

In the Environment Court of New Zealand  
Christchurch Registry

I Te Koti Taiao o Aotearoa  
Ōtautahi Rohe

**ENV-2018-CHC-148**

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Under	the Resource Management Act 1991 ( <b>RMA</b> )
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	<b>Allenby Farms Limited</b>
	Appellant
And	<b>Queenstown Lakes District Council</b>
	Respondent

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**AMENDED** Notice of Appeal

7 February 2020

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**Appellant's solicitors:**  
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**To** The Registrar  
Environment Court  
Christchurch

- 1 Allenby Farms Limited (**Allenby**) appeals against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 Allenby made a submission (#502) and further submission (#1254) on the PDP.
- 3 Allenby is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 Allenby 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 decision appealed relate to:
  - (a) Chapter 3 Strategic Direction;
  - (b) Chapter 6 Landscapes;
  - (c) Chapter 22 Rural Residential and Rural Lifestyle;
  - (d) Chapter 27 Subdivision;
  - (e) Chapter 33 Indigenous Vegetation;
  - (f) Planning Maps 18 and 21.
- 7 Reasons for appeal

### **Overview**

- 8 Allenby sought in its submission to the PDP and in its case presented at the relevant PDP hearing, to rezone parts of its land located at Hidden Hills Drive Wanaka, and commonly known as Mt Iron and Little Mt Iron (**Site**), to provide for a comprehensive parkland type zoning; Mt Iron Park Rural Lifestyle (**MIPRL**) Zone. This zoning sought to enable a small number of further residential allotments on the lower flanks of Mt Iron and Little Mt Iron and to preserve significant parts of the balance land for the purposes of:
  - (a) Formalizing, upgrading, and creating a number of recreational walking tracks over Mt Iron and surrounds, thereby significantly enhancing public access and recreation / commuter opportunities to the public;

- (b) Creating an ecological enhancement, restoration regime, and pest control through a series of land covenants and provisions, binding new owners to contribute to the maintenance of Significant Natural Areas over the Site;
  - (c) A specific subzone rule regime to ensure that appropriate design and location of houses is carried out, and provide certainty that the positive benefits of the proposal will be realised and retained in perpetuity.
- 9 his Appeal seeks that Area A<sup>