

1 December 2016

Development Contributions Hearing Panel
Queenstown Lakes District Council
Private Bag 50072
Queenstown 9348

To the Hearings Chair,

**RE: PROPOSED AMENDMENTS TO THE NOTIFIED REVISED POLICY ON DEVELOPMENT
CONTRIBUTIONS DATED OCTOBER 2016**

The Queenstown Airport Corporation ("QAC") filed a submission in support of the revised development contributions policy. In summary, QAC submitted that:

1. The revised development contribution policy appropriately apportions costs on Frankton Flats;
2. The apportionment of costs is consistent with QAC's view that Queenstown Airport facilitates rather than generates the demand for Council's services;
3. Some amendments are required to the revised policy to allow the Queenstown Lakes District Council to accept an advanced lump sum payment of development contributions, when volunteered by the developer. This could include, for example, developer agreements;
4. A portion of the Queenstown Airport airside facilities have been included in the area of land subject to the Council's traffic modelling and thus targeted development contribution rate. This area of land (located to the south east of the cross-wind runway) is not publicly accessible and should therefore be removed from the targeted area shown in Appendix A of the revised policy.
5. Subject to the amendments set out in 3 and 4 above, that the notified DC Policy be retained without any further substantive amendments.

Due to the short notice provided to consider the submissions received on the revised development contributions policy and to prepare evidence, QAC is not in a position to appear at today's hearing. In this regard, QAC supports the position of Queenstown Central Limited, that the

hearing of submissions should be scheduled for mid-December (at the earliest) in order to allow sufficient time for specialist advisors to be engaged.

Furthermore, QAC understands that some submitters have sought to redistribute the development contribution costs and intend to present economic and transportation evidence at the hearing in support of this position. In QAC's view, it would be appropriate to provide submitters with a further opportunity to consider this evidence, particularly if it results in a wholesale change to the notified policy (which QAC supported).

We trust that the Panel will give QAC's submission due consideration during its deliberations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K O'Sullivan', with a stylized flourish at the end.

Kirsty O'Sullivan
Mitchell Daysh Ltd

Kirsty.osullivan@mitchelldaysh.co.nz

**BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL HEARINGS
PANEL**

UNDER

the Local Government Act 2002

IN THE MATTER

of proposed amendments to the
Queenstown Lakes District Council's
Policy on Development Contributions

AND

IN THE MATTER

of submissions by **REMARKABLES
PARK LIMITED**

**SUBMISSIONS ON BEHALF OF REMARKABLES PARK LIMITED
AMENDMENTS TO THE POLICY ON DEVELOPMNET CONTRIBUTIONS
2 DECEMBER 2016**

**BROOKFIELDS
LAWYERS
J D Young
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AUCKLAND**

MAY IT PLEASE THE PANEL

1. INTRODUCTION

- 1.1 These submissions are made on behalf of Remarkables Park Limited (**RPL**) in relation to the Statement of Proposal to amend the Queenstown Lakes District Council's (**the Council**) Policy on Development Contributions (**the Policy**).
- 1.2 RPL is a landowner developing land within the Remarkables Park Zone (**RPZ**). The land covers 150 hectares south of Queenstown Airport and adjacent to the Kawarau River. The land is zoned for mixed-use development and in particular, commercial, retail, residential, visitor accommodation, conference, medical, community facilities and reserves. The Policy threatens to impose significant and unjustifiable costs on RPL.
- 1.3 RPL considers that proposed amendments to the Policy are contrary to the provisions of the Local Government Act 2002 (**LGA'02**) and in breach of a contractual agreement between RPL and the Council.

2. EXPERT EVIDENCE

- 2.1 RPL has engaged two independent experts to review the Policy.
- 2.2 Tony Penny is a very experienced traffic and transportation expert. Mr Penny contends that the transportation analysis is fundamentally flawed because it does not assess all derived benefits. Further, the benefits of a trip are not applied to both ends of the trip (origin and destination). Mr Penny concludes that if these errors (and others) are remedied, the benefit allocation to existing development is in the order of 47%.
- 2.3 Mr Basrur is a forensic accountant. He considers that the Council's analysis is flawed because ownership and usage benefits cannot be correlated, linear growth of property units cannot be assumed, and the inclusion of future costs is inaccurate.

