZ. The NOR does not have particular regard to the RPZ.
- (d) SPL owns land to the north of the Airport. Some of that land has recently been rezoned under the Council's Plan Change 19 to enable a range of urban activities. Plan Change 19 also rezones land owned by other entities for urban activities. SPL also owns land to the south of the Airport.
- (e) The NOR does not have particular regard to Plan Change 19.

7.2 NOR and District Plan

- (a) 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. Further, the provisions of the District Plan and the conditions of the designation are inconsistent.
- (b) Of particular concern to RPL and SPL is the proposal to include the requirements of the Noise Management Plan ("NMP") within the designation. As a consequence, the relevant conditions can be altered at anytime without public notice. RPL and SPL consider that the specific matters to be addressed in the NMP should be included in the District Plan. This matter is commented on further below.
- (c) Further, the NOR does not identify a "project or work" in the usual sense that gives rise to a requirement for a designation. For example, the alteration is not for the purpose of constructing the RESA, which fits the description of a "project or work". The expansion of noise contours does not fit comfortably with the language of the NOR and designation process under the Act, further reinforcing that these matters should be dealt with in the District Plan.

7.3 Planning horizon

- (a) The NOR is intended to provide for airport growth to 2037. The provisions of the NOR therefore enable airport operations on the basis of anticipated growth to 2037.

- (b) 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 noisier aircraft will be retired. QAC's noise modelling includes noisy aircraft that are unlikely to be part of the future aircraft fleet mix. These uncertainties make it inappropriate to regulate and/or prohibit activities adjoining based on airport operations that are predicted to occur so far into the future.
- (c) Given the above uncertainty, the NOR is not necessary for achieving the objectives of the requiring authority. 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 of land because they may not be necessary.
- (d) The NOR (and associated plan provisions) immediately blight land adjoining the Airport and restrict land use. However, the mitigation package is not immediately provided to all affected landowners. It is inequitable to immediately blight land based on growth projections but only provide mitigation at the rate that actually growth occurs. It is conceivable that blighted land may never require or receive mitigation.

7.4 Adverse effects and ASANs

- (a) The NOR will generate significant adverse noise and amenity effects. There are no measures provided by the NOR to avoid those effects. To the contrary, there is a presumption that such effects are acceptable or need only be mitigated.
- (b) RPL and SPL consider that the noise mitigation measures contained in the NOR are inadequate.
- (c) The designation refers to Activities Sensitive to Aircraft Noise ("ASAN") and cross-references the definition proposed in Plan Change 35. RPL opposes the proposed definition of ASAN as it relates to RPL's and SPL's land. The proposed definition of ASAN is unclear, particularly as it relates to commercial recreational activities and

outdoor activities. The proposed definition potentially compromises existing zoned opportunities.

- (d) The definition of ASAN has been used in the Activity Table (12.11.3.6) where it is inconsistent with existing zoned opportunities. The proposed definition of ASAN is incompatible with the RPZ. In short, there is confusion created by conflicting provisions in the NOR, PC35 and the proposed definition of ASANs. RPL seeks that "ASAN" be deleted from Activity Table (12.11.3.6).
- (e) Noise insulation measures (including ventilation), if found to be an acceptable and sustainable mitigation measure, should be fully funded by the QAC for all existing and future activities undertaken in reliance on current zonings (operative and proposed). This would remove the unfairness inherent in proposed condition 15 (where the QAC proposes to offer to cover 75% of cost for mechanical ventilation when those buildings fall within the 60dBA which, if accepted, prevents a claim for the further 25% of the cost when the activity falls within the 65dBA).
- (f) The NOR states that alternative mitigation strategies may be adopted by agreement between the QAC and the building owner with dispute resolution procedures to be provided under the NMP. RPL and SPL consider that the mitigation provisions that are contained in the NOR should be considered to be the minimum provision. The QAC should be bound by the mitigation strategies that are contained in the NOR upon its confirmation, unless the building owner should seek alternatives measures that are agreed to by QAC.
- (g) RPL and SPL are concerned that the noise mitigation measures are only available where the benefitting building owner enters into a binding property agreement or covenant based on no future complaints against airport noise. RPL and SPL consider that it is inappropriate for noise mitigation measures to be made contingent on such a restriction.
- (h) Case law has established that it is for the QAC to internalise or mitigate effects generated by it. The QAC's approach to mitigation is inconsistent with that case law and the approach taken at other airports in New Zealand.
- (i) SPL and RPL are particularly concerned that no noise limits are to be applied to unplanned engine testing of aircraft for scheduled passenger services. SPL and

