

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL HEARINGS PANEL

UNDER the Resource Management Act 1991

IN THE MATTER of the review of parts of the Queenstown Lakes District Council's District Plan under the First Schedule of the Act

AND

IN THE MATTER of submissions and further submissions by **REMARKABLES PARK LIMITED**

**MEMORANDUM OF COUNSEL FOR REMARKABLES PARK LIMITED SEEKING LEAVE
TO FILE SUBMISSIONS IN RELATION TO TRADE COMPETITION**

DESIGNATIONS – QUEENSTOWN AIRPORT

8 NOVEMBER 2016

**BROOKFIELDS
LAWYERS
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MAY IT PLEASE THE PANEL:

1. Counsel for the QAC has filed reply submissions that assert, *inter alia*, that RPL's submissions should be disregarded because it is a trade competitor of the QAC. RPL seeks leave to respond to those submissions because:
 - (a) The allegation is very serious and is not accepted by RPL;
 - (b) The grounds upon which the allegation is advanced were known to the QAC prior to the hearing of submissions of designations, but no such challenge to RPL's standing was ever signalled prior to counsel's reply. Counsel for the QAC relies exclusively on the content of RPL's submission on the Airport Mixed Use zone;
 - (c) Issues of natural justice arise because RPL was not given an opportunity to consider or respond to the allegation.

2. It is noted RPL is also concerned at the extent of material adduced as part of the QAC's reply and myriad statements in the reply submissions that misrepresent what counsel for RPL submitted at the hearing. However, in order to bring the hearing to a conclusion and not unnecessarily protract the process, RPL does not seek leave to address all those concerns. It does, however, seek leave to comment on the submission of evidence after the conclusion of the formal public hearing which is a clear and obvious breach of natural justice and causes prejudice to submitters.

DATED the 8th day of November 2016



J D Young

Counsel for Remarkables Park Limited

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**SUBMISSIONS ON BEHALF OF REMARKABLES PARK LIMITED IN RELATION TO
TRADE COMPETITION**

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1. INTRODUCTION

- 1.1 These submissions are made on behalf of Remarkables Park Limited (RPL). They are limited to the issue of trade competition raised by counsel for the Queenstown Airport Corporation (QAC) in reply submissions.
- 1.2 Counsel has sought leave to respond to the allegation the RPL is a trade competitor of the QAC. Counsel has endeavoured to keep these submissions brief.

2. RPL IS NOT A TRADE COMPETITOR OF THE QAC

- 2.1 The grounds for alleging RPL is a trade competitor of the QAC are very sparse, but in essence hang on the content of RPL's submission on the Airport Mixed Use zone and the decision in **Kapiti Coast Airport Holdings Limited v Alpha Corporation Limited**¹.
- 2.2 In response, RPL submits that:
- (a) The submissions in respect of the Airport Mixed Use zone are not before this Committee. This Committee is considering submissions on the designations chapter of the Proposed District Plan;
 - (b) RPL is not currently in the business of providing aeronautical services. It has no current aspiration to establish an aerodrome and is unlikely to ever have any such aspiration;
 - (c) The QAC maintain that any of the commercial, industrial, retail and other activities it now wishes to undertake through its designation are ancillary to and connected with its aerodrome activities. Development within the RPZ is not ancillary to or connected aerodrome activities;
 - (d) In any case, RPL's submissions on the Airport Mixed Use zone and the modification to the airport's designation are motivated by adverse

¹ [2016] NZEnvC 137.

environmental effects and the integration of land uses. The QAC has, for many years, stridently opposed a variety of land uses in and around the airport due to reverse sensitivity concerns. One question raised by RPL in its submission is why the same reverse sensitivity do not arise in relation to land owned by the QAC. It also concerned about the scale and location of the activities proposed, and potential amenity and traffic effects (amongst other matters);