3. CONTRACTUAL AGREEMENTS WITH RPL

3.1 The Council entered into an agreement with RPL (and Shotover Park Limited (**SPL**)) dated 10 February 2014 (**Agreement**) in which it agreed to (amongst other things):

- (a) Immediately take all such steps as are practicable and reasonable to complete the acquisition of land required for the EAR (including actively encouraging and assisting NZTA in its endeavours to acquire land) – clauses 4(a)(i) and (ii);
- (b) Exercise reasonable endeavours to undertake the design and construction of the EAR so that the EAR **was completed by May 2015**, and bring forward and make available the funding allocation in the QLDC's Ten Year Plan for the EAR to the total of \$12,593,000 – clause 4(c); and
- (c) To give a "Roading Credit"¹ to RPL or SPL in respect of any land or cash contributions made to any section of the EAR controlled by QLDC should any of those parties fund or contribute to the design and/or construction of the EAR in order to expedite the design and construction of the EAR – clause 4(d).

3.2 Item (c) is particularly relevant because it makes it clear that the Council would fund the design and construction of the EAR. If RPL or SPL was to contribute (by way of land or cash), it was to receive a "Roading Credit". By way of comparison, clause 5(iv) of the Agreement makes it clear that RPL would fund construction of the relocation of a pump station. The Agreement arose from discussions and formal mediation concerning development and the zoning of land within the Frankton Flats. The Council's agreement to fund the EAR was in consideration for various matters that were beneficial to the Council.

3.3 The Policy is, therefore, contrary to the plain terms of the Agreement which anticipate the Council funding the EAR. RPL is not required to

contribute to the funding. Further, if it did so contribute, it was to be reimbursed by way of "Roading Credit".

- 3.4 RPL brings the Agreement to the attention of the Council to avoid breach of its terms. Should the Council, through its Policy, require RPL to contribute to the funding of the EAR, RPL will be required to consider its remedies for breach of contract.
- 3.5 Further, I am obliged to record that RPL and SPL have already paid significant development contributions in relation to development completed by it and SPL. It is expected that those contributions would have been earmarked for the design and construction of the EAR. Section 204 of the Local Government Act 2002 (**LGA'02**) states:

204 Use of development contributions by territorial authority

- (1) A development contribution—
- (a) must be used for, or towards, the capital expenditure of the reserve, network infrastructure, or community infrastructure for which the contribution was required, which may also include the development of the reserve, network infrastructure, or community infrastructure; but
 - (b) must not be used for the maintenance of the reserve, network infrastructure, or community infrastructure.

The obligation under section 204 is mandatory.

4. PUBLIC BENEFIT

- 4.1 The Council is obliged to consider the public benefits of the EAR when considering the Policy. Section 101(3) of the LGA'02 states:

- "(3) The funding needs of the local authority must be met from those sources that the local authority determines to be appropriate, following consideration of,—
- (a) in relation to each activity to be funded,—
 - (i) the community outcomes to which the activity primarily contributes; and
 - (ii) **the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals;** and
 - (iii) the period in or over which those benefits are expected to occur; and

- (iv) the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and
- (v) the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities; and
- (b) the overall impact of any allocation of liability for revenue needs on the community.”

4.2 Any contribution made by the NZTA only reflects the public benefit derived by the better functioning of its state highway network. It has no relevance to the public benefit derived from new or improved district roads. Distribution of benefits is a mandatory statutory consideration for the Council under section 101(3)(a)(ii).

4.3 In **Neil Construction Ltd v North Shore City Council**², the High Court stated that:

“...The distribution of benefits between the community as a whole, any identifiable part of the community, and individuals, **is a factor the council must consider in relation to each activity**. It accords insufficient recognition to this factor that it is not treated as a separate “driver” or component in the cost methodology. I agree with Mr Akehurst’s description of the council’s rationale for excluding any allowance for improved levels of service from its cost methodology (that different professions have markedly varying views as to what this term means, and it may be misleading to the general public), as “ . . . outstandingly thin”, given that it is a critical factor under s 101(3)(a).”

