

**BEFORE THE ENVIRONMENT COURT**

Decision No. [2013] NZEnvC 93

**IN THE MATTER** of the Resource Management Act 1991 (**the Act**) and appeals pursuant to clause 14 of the First Schedule and a designation under section 174 of the Act

**BETWEEN** AIR NEW ZEALAND LTD

(ENV-2011-WLG-001)

QUEENSTOWN AIRPORT  
CORPORATION LTD

(ENV-2011-WLG-003)

REMARKABLES PARK LTD AND  
SHOTOVER PARK LTD

(ENV-2011-WLG-004)

Appellants

**AND** QUEENSTOWN LAKES DISTRICT  
COUNCIL

Respondent

**BETWEEN** AIR NEW ZEALAND LTD

(ENV-2011-WLG-014)

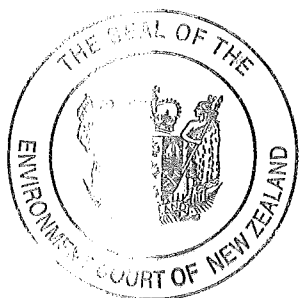
REMARKABLES PARK LTD AND  
SHOTOVER PARK LTD

(ENV-2011-WLG-016)

Appellants

**AND** QUEENSTOWN AIRPORT  
CORPORATION LTD

Respondent



Hearing: In Chambers at Christchurch

Court: Environment Judge J E Borthwick  
Environment Commissioner R M Dunlop  
Environment Commissioner D J Bunting

Date of Decision: 8 May 2013

Date of Issue: 8 May 2013

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**THIRD INTERIM DECISION  
OF THE ENVIRONMENT COURT**

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**Introduction**

[1] In the Second Interim Decision issued on 5 March 2013 we found, inter alia, that the District Plan implementation methods should be amended to be both consistent as between themselves and with condition 16 of the notice of requirement to amend Designation 2.

[2] As a consequence, the implementation methods were to read:

Queenstown Airport Corporation Limited shall offer to part fund retrofitting over time of mechanical ventilation of any Critical Listening Environment within existing buildings containing an Activity Sensitive to Aircraft Noise located between the Air Noise Boundary and the 60 dB AANC 2037 ~~60dB Noise Contour~~. This ventilation is to enable windows and doors to remain closed to achieve the Indoor Design Sound Level if required. Retrofitting ~~shall be based on the 2037 Noise Contours~~ and shall be offered at the time the Projected 60 dB AANC reaches the property.

[3] That said, we reserved leave for the parties to file a joint memorandum if the court was not correct in its understanding that the 60 dB AANC and not 2037 60 dB Noise Contour applied.

[4] In its 15 March 2013 memorandum, QAC responded to paragraph [21] of the court's Second Interim Decision as follows:

... whilst the Court's suggested changes are not technically incorrect, QAC respectfully submits that the manner in which the issue is addressed in the November Provisions provides a clearer



indication to users of the District Plan as to the properties that will ultimately be eligible for QAC part funded noise mitigation. QAC therefore prefers that the 30 November 2012 wording be retained.

[5] What QAC omitted to say is that the implementation methods set out in the November Provisions inconsistently reference the 60 dB AANC and the 2037 60 dB Noise Contour. It is this inconsistent use of terminology that has given rise to the court's confusion. Subsequently, the court released a Minute seeking the advice of the parties on:

- (a) district wide issues – implementation methods at p4-57 – is a correction required to the fifth implementation method to delete “60 dB AANC” and replace it with “2037 60 dB Noise Contour”?
- (b) condition 16 at pA1-49 – in light of Mr Day's advice to counsel set out in the memorandum is the reference to “60 dB Projected AANC” correct or should it be amended to read “2037 60 dB Noise Contour”?<sup>1</sup>

[6] QAC has since confirmed that a correction is required to the implementation methods at p4-57 in the manner identified in the Minute, and we approve the same.

