

## Supreme Court to Consider Council's Duty of Care

The Supreme Court has granted leave to appeal a decision of the Court of Appeal finding that the Queenstown-Lakes District Council did not owe a duty of care to the commercial owner of a luxury lodge damaged by fire due to a defective flue.

In **Queenstown-Lakes District Council v Charterhall Trustees Limited & Or\*** the Court of Appeal affirmed the distinction made in **Te Mata Properties Limited v Hastings District Council\*\*** between the owners of commercial and residential properties. In **Te Mata** the Court had held that owners of commercial buildings do not depend on local bodies in the same way as residential property owners, because they are likely to have engaged advisers with greater expertise than those offered by local bodies. Therefore, local bodies do not, generally, owe the owners of commercial properties a duty of care (see [http://www.brookfields.co.nz/newsroom/localgovernment/oct2007\\_2.asp](http://www.brookfields.co.nz/newsroom/localgovernment/oct2007_2.asp)).

On 24 November 2009, the Supreme Court granted leave to appeal to Charterhall Trustees Limited, and Blair & Co, one of two firms of architects involved with the design of the lodge. The question to be considered by the Supreme Court is:

"Whether the Council owed a duty of care to Charterhall to exercise reasonable skill and care in the performance of its functions and responsibilities under the Building Act 1991."

The Supreme Court's decision on this issue has the potential to significantly alter current assumptions about the duty of care owed to property owners by Councils in their capacity as building consent authorities, and therefore the manner in which plans and building works are assessed and inspected. We will report further when the matter has been heard by the Supreme Court.

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\* CA441/2008, 25 August 2009.

\*\* [2009] 1 NZLR 460.

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