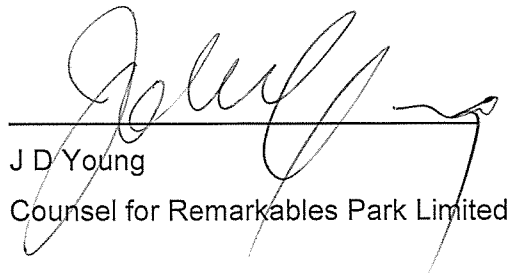
4.4 In my submission, the Policy fails to adequately weigh and evaluate:

- (a) the distribution of benefits between the community as whole, in part, and individuals (s103(1)(a)(ii)); and
- (b) the period in or over which those benefits are expected to occur (s103(1)(a)(iii)).

² [2008] NZRMA 275 (HC) at [217].

The Policy is, therefore, fundamentally flawed and must be reconsidered.

Dated the 2nd day of December 2016



J D Young
Counsel for Remarkables Park Limited

**BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL HEARINGS
PANEL**

UNDER

the Local Government Act 2002

IN THE MATTER

of proposed amendments to the
Queenstown Lakes District Council's
Policy on Development Contributions

AND

IN THE MATTER

of submissions by **REMARKABLES
PARK LIMITED**

**STATEMENT OF EVIDENCE OF ANTHONY THOMAS PENNY ON BEHALF OF
REMARKABLES PARK LIMITED**

2 December 2016

**BROOKFIELDS
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MAY IT PLEASE THE PANEL

1. INTRODUCTION

- 1.1 My full name is Anthony Thomas Penny. I am a Fellow of the Institute of Professional Engineers of New Zealand Civil Engineers and I hold a Bachelor Degree in Mathematics and a Bachelor Degree in Civil Engineering from the University of Canterbury. My background of experience includes over 40 years in traffic engineering and transportation planning with the Christchurch City Council, the Department of Transport in the United Kingdom, the MVA Consultancy in Hong Kong and Traffic Design Group (TDG) Limited. I have worked as a traffic engineering specialist on projects throughout New Zealand for over 30 years having been engaged by local authorities and private concerns in many centres to advise on the full range of transportation issues covering safety, management and planning matters.
- 1.2 In this matter I have been requested by Counsel for Remarkables Park Limited to provide my opinions on the assessment of transportation benefits used to support the proposal by Queenstown Lakes District Council (**QLDC**) to amend its Policy on Development Contributions by imposing a targeted development contribution policy on landowners adjacent to the new section of the Eastern Arterial Road (**EAR**).

2. TRANSPORTATION ANALYSIS

- 2.1 In my opinion the QLDC consultant's method of using transportation benefits for allocating costs for constructing the remainder of the EAR to different land holdings is flawed from a transportation planning perspective.
- 2.2 It has been done by allocating the proportional benefits derived by vehicles that will use the new road to the sites that generate the traffic.
- 2.3 They have used a macroscopic transportation model to predict the traffic using the EAR but have only used 2045 forecasts.
- 2.4 These traffic volume predictions are used to estimate the relative benefits, whereas benefits are normally calculated using vehicle-kms and travel time to account for trips that might only gain a small benefit from using the road, for example.

- 2.5 Benefits are also normally calculated by considering the difference in travel costs (time and distance) between scenarios with and without the new road, not just traffic volumes with the road.
- 2.6 Such analysis in congested networks like Frankton is normally done using hourly models to account for peak traffic effects but this analysis has been done simply using an all-day model, which will significantly under-estimate reassignment of traffic onto the EAR to avoid peak hour congestion at the BP intersection.
- "wider benefits"
- 2.7 With traffic diverted to the EAR, all other traffic using SH6 will get benefits from improved travel times and this involves benefits for travel between existing developments, which has not been taken into account in the benefit/cost allocation.
- 2.8 The concerns above challenge the validity of the transportation analysis undertaken but it is not easy to estimate what allocation might be calculated if the analysis were undertaken using standard techniques.

3. ANALYSIS REVIEW

- 3.1 The points below address two major errors in the analysis undertaken by the QLDC and provide an indication of more accurate values for the benefit estimation without crediting any validity to the analysis method.
- 3.2 The analysis undertaken has acknowledged that not all the benefits of the new road will be attributable to the landholders adjacent to the EAR who do not yet have consent for future development of their sites.
- 3.3 It allocates 8.2% of the benefits to existing or consented developments based on daily trips between existing developments that are predicted to use the new road in 2045.
- 3.4 While some traffic is predicted to travel from existing development along SH6 (east) to the Remarkables Park shopping centre, there are no trips in the opposite direction predicted to use the EAR. If the same number is assumed for the opposite direction then the allocation to existing development would increase to 10.5%. (^{up}from 8.2%)
- 3.5 Of the remaining 89.5% it is calculated that 72.6% involve trips between existing development and future development sites.

