

21 April 2021

CIV-2019-425-112

MEDIA RELEASE

Wanaka Stakeholders Group Inc v Queenstown Lakes District Council and Queenstown Airport Company Ltd

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment is the only authoritative document. The full judgment can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz

The High Court has upheld in two respects the application by the Wanaka Stakeholders Group¹ to judicially review the decision of the Queenstown Lakes District Council to grant a long-term lease of Wanaka Airport to the Queenstown Airport Company.

The lease is for a term of 100 years and is perpetually renewable unless notice of termination is given 30 years in advance. Under the lease, the Council sold the Airport buildings, runway and associated infrastructure to the Airport Company and gave the Airport Company rights to make most decisions regarding the future development and operation of the Airport. The lease also gave the Airport Company certain rights with respect to the future development of Project Pure, the wastewater treatment plant operated by the Council on land within the perimeter of Wanaka Airport.

The Court's role in judicial review is to ensure that decisions taken by public bodies are in accordance with relevant legislation and the principles of administrative law. It is not to decide on the substantive merits of such decisions.

The High Court held that, in granting the lease, Council transferred control of Wanaka Airport to the Airport Company. Under the Local Government Act 2002, a transfer of control of a strategic asset such as Wanaka Airport can take place only under the process prescribed in the Act for the adoption or amendment of the Council's long-term plan. That process had not been

¹ The Wanaka Stakeholders Group is a community group which represents residents and businesses of Wanaka and the Upper Clutha Valley.

followed. Therefore, the decision to grant the lease did not comply with the Local Government Act and was unlawful.

The High Court also held that the consultation process carried out by the Council before granting the lease did not comply with the consultation requirements of the Local Government Act.

The Court was satisfied that the lease had been agreed by the Council's negotiating team in the expectation that Wanaka Airport would be developed as a complementary airport to Queenstown Airport to accommodate narrow body jet aircraft, and that the Lease was intended to enable that level of development, even if no final decisions had been made on the timing and scale of future jet services. However, the proposal on which the Council consulted the people and communities of the District envisaged a more limited development of Wanaka Airport that did not include scheduled jet-services. The Court considered that the expectation of introducing jet services to Wanaka Airport arose in the course of negotiations over the lease after the consultation process had concluded.

As a consequence, the proposal on which the Council carried out its consultation process did not fairly represent the nature of the decision taken by the Council when it granted the lease. In this respect too, the decision to grant the lease did not comply with the Local Government Act and was unlawful.

The High Court rejected arguments by the Wanaka Stakeholders Group that, in granting the lease, the Council transferred legal ownership of Wanaka Airport and effective control of Project Pure to the Airport Company. The Court also held that, in granting the lease, the Council had not triggered the requirements of the Local Government Act concerning decisions to alter significantly the level of services provided at Wanaka Airport. The Court also held that it was unnecessary to decide whether the decision to grant the lease was unreasonable or had failed to take account of relevant considerations.

The Court acknowledged that there would be disruption to the tenants at Wanaka Airport, to the Council and to the Airport Company if the lease were set aside. However, it considered that if the lease were not set aside, the public's ability to have a say in the future uses of the Airport over the next 100 plus years would be limited. Consultation by the Airport Company would be at the Company's discretion and outside the Local Government Act's processes.

For these reasons, the High Court declared that the grant of the lease was unlawful, set the lease aside, and declared the lease to be of no legal effect.

The Court declined to make an order restraining the Council and the Airport Company from taking any further steps to develop and operate Wanaka Airport as a dual capable airport with Queenstown Airport. The Court said that, if there continues to be a case for meeting projected demand for passenger air services into the Queenstown Lakes District through the development of Wanaka Airport, including for jet services, it is open to the Council and the Airport Company to pursue that option, provided they do so in accordance with the Local Government Act.