[7] While QAC does not consider any additional words are required to clarify the meaning and intent of condition 16, it volunteered revised wording for the condition as follows:

16. Queenstown Airport Corporation Limited shall offer to part fund retrofitting, over time, of mechanical ventilation of any Critical Listening Environments within existing buildings containing an Activity Sensitive to Aircraft Noise located between the Air Noise Boundary and the 2037 60 dB Noise Contour. In particular, each year the QAC shall offer to provide 75% funding of mechanical ventilation for Critical Listening Environments of buildings that existed on [insert date designation confirmed] containing an ASAN that are within the 60 dB Projected AANC. This offer may be earlier at QAC's discretion. Where a building owner accepts this offer they shall not be eligible for further funding of mechanical ventilation if the building later becomes within the 65 dB Projected AANC, but they shall become eligible for 100% funding of any sound insulation required.



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<sup>1</sup> Minute dated 21 March 2013.

[8] Given the complexity of noise management tools, it is our view that clarification is required and we approve the amendment proposed to condition 16.

### Outcome

[9] A final determination on the planning map and Figure 2 will be made in conjunction with the second Queenstown Airport Corporation Ltd notice of requirement lodged in relation to Designation 2. Referred to as **Lot 6 NOR**, the Environment Court released its decision on the second notice of requirement in September 2012: *Queenstown Airport Corporation Ltd* [2012] NZEnvC 206. This decision has been appealed to the High Court, including by RPL.

[10] This plan change is approved subject to the following amendments. In relation to the implementation methods that appear in the District Plan at:

- page 4-57 amend Implementation Methods (i);
- page 5-6 amend Implementation Methods (v);
- page 5-9 amend Implementation Methods (i)(i);
- page 7-6 amend Implementation Method (j);
- page 11-6 of the Business and Industrial Area Section, Implementation Methods (i) as follows:
- the relevant paragraph is to read:

Queenstown Airport Corporation Limited shall offer to part fund retrofitting over time of mechanical ventilation of any Critical Listening Environment within existing buildings containing an Activity Sensitive to Aircraft Noise located between the Air Noise Boundary and the 2037 60 dB Noise Contour. This ventilation is to enable windows and doors to remain closed to achieve the Indoor Design Sound Level if required. Retrofitting shall be offered at the time the Projected 60 dB AANC reaches the property.

[11] Condition 16 of the notice of requirement is approved subject to the following amendment:

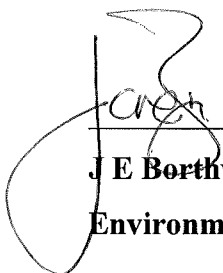
16. Queenstown Airport Corporation Limited shall offer to part fund retrofitting, over time, of mechanical ventilation of any Critical Listening Environments within existing buildings containing an Activity Sensitive to Aircraft Noise located between the Air Noise Boundary and the 2037 60 dB Noise Contour. In particular, each year the QAC shall offer to provide 75% funding of mechanical ventilation for Critical Listening Environments of buildings that existed on [insert date designation confirmed] containing an ASAN that are within the 60 dB Projected AANC. This offer may be earlier at QAC's discretion. Where a building owner accepts this offer they shall not be eligible for further funding of mechanical ventilation if the building later



becomes within the 65 dB Projected AANC, but they shall become eligible for 100% funding of any sound insulation required.

[12] Although PC35 cannot be decided finally for the reason at [9] above, we are concerned that the directions which the court has made in the First Interim Decision [2012] NZEnvC 195, Second Interim Decision [2013] NZEnvC 28 and this Third Interim Decision should be collated into a single version to assist district plan users by providing a consolidated record of the court's decisions. This can be done by updating the version of Plan Change 35 and Designation 2 (the Aerodrome Designation) filed on 30 November 2012. Accordingly, the Council, having conferred with the other parties, is to file by **31 May 2013** a copy of PC35 and Designation 2 amended to give effect to the relevant court decisions.

For the Court:

  
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**J E Borthwick**  
**Environment Judge**