3.6 All trips have two ends and accordingly the benefits for trips between existing and future development would be shared between the two categories of development.

3.7 In the absence of a detailed origin-destination analysis, this should be allocated 50:50 and therefore 36.3% of these benefits would be allocated to existing development taking the overall allocation up from 10.5% to 46.8%.

4. BENEFIT STREAM

4.1 Transportation benefits are normally calculated over 40 years from construction not just at an arbitrary snapshot such as 2045.

4.2 When the EAR opens it is unlikely that any of the "future" development will have been completed and therefore it will obtain zero benefits from the EAR initially.

4.3 There will however be a considerable volume of traffic using the EAR (partly because of congestion at the BP roundabout) and therefore 100% of the benefits will initially be associated with existing development such as along Glenda Drive and the Remarkables Park town centre as well as the soon to be built high school.

4.4 Normally for a transportation analysis, benefits are discounted at 6% per annum and therefore the benefits accrued in the early years are more highly valued. *Weights to existing development*

4.5 Depending on how quickly the future development occurs, an analysis of benefits over 40 years reduced to a net present value could be expected to see the 46.8% allocation to existing development increased to between 60% and 80%. *likely to develop more slowly - the more slowly this happens, the more benefits are loading on existing dev.*

4.6 This can be compared with the QLDC consultant's estimated of 8.2%.

4.7 Clearly even if the analysis undertaken were valid, the conclusion obtained is very inaccurate.

Tony Penny

2 December 2016

**BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL HEARINGS
PANEL**

UNDER

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IN THE MATTER

of proposed amendments to the
Queenstown Lakes District Council's
Policy on Development Contributions

AND

IN THE MATTER

of submissions by **REMARKABLES
PARK LIMITED**

**STATEMENT OF EVIDENCE OF DHANANJAY RAGHAVENDRA BASRUR ON
BEHALF OF REMARKABLES PARK LIMITED**

2 December 2016

**BROOKFIELDS
LAWYERS**

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MAY IT PLEASE THE PANEL

1. INTRODUCTION

- 1.1 My name is Dhananjay Raghavendra Basrur of Auckland, Corporate Finance Adviser. I am known as Jai Basrur.

2. EAR

- 2.1 The approach used for allocating trips to future developments is questioned and has a material impact on the level of development contributions assessed.
- 2.2 Ownership and usage benefits cannot be correlated or implied. This inference could violate the stated principle "those who benefit from the EAR should be the ones who pay for it". *- if look over a period of time is a mismatch*
- 2.3 Linear growth in property units and dwellings cannot be assumed because: *Simplified assumption that will grow consistently*
- (a) *unintended consequences?* It raises issues: subsidies for new owners who have not made development contributions; financing of cost overruns; timing mismatch between those who benefit and those who pay development contributions; and -
- (b) It does not recognise timing of development projects and the practical reality that development is phased and staggered.
- 2.4 The inclusion of future interest costs yet to be incurred in assessing development contributions is inaccurate.

3. OTHER

- 3.1 The present approach of funding development contributions could escalate property prices as developers would be forced to pass through such costs.
- 3.2 Financing investments from a balance sheet perspective could cause timing mismatches between people and periods in which development contributions are made and benefits are derived. Alternative

mechanisms aligned to periods of benefits and beneficiaries should be considered.

