

**BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**ENV-2018-CHC-**

**UNDER** the Resource Management Act 1991

**AND**

**IN THE MATTER** of an appeal under clause 14(3) of Schedule 1 of  
the Resource Management Act 1991 regarding  
decisions of a Requiring Authority on designations  
in the Queenstown Lakes Proposed District Plan

**BETWEEN** **Remarkables Park Limited**  
Appellant

**AND** **Queenstown Airport Corporation Limited**  
Respondent

**AND** **Queenstown Lakes District Council**  
Local Authority

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**NOTICE OF APPEAL ON BEHALF OF REMARKABLES PARK LIMITED**

**Dated: 21 August 2018**

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**BROOKFIELDS  
LAWYERS**  
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**REMARKABLES PARK LIMITED** (“**Appellant**”) appeals against part of the requiring authority decision of Queenstown Airport Corporation Limited (“**QAC**”) in respect of Stage 1 of the Proposed Queenstown Lakes District Plan (“**Proposed Plan**”), insofar as it relates to Designation 2 “Aerodrome Purposes”.

### **Decision**

1. The Appellant has the right to appeal under clause 14(3) of Schedule 1 of the Resource Management Act 1991 (“**RMA**”) because it made submissions (#807) and further submissions (#1117) on Designation 2 of the notified Proposed Plan.
2. The Appellant received notice of:
  - (a) the Queenstown Lakes District Council’s (“**QLDC**”) notified Proposed Plan on 26 August 2015 (including Designation 2 “rolled over” with modifications);
  - (b) the QLDC’s recommendations on Requiring Authorities’ designations (contained within Stage 1 Decisions) on 7 May 2018 (“**Recommendations**”); and
  - (c) the QAC’s decisions on the QLDC’s recommendations on 10 July 2018 (“**Decisions**”).
3. The Appellant is not a trade competitor for the purposes of section 308D of the RMA.

### **Parts of the Decision that the Appellant is appealing**

4. The Appellant appeals the part of the Decision relating to Designation 2.

### **General Reasons for appeal**

5. The reasons for this appeal are that the Decisions on Designation 2:
  - (a) will not promote sustainable management of resources, will not achieve the purpose of the RMA and will be contrary to Part 2 and other provisions of the RMA;
  - (b) will not meet the reasonably foreseeable needs of future generations;
  - (c) will not enable social, economic and cultural wellbeing;
  - (d) are inconsistent with the relevant provisions of other planning documents;

- (e) will not avoid, remedy or mitigate adverse effects on the environment; and
  - (f) are not reasonably necessary for achieving the objectives of the QAC.
6. At a high level, the nature of the QAC's provisions for Designation 2 is to expand the list of permitted activities and provide significantly more liberal standards for those activities. The Appellant considers that the QAC has provided no probative reasoning or evidence to support these amendments.

**Specific reasons for appeal**

7. Without limiting the generality of paragraphs 5 and 6 above, the Appellant opposes the following provisions:

Mapping

8. The Appellant seeks that Designation 2 be removed from Lot 1 DP 472825 in the designation. This lot is a fee simple title in the ownership of Aviemore Corporation Limited.

D.1 Designation Description

9. The Appellant opposes replacing the word "minimising" with the word "managing." The QAC claims that the amendment is made to "improve clarity and interpretation." The Appellant considers that "managing" offers less clarity than "minimising" and that "minimising" is more appropriate and consistent with Plan Change 35.
10. The QLDC supports the word "minimising" in the Description for Designation 2.<sup>1</sup> The amendment to the word "managing" was not the subject of any evidence provided during hearings on Designation 2. The Appellant considers that it is inappropriate for the QAC to make this amendment now, in the final stage of Council level proceedings.

D1.1 Permitted Activities

11. The Appellant opposes the inclusion of paragraph (g) which provides for a very wide range of retail, commercial and food and beverage activities to occur within Designation 2. Secondly, the Appellant considers that the wording preceding the list of permitted activities

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<sup>1</sup> QLDC Recommendations on Designation 2, contained within QLDC's 'Decisions Version' of Stage 1 of District Plan.

creates ambiguity (for example the words “nature of activities”) and should be amended to clarify that the list of activities is exhaustive.

12. The QLDC do not support the QAC’s extensive list of permitted activities.<sup>2</sup> It is noted that the QLDC’s section 42A report supported the inclusion of these activities.<sup>3</sup> After hearing the Appellant’s and the QAC’s cases, the section 42A reporting officer revised her position, finding that the QAC had provided insufficient assessment as to whether these activities are appropriate in the designation and withdrew support for this provision.<sup>4</sup>
13. The QAC relies on the High Court’s judgment **McElroy v Auckland International Airport**<sup>5</sup> to justify this provision. The Appellant agrees with the position advocated by the QLDC that this judgment is not an answer to the QAC’s extended list of permitted activities in Designation 2.<sup>6</sup> The case related to a declaration as to whether certain land was held and still required for a public work under section 40 of the Public Works Act 1981. It did not consider section 171 of the RMA and the requirement for designation provisions to be reasonably necessary for achieving the objectives of a requiring authority for which a designation is sought. As noted by the QLDC, the QAC’s objectives are narrower than simply providing airport and airport related activities.<sup>7</sup>

#### D.1.1 Prohibition on Non-Airport Related Activities

14. The Appellant seeks the reinstatement of a provision prohibiting “non-airport related activities” in Designation 2. The Appellant agrees with the position of the QLDC recorded in the section 42A report that this provision “*is appropriate in that it ensures that any activity that is not associated with the operation of the airport is required to comply with the underlying zone standards.*”<sup>8</sup>
15. In addition, the section 42A report records that removing the provision may be inconsistent with section 171 of the RMA, in that “non-airport related activities” are not reasonably necessary for achieving the objectives of the QAC for Designation 2.