RPL consider that this is an inappropriate exception given the nature and sensitivity of surrounding zoning. Given that the NOR states that the NMP shall detail noise management practices for unplanned engine testing, SPL and RPL consider that best practice must be applied in all instances and for that reason noise management practices (including a prohibition on such testing during certain hours) for unplanned engine testing should be stipulated within the District Plan (and the NMP). For example, it would make sense that all engine testing be located on the northern side of the airport adjoining land that is proposed for yard based industrial.

- (j) The monitoring requirements outlined in the NOR require QAC to report on the Annual Aircraft Noise Contours ("AANCs") each year to the QAC, and every three years to the QLDC. RPL and SPL suggest that given the relationship between the NOR and the District Plan, the AANCs should be provided to QLDC on an annual basis.

7.5 Alternative sites, routes and methods.

- (a) The NOR cross references the Air Noise Boundary ("ANB"), and the Outer Control Boundary ("OCB") which are to be shown on the District Plan maps. In particular, the NOR refers to the ANB and OCB in specifying the limits on aircraft noise.
- (b) The QAC does not have an interest in all the land affected by the ANB or OCB. Therefore, the QAC is required to give adequate consideration to alternative sites, routes and methods.
- (c) The increasing inability of the QAC to operate within the confines of the current site without adversely affecting adjoining landowners and restricting activities undertaken by adjoining landowners indicates that the site is not suitable for expansion in the manner proposed. The NOR, however, does not consider alternative sites or locations for activities. For example, helicopter operations do not have to occur at the airport, but no consideration has been given to relocating these operations.
- (d) Of specific concern to RPL is the "bulge" in the OCB over its land, which is understood to be partially caused by helicopter operations. QAC have not considered an alternative route for helicopter operations. RPL considers that alternatives that reduce or remove the "bulge" should be considered.

- (e) Adequate consideration has not been given to "flight friendly" routes. The NOR is driven by the QAC's operational preferences rather than by striking a balance between airport operations and neighbouring land use.

7.6 Noise Management Plan

- (a) The QAC considers that the NMP should be provided for under the designation. RPL considers that the NMP should be provided for within the District Plan.
- (b) The NMP is a key mechanism for managing noise and enabling input from adjoining landowners. Despite this the NMP has only been advanced in draft form. QAC have a further twelve months from the confirmation of the NOR to finalise the NMP. Despite the significance of the NMP in managing the effects of the NOR, the NOR does not require that the NMP be subject to any public consultation.
- (c) RPL considers that the key aspects of the NMP should be confirmed and recorded in the District Plan. This is necessary to ensure that, as required by clause 20(f) of the NOR, the NMP provides the community with certainty as to compliance with the noise limits and effects on all surrounding land uses. As discussed above, if the NMP remains as a condition of the NOR it can be altered at any time without public notice.
- (d) The NOR requires the NMP to address mitigation of noise effects on buildings accommodating ASAN that exist at the time that the NOR is confirmed. As stated above, RPL and SPL consider that the QAC should fund all acoustic treatment required for existing zoned opportunities.
- (e) Clause 21 of the NOR states that the NMP shall include provision for the Airport Queenstown Liaison Committee (QALC) and provides a list of members to be included. As a significant stakeholder and the owner of substantial landholdings adjoining the airport, RPL and SPL consider that they should have 1 member on the QALC.
- (f) "Flight friendly" rules should be adopted to minimise noise emissions on adjoining landowners. This requirement should be stipulated in the District Plan and form part of the NMP.