Jai Basrur

2 December 2016

**SUBMISSION ON QUEENSTOWN LAKES DISTRICT COUNCIL'S
PROPOSED AMENDMENT TO POLICY ON DEVELOPMENT CONTRIBUTIONS**

To: Queenstown Lakes District Council
Private Bag 50072
QUEENSTOWN

Name of Submitter: Remarkables Park Limited
Presenter: Alastair Finlay Porter

STATEMENT OF EVIDENCE OF ALASTAIR FINLAY PORTER

Dated 2 December 2016

INTRODUCTION

1. My name is Alastair Finlay Porter. I hold a BCom from Auckland University majoring in accounting together with papers in economics and law. I am an associate member of the New Zealand Society of Accountants (ACA), and a Chartered Fellow of the Institute of Directors (CFInstD).
2. I have held executive and non-executive directorships in the property, marketing and farming sectors. I was formerly a board member of the New Zealand Deer Farmers Association. For many years I was a board member of and then deputy chairman of the New Zealand Game Industry Board. From April 2008 to December 2012 I was Chairman of the Queenstown Chamber of Commerce. I remained as a board member of the Queenstown Chamber of Commerce until November 2013. I have experience in urban and rural residential property development both as a principal and a consultant, including extensive experience in drafting contracts and understanding of planning provisions.

IMPLICATIONS

3. The implications of this proposal are to impose an entirely unexpected and disproportionate financial burden on Remarkables Park.

DEED OF AGREEMENT

4. Unexpected because of terms of the deed of agreement and subsequent meetings.
5. Reinforced by Council conduct resulting in breaches of that deed (seeking immediate funding from NZTA – no steps taken for two years, and reasonable endeavours for construction of the Eastern Arterial Road by May 2015 – no steps taken) and subsequent undertaking to provide information – took another year. Contrast Remarkables Park who have met all contractual obligations.
6. Offer of credits if Remarkables Park Limited built some or all of the Eastern Arterial Road is inconsistent with Council now seeking Remarkables Park Limited pay the Council for the Eastern Arterial Road.

INCONSISTANCY

7. **Methodology not normal**
8. I endorse Mr Penny's evidence and as a developer I find it unreasonable and inconsistent that Council seeks to use a methodology that a traffic engineer of his considerable experience considers not to be using **standard techniques** of analysis.

DOUBLE COUNTING AND NPV

9. From an accounting perspective both of Tony Penny's other criticisms are also valid. Clearly counting trips in both directions to allocate costs is "double counting". NPV also analysis needs to be applied, particularly in this case, when initially there are no benefits to adjoining land until development commences. *and only progressively as development occurs.*

TIMING AND PLANNING

10. An Eastern Arterial alignment dates back at least to the mid-nineties.
11. *EAR has been* Included in District Plan Reviews, and related agreements.
12. Notwithstanding Council have tried to underplay its importance as an Arterial Road, as it is described in the deed with Remarkables Park Limited, by more recently referring to it by an earlier description Eastern Access Road. It is nevertheless an Arterial Road.
13. Significant problem is lack of integration between Council's Spatial Planning (especially EAR, RPZ, Airport) and Asset Infrastructure Planning the Eastern Arterial Road.
14. If Council wanted to apply a Development Levy funding approach it should have started many years earlier when most of the proposed development was to be undertaken and could be captured by that regime.
15. That time has well and truly passed for simple resolution.
16. The alternative now to seek development levies will be complex legal arguments, expensive traffic models etc.
17. Furthermore for this reason I endorse Jai Basrur's conclusion that the principle here of seeking to charge those who benefit is inconsistent with charging current landowners. The land adjoining the Eastern Arterial Road is not a simple clear cut land use where benefactor and land owner are largely the same, such as an SHA. On the Frankton Flats the situation because of mixed use zonings, unknown outcomes as to land use and timing, substantial development having already been undertaken, and contractual issues makes this a minefield to now seek to finance through substantial Development Levies.

Inefficient / High Cost of Funding

18. Developers must add margins to all costs including Development Levies to obtain finance, and to stay in business.
19. As a result development levies increase development costs and are an impediment to development.
20. Yet development creates substantial rates. These are in effect a risk free annuity which can be securitised on attractive borrowing terms. *-> will be accepted as a form of security rates are risk free*
21. Rates do not carry the cost of a developer's margin.
22. The Eastern Arterial Road is long term infrastructure.
23. Benefactors will change over time, and through targeted rates can also be applied in ways which could enable tourist growth to be on charged more directly for their share.
24. Rates are now the best aligned mechanism for funding the Eastern Arterial Road fairly, equitably and efficiently.
25. Encouraging development by not implementing development with Development Levies will likely generate more ratepayers, more quickly and lower average district rates burden. Ramada example \$90,000 in rates from 3,000 m² of land.