<sup>2</sup> QLDC Recommendations on Designation 2, contained within QLDC’s ‘Decisions Version’ of Stage 1 of District Plan.

<sup>3</sup> Section 42A Hearing Report, Chapter 27 – Designations (Queenstown Airport and Wanaka Airports), Appendix 1 Recommended Revised Chapter.

<sup>4</sup> Rebecca Holden, Summary Evidence dated 20 October 2016, paragraph 8.

<sup>5</sup> **McElroy v Auckland International Airport Limited** [2008] 3 NZLR 262; and the Court of Appeal judgment **McElroy v Auckland International Airport Limited** [2009] NZCA 621.

<sup>6</sup> Opening Representations / Legal Submissions for Queenstown Lakes District Council, Hearing Stream 07 – Chapter 37 Designation, 20 October 2016, paras 6.1-6.4.

<sup>7</sup> Opening Representations / Legal Submissions for Queenstown Lakes District Council, Hearing Stream 07 – Chapter 37 Designation, 20 October 2016, para 6.4.

<sup>8</sup> Section 42A Hearing Report, Chapter 27 – Designations (Queenstown Airport and Wanaka Airports), para 6.10

D.1.2 Building Height

16. The Appellant seeks that the building height within Designation 2 be revised to 9 metres. The Appellant considers that a height of 15 metres is not necessary for aerodrome uses. The Appellant also opposes the exclusion of hangars from the building height limits.

D.1.3 Building Setback

17. The Appellant seeks that the minimum setback requirements should be 10 metres, consistent with the provisions of the Designation provisions in the operative plan. Setbacks of 5 metres and 3 metres are entirely inappropriate and inconsistent with the commercial and residential zoned land adjoining Designation 2.

D.1 Strip Width

18. The Appellant seeks that the standards relating to the maximum Strip Width are reinstated in Designation 2, and that the designation provides a maximum Strip Width of 75 metres.

D.1.6 and D.1.7 Outline Plan

19. The Appellant opposes the provisions for Outline Plans and waivers. The Appellant considers that the provisions are insufficient to address adverse effects of Designation 2.

**Relief Sought**

20. The Appellant seeks the following amendments to Designation 2:
- (a) Replace the word “managing” with the word “minimising” in the Designation Description;
  - (b) Delete (g) from the list of permitted activities and amend wording preceding list of permitted activities as follows:

~~The nature of the activities~~ following activities are authorised by this designation ~~are~~  
~~described as follows:~~

- (c) Include provision prohibiting non-aircraft related activities;
- (d) Amend Building Height restrictions to 9 meters across the entire designation and remove hangars from list of exclusions;

- (e) Amend Minimum Setback restrictions to 10 metres across the entire designation;
- (f) Include Maximum Strip Width standards of 75 metres; and
- (g) Amend Conditions D1.6 and D1.7 to better address adverse effects.

### **Consequential and Further Relief**

21. In addition to the specific relief set out above, The Appellant seeks such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this appeal and the relief requested in the Appellants primary and further submissions.

### **Service**

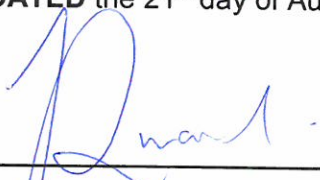
22. A copy of this notice has been lodged today with the Environment Court:
- (a) electronically by email to [Christine.Mckee@justice.govt.nz](mailto:Christine.Mckee@justice.govt.nz); and
  - (b) by posting a hard copy to: PO Box 2069, 20 Lichfield Street, Christchurch.
23. An electronic copy of this notice is being served today by email to the QAC at [Rebecca.wolt@laneneave.co.nz](mailto:Rebecca.wolt@laneneave.co.nz) and to the QLDC at [dpappeals@qldc.govt.nz](mailto:dpappeals@qldc.govt.nz).

### **Attachments**

24. Copies of the following documents are attached to this notice:
- (a) Annexure One: Notice of Requirement for Designation to be Included in Proposed Plan with Modification
  - (b) Annexure Two: The relevant parts of the QLDC's recommendations (contained within the Stage 1 Decisions)
  - (c) Annexure Three: The QAC's Decisions

(d) Annexure Four: The Appellant's submissions.

**DATED** the 21<sup>st</sup> day of August 2018



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**J D Young / R S Ward**

Counsel for the Appellant

**THIS NOTICE OF APPEAL** is filed by **JOHN DYLAN YOUNG**, solicitor for Remarkables Park Limited. The address for service of the Appellant is at the offices of Brookfields Lawyers, Tower 1, 9<sup>th</sup> Floor, 205 Queen Street, Auckland.

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

1. Posted to the solicitors at PO Box 240, Auckland 1140
2. Left for the solicitors at Document Exchange for direction to DX CP24134.
3. Emailed to the solicitors at [youngj@brookfields.co.nz](mailto:youngj@brookfields.co.nz) / [ward@brookfields.co.nz](mailto:ward@brookfields.co.nz)

#### **Advice to recipients of copy of notice of appeal**

##### *How to become a party to proceedings*

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to [Christine.Mckee@justice.govt.nz](mailto:Christine.Mckee@justice.govt.nz)) and serve copies of your notice on the Queenstown Lakes District Council and the appellant.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the RMA.

You may apply to the Environment Court under section 21 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

*Advice*

If you have any questions about this notice, contact the Environment Court in Christchurch.