

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-096

Under the Resource Management Act 1991 (**RMA**)

In the matter of An appeal under clause 14(1) of Schedule 1 of the RMA in relation to the proposed Queenstown Lakes District Plan

Between **Andrew Fairfax and Ian and Philippa Macauley**
Appellant

And **Queenstown Lakes District Council**
Respondent

AMENDED Notice of Appeal

2 November 2018

Appellant's solicitors:

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**anderson
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To The Registrar
Environment Court
Christchurch

- 1 Andrew Fairfax and Ian and Philippa Macauley appeal against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 Fairfax and Macauley made submissions (#660) and (#662) on the PDP.
- 3 Fairfax and Macauley is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 Fairfax and Macauley received notice of the decision on 7 May 2018.
- 5 The decision was made by Queenstown Lakes District Council (**QLDC**).
- 6 The parts of the decisions appealed relate to:
 - (a) Chapter 21 Rural Zone;
 - (b) Chapter 36 Noise;
 - (c) Consequential relief Definition Chapter 2 / (Wakatipu Basin Chapter 24).
- 7 Reasons for appeal

Background

- 8 Fairfax and Macauley own land in the Wakatipu Basin and regularly fly helicopters and fixed wing aircraft. The Appellants have a particular interest in the rules relating to the informal airports, and amendments to those provisions so as to enable the protection of existing established airports and the establishment of new airports, subject to appropriate amenity controls.
- 9 Alternative and consequential relief is sought in this Appeal with respect to the Wakatipu Basin Variation (Chapter 24, Stage 2). The Appellant acknowledges that Stage 2 decisions are yet to be completed, however given the timing of the Council's staged review, the outcomes of the Rural Zone rules applicable in respect of the Basin (and the Appellants' land) are at present uncertain, and therefore being appealed. Should a stage 2 zoning be confirmed over the Appellants' land, similar relief to that set out in this Appeal is sought to be applicable to that Stage 2 Zoning.
- 10 The Appellants also consider that it may be prudent for all appeals on these provisions relevant to informal airports in rural zones to be put on hold, pending the outcome of Stage 2 Wakatipu Basin to 'catch up' through the Court process

to these appeals. The reason being, that there is no justification for a separate rule regime applicable to Rural Zone informal airports as compared to the Wakatipu Basin Zone, particularly given in some instances the Basin Zone and Rural Zone abut each other. Hearing the appeals in a combined fashion will ensure a consistent PDP outcome, as well as ensuring the requirements of section 18A are met, to:

18A Procedural Principles

Every person exercising powers and performing functions under this Act must take all practicable steps to—

(a) use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised; and

(b) ensure that policy statements and plans—

(i) include only those matters relevant to the purpose of this Act; and

(ii) are worded in a way that is clear and concise; and

...

Further and consequential relief sought

11 Fairfax and Macauley oppose any further provisions inconsistent with this appeal and seeks alternative, consequential, or necessary additional relief to that set out in this appeal and to give effect to the matters raised generally in this appeal and Andrew Fairfax's and I and P Macauley's PDP submissions.

Attachments

12 The following documents are **attached** to this notice:

- (a) **Appendix A** – relief sought
- (b) **Appendix B** - A copy of the Appellant's submissions;
- (c) **Appendix C** - A copy of the relevant parts of the decision; and
- (d) **Appendix D** - A list of names and addresses of persons to be served with this notice.

Dated this 2nd day of November 2018



Maree Baker-Galloway/Rosie Hill
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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

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) with the Environment Court and serve copies of your notice on the relevant local authority and the Appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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 Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Advice

