BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

ENV-2018-CHC-

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal pursuant to Clause 14 of the First Schedule of the Resource Management Act 1991
BETWEEN	**MICHAEL JOSEPH BERESFORD** Appellant
AND	**QUEENSTOWN LAKES DISTRICT COUNCIL** Respondent

NOTICE OF APPEAL

Dated 18 June 2018

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TO: The Registrar
Environment Court
Christchurch

1 **MICHAEL JOSEPH BERESFORD** (**the Appellant**) appeals against decisions of the Queenstown Lakes District Council on the Proposed District Plan (**PDP**), in particular:

1.1 The decision regarding Upper Clutha Planning Maps (Outstanding Natural Landscapes, Outstanding Natural Features and Significant Natural Areas) (Report 16.1); and

1.2 The decision regarding Upper Clutha Planning Maps (Sticky Forest) (Report 16.15).

2 The Appellant made a submission in relation to a block of land in Wanaka legally described as Section 2 of 5 Block XIV Lower Wanaka Survey District (CT OT18C/473), comprising 50.67 hectares, and commonly referred to as Sticky Forest. The land has frontage to Lake Wanaka near its outlet to the Clutha River. On the other three sides of the land, residential development or land zoned to enable the same surrounds it. The land is covered in a forest plantation (comprising exotic species, the continued planting of which are to be prohibited by the PDP).

3 The relief sought in the Appellant's original submission was to rezone the site from Rural as shown on Planning Maps 19 and 20 to Low Density Residential.

4 By the time of the hearing, a revised package of relief sought the following:

4.1 Rezoning part of the site Low Density Residential;

4.2 Rezoning another part of the site Large Lot Residential;

4.3 Retaining the balance of the site (comprising approximately 31 hectares) as Rural on the basis that it would be made available to the public for recreational purposes;

4.4 Shifting both the ONL and UGB boundaries to coincide with the edge of the proposed Large Lot Residential Zone;

4.5 Associated changes to Chapters 6 (Landscape), 7 (Low Density Residential Zone), 11 (Large Lot Residential Zone) and 27 (Subdivision).

5 Although the Council found that there was merit in the Appellant's contention that some parts of the site are suitable for urban development, in the absence of any clarity as to the nature and location of legal rights of access to the site, the Council concluded that it was not possible to determine where and how urban development should be provided for. The Council found that the submission was premature, and that in the interim, the Rural Zone is the most appropriate way to achieve the objectives of the PDP.

6 The Appellant is not a trade competitor for the purposes of s308D of the Resource Management Act 1991.

7 The Appellant received notice of the decisions on 7 May 2018.

8 The decisions were made by the Queenstown Lakes District Council.

9 The parts of the decisions the Appellant is appealing in relation to Report 16.1 and Report 16.15, is the decision on the Appellant's submission in its entirety.

10 The reasons for the appeal are as follows:

10.1 The Council accepted that the site is landlocked as a result of a subdivision that was pursued by the Crown in order to effect settlements under the Ngai Tahu Claims Settlement Act 1998, and the South Island Landless Natives Act 1906, that had not been the subject of the normal RMA processes.

10.2 As no resolution of the access issue had been achieved by the time of the hearing, the case for rezoning was based upon the suitability of potential road connections that could efficiently serve the land if it were to be subdivided for low density residential, but subject to a more detailed assessment through a later subdivision consent process.

10.3 However, the Council rejected the Appellant's request for a rezoning on the basis that the request ought to have been pursued after the issue of legal access had been resolved, at which point it would likely have "found an urban zoning of at least part of the site to be appropriate".

10.4 In so concluding, the Council has left the Appellant in a position of difficulty, particularly in the event remedies are pursued under the Property Law Act 2007 (**PLA**), as "reasonable access" under the PLA has to be considered in light of permitted uses of land under its current zoning.

10.5 It is implicit that the Council considered that a residential zoning of part of the land on terms (more or less) as sought by the Appellant would be more appropriate than retention of the existing Rural zoning, and on that basis, resolution of the access issue under the PLA would be fruitless under the current Rural zoning.

10.6 On the authority of *Maclaurin v Hexton Holdings Limited*,[1] the Council was wrong not to have decided the rezoning on the grounds that there was no firm access proposal before it. There was no reason why the Council could not have evaluated the alternative access options put up for consideration at the hearing.

10.7 It was not a legitimate concern of the Council to know of the nature of the Appellant's legal rights or interest in the land over which access might be obtained, as its legitimate concern was only in relation to the proposed activity's effects.

10.8 Absent a firm decision from the Council, the Appellant's rights to pursue its remedies under the PLA have now been frustrated.

10.9 As part of its relief, the Appellant had also sought that the ONL line across the Sticky Forest Block be relocated, including for reasons that there were areas of land within the ONL that were capable of absorbing some residential development without creating adverse effects associated with "inappropriate land use, subdivision or development" in a s6(b) RMA context.

10.10 Although the Appellant's landscape architect did not wholly support relocation of the ONL line to the full extent proposed by the Appellant, he had undertaken an assessment supporting the potential of this part of the site within an ONL to absorb some limited development.

[1] CA212/07; 2008 NZCA 570

10.11 In its decision, the Council concluded that in s6(b) RMA terms:

(a) Identification of the location of an ONL is solely a landscape issue; and

(b) Determining the consequences of the identification of the ONL for potential development within the identified outstanding landscape "comes into play at the second stage";

– but without considering or deciding that second question.

10.12 It was open to the Council to leave the ONL line in the location agreed to as between the landscape architects for both the Council and the Appellant, but to allow the limited development within part of that land on the terms sought by the Appellant, and on the basis of the evidence before it, the outcome was warranted.

10.13 The question of what is "inappropriate subdivision, use and development" in an ONL must be determined by reference to the natural characteristics and qualities that contribute to the values of the ONL in question. A resolution of the further question of whether a particular development proposal will give rise to adverse effects on a particular ONL, must also be assessed in the context of the characteristics and qualities of the ONL in question.

10.14 Those issues were capable of being evaluated by the Council, and it erred in failing to undertake that further evaluation.

11 The Applicant seeks relief as sought in the package of relief presented to the hearing before the Council.

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

12.1 A copy of the Appellant's submission;

12.2 A copy of the relevant Decision Reports 16.1 and 16.15.

13 As no further submissions were received in relation to the Appellant's submission, the only party being served with this appeal pursuant to paragraph 2(a) of the

Special Procedural Arrangements is the Queenstown Lakes District Council at its dedicated email address: dpappeals@qldc.govt.nz.

Dated this 18th day of June 2018.

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