7.7 Sustainability and efficiency

- (a) The NOR enables increases in the noise emitted by the Airport which are not sustainable. The constrained location of the Airport requires a sustainable approach to noise effects. Ongoing countenance of increasing noise is not sustainable.
- (b) As technology advances, planes will get quieter rather than noisier. The Airport has not considered technological advances, nor even considered the possibility that it may be able to reduce noise in the future. The NOR is advanced on the presumption that Airport noise can only increase, and should be encouraged to increase.
- (c) Enabling increased noise effects will not promote the efficient operation of the Airport.
- (d) The sustainable management purpose of the Act is not met by increasing noise emission.

7.8 Conditions of designation not amended

- (a) The NOR has not amended designation D.2 (Air Noise Boundary Controls). The conditions of that designation conflict with the NOR. For example, designation D.2 refers to:
 - (i) An "Airport Liaison committee" with a differently constituted membership to the "Queenstown Airport Liaison Committee" provided for in the NOR;
 - (ii) A noise monitoring regime that is different to the NOR;
 - (iii) Noise sensitive activities, but does not refer to ASANs; and
 - (iv) Prohibits any activity within the ANB without prior approval of the Airport.
- (b) The NOR does not integrate with the District Plan or the existing designations. In particular, the NOR includes land that the QAC seeks to compulsorily acquire. (noting that the current proposal for acquisition being pursued by the QAC is

different to that shown on the proposed planning maps). That land is not currently owned by QAC and may never be owned by QAC. However, the designation D.2 has the effect of blighting that land and preventing activities being undertaken without prior approval of the QAC. This is an unnecessary, speculative and unreasonable control.

8. Relief Sought

8.1 General Relief

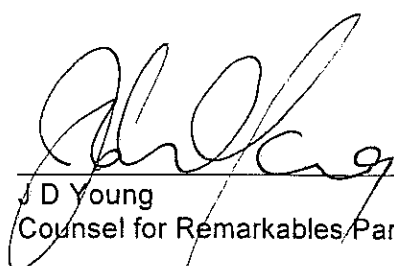
- (a) RPL and SPL seeks the following general relief to give effect to the matters raised above;
 - (i) That the NOR be cancelled; or
 - (ii) That the NOR be modified to expressly exclude land owned by RPL and SPL.

8.2 Specific and Alternative Relief

- (a) Without derogating from the generality of the above, SPL and RPL seek the following more specific and alternative relief to give effect to the matters raised above:
 - (i) That the key aspects of the NMP be confirmed and recorded in the District Plan including (but not limited to):
 - An RPL representative on the QALC;
 - "Flight friendly" rules to minimise noise emissions on adjoining landowners; and
 - QAC funding all acoustic treatment required for existing zoned development opportunities.
 - (ii) The key noise management provisions be provided for in the District Plan (including the matters that the NMP is to address);

- (iii) Mitigation be fully funded and provided by the QAC at the time the NOR and Plan Change 35 are confirmed (on the assumption that the NOR and Plan Change 35 are not rejected in their entirety);
- (iv) The deletion of ASAN from Activity Table (12.11.3.6);
- (v) Helicopter operations be removed or relocated to minimise noise impacts of the RPZ;
- (vi) Flight friendly rules be imposed for all aircraft to minimise noise impacts; and
- (vii) Any other further and/or consequential changes required to give effect to the grounds of appeal stated above at paragraphs 6 and 7.

DATED the 10th day of February 2011.



J D Young
Counsel for Remarkables Park Limited

THIS NOTICE OF APPEAL is filed by **JOHN DYLAN YOUNG**, solicitor for the appellant. 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 marked "A".
- (b) A copy of the QAC's decision on the recommendation of QLDC 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

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