- (e) Further to (d) above, RPL owns land adjoining the QAC's land. As stated at the hearing of submissions on the designation chapter, it stands to be directly and significantly affected by development on its boundary (particularly where building height is sought to be increased and set backs are proposed to be reduced²). The references to the Lot 6 decision in my synopsis of submissions³ and submissions presented at the hearing highlight the potential issues at the boundary of QAC's and RPL's land;
- (f) **The Kapiti Coast Airport** does not assist in the current circumstances because of the matters raised above and;
 - (i) It concerned a plan change not a designation;
 - (ii) The opponents of the plan change did not own land adjoining the airport; and
 - (iii) The High Court's decision in **Queenstown Central Limited v Queenstown Lakes District Council** [2013] NZRMA 239 (HC) was carefully distinguished in the facts of the case. In particular, it was noted that in the **Queenstown Central** decision landowners were competing to get their land zoned for the highest value use in the context of a scarce resource (flat land in the Queenstown urban environment).⁴ In short, the parties were resource use competitors,

² It is noted that counsel for QAC has stated that RPL's concerns regarding the location of activities is confined to the north of the main runway (paragraph 13 of the reply submissions). That is incorrect. RPL's is concerned with the location of activities to the south of the main runway where the QAC's land adjoins RPL's land. Counsel submitted however that the same interface issues could also arise to the north.

³ In that regard it is noted that the synopsis of submissions for RPL filed in advance of the hearing clearly set out all the issues that were expanded upon orally and in writing during the hearing.

⁴ See page 8 of the **Queenstown Central** decision.

not trade competitors.⁵ Judge Dwyer found this was not the case in Paraparaumu. Given that RPL and QAC are adjoining landowners on the Frankton Flats (being the same scarce resource that was the subject **Queenstown Central** decision), it is difficult to see how the **Queenstown Central** decision could be distinguished in relation to RPL's submissions on the designation of the Airport Mixed Use zone. Counsel for the QAC has not offered any analysis in that regard.

- (g) For completeness, it is noted that, on its face, Part 11A only applies to resource consents and proceedings before the Environment Court (see the limitations and prohibition under sections 308B to 308E). Further, a declaration that the trade competition provisions of the Resource Management Act 1991 have been breached may only be brought in the Environment Court (section 308G). Counsel for the QAC has not addressed Part 11A; and
- (h) In any case, the submissions for RPL raise adverse effects on the environment (as set out in the submissions filed in respect the designations chapter), and are therefore lawful under Part 11A.

2.3 In conclusion, it is submitted that:

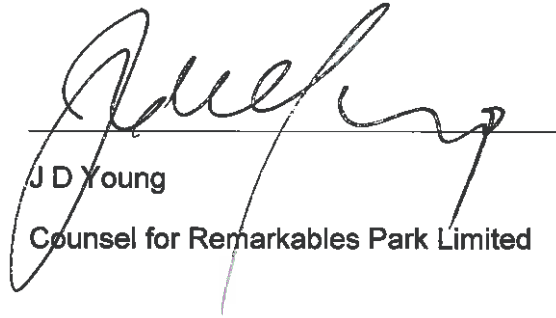
- (a) RPL's submission raised adverse effects on the environment;
- (b) Did not relate to trade competition or the effects of trade competition;
- (c) Counsel for the QAC should not be permitted to raise such a significant legal issue in reply submissions when all the material upon which she relies was available to her in advance of the hearing; and
- (d) RPL's submission should not be disregarded.

2.4 It is also noted that counsel for the QAC has taken the unusual step of filing reply evidence following the conclusion of the formal public hearing. Submitters are, therefore, precluded from considering and commenting on that evidence. Leave was not sought to file the further evidence. Clearly submitters are prejudiced. In my submission, the evidence should be disregarded. It is for the QAC to take steps to properly prepare for a hearing and it was on notice of the issues of concern to RPL

⁵ See para 2 of the **Queenstown Central** decision.

through the submission lodged and the synopsis of submissions filed in advance of the hearing. The Council and the submitters should not be put to the time and cost of a resumed hearing because the QAC has failed to properly consider and respond to issues raised in submissions, evidence and legal submissions.

DATED the 8th day of November 2016



J D Young
Counsel for Remarkables Park Limited