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

Provision (PDP decision version)	Reason for appeal	Relief sought
Chapter 21 Rural Zone		
<p>Objective 21.2.11</p> <p>The location, scale and intensity of informal airports is managed to maintain amenity values while protecting informal airports from incompatible land uses.</p>	<p>The objective is sought to be amended to recognise that there is no expectation in the Rural Zone that amenity values will always be retained to the same level as that which currently exists. Management of amenity values should be in accordance with an effects- based assessment in each application case.</p>	<p>Amend Objective 21.2.11 as follows:</p> <p>The location, scale and intensity of informal airports is managed to maintain <u>are located to manage</u> amenity values while protecting informal airports from incompatible land uses.</p>
<p>Policy 21.2.11.1</p> <p>Ensure informal airports are located, operated and managed so as to maintain the surrounding rural amenity.</p>	<p>Protecting rural amenity values could be problematic and for existing informal airports and is a higher level of protection than anticipated through section 7 or Part 2 RMA.</p>	<p>Amend policy 21.2.11.1 as follows:</p> <p>Ensure <u>new</u> informal airports are located, operated and managed so as to maintain the surrounding rural amenity.</p>
<p>Policy 21.2.11.2</p> <p>Protect rural amenity values, and amenity of other zones from the adverse effects that can arise from informal airports.</p>	<p>There is no expectation in the Rural Zone that amenity values will always be retained to the same level as that which currently exists. Management of amenity values should be in accordance with an effects- based assessment in each application case and in accordance with applicable noise standards.</p>	<p>Amend Policy 21.2.11.2 as follows:</p> <p>Protect <u>Provide for</u> rural amenity values, and amenity of other zones from the adverse effects that can arise from <u>new</u> informal airports.</p>
<p>New objectives / policies 21.2.11.x</p>	<p>New objectives and / or policies are sought to be include which provide for assessment of informal airport proposals which may</p>	<p>Insert new objectives / policies 21.2.11.x</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
	<p>be in minor contravention of, or noncompliance with, the permitted activity standards of Table 7. Such activities can have an acceptable effects (or none) on amenity values and therefore should be anticipated and provided for in the policy framework. Suggested relief wording has been provided for these additions, however could require further amendment / refinement to achieve PDP consistent drafting.</p>	<p><u>21.2.11.x Applications for informal airport activity establishment / use which breaches Table 7 are provided for, subject to adequately managing any potential adverse effects on rural amenity values.</u></p> <p><u>21.2.11.xx Assessment of informal airport activity use which breaches Table 7 should consider the degree and extent to which non-compliance with Table 7 results in adverse effects on amenity values.</u></p>
<p>Table 7 – 21.10.2 Informal Airports (Rural Zone)</p> <p>21.10.2.2 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities;</p> <p>21.10.2.3 In relation to point Rule 21.10.2.1, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit of building platform not located on the same site.</p>	<p>Rule 21.10.2.2 should be expressed as an exception to the activity standards table 7 rather than its own rule, as it could presently be construed that use of informal airports which are not those as listed in 21.10.2.2 default to a discretionary activity status.</p> <p>A 500m separation from any road or house would severely limit the prospect of any site being used for appropriate informal airport activities, and could affect existing established uses which require amendment or expansion. The proposed separation rule nullifies the overall enabling intent of the informal airport provisions.</p>	<p>Delete Rule 21.10.2.2 and replace as an exception to Table 7 so that emergency landings, rescues, fire-fighting and activities ancillary to farming activities are permitted activities.</p> <p>Delete 21.10.2.3</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
Chapter 36 Noise		
<p>36.5.10</p> <p>Sound from any helicopter landing area must be measured and assessed in accordance with NZ 6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas. Sound from helicopter landing areas must comply with the limits of acceptability set out in Table 1 of NZS 6807. In assessing noise from helicopters using NZS 6807: 1994 any individual helicopter flight movement, including continuous idling occurring between an arrival and departure, shall be measured and assessed so that the sound energy that is actually received from that movement is conveyed in the Sound Exposure Level (SEL) for the movement when calculated in accordance with NZS 6801: 2008.</p>	<p>Amend rule so that the noise limits are measured as Lmax, not Ldn, and consider a higher limit (60dB for informal airport activity use). Evidence presented in Stage 1 hearings noted that recent Environment Court decisions found a helicopter noise limit of 60dB in conjunction with a limit of four helicopter flights a day to be appropriate. This should therefore be reflected for informal airport activity use which is low scale (two flights per day).</p> <p>Also amend rule so that noncompliance is a discretionary activity, not a non-complying activity. The noise standards applicable are relatively low, and default to non-compliance for what could be a technical or minor breach is not justified / does not give effect to the informal airport activity rules.</p>	<p>Amend Rule 36.5.10 as follows:</p> <ul style="list-style-type: none"> - Measure R36.5.10 as Lmax (for the Rural Zone / Wakatipu Basin informal airports); - Apply a 60dB noise limit (for the Rural Zone / Wakatipu Basin informal airports); - Amend non-compliance status of R36.5.10 Discretionary (for the Rural Zone / Wakatipu Basin informal airports).
Planning Maps / Definitions Chapter 2 / Wakatipu Basin		
	<p>Provide specific policy support for rural living and development in the Wakatipu Basin and the WB Precinct and its distinctive development aspects with respect to informal airports. Given the uncertainties of the Council's approach to staging the</p>	<p>Consequentially amend planning maps / stage 2 / Wakatipu Basin Chapter 24 to give effect to the relief set out in this appeal</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
	<p>District Plan, these matters are included in this Appeal. There is no justification for a different activity status or rule regime for informal airports in the Wakatipu Basin, as compared to the Rural Zone and therefore</p>	

Appendix B - A copy of the Appellant's submission;

Appendix C - A copy of the relevant parts of the decision; and

Appendix D - A list of names and addresses of persons to be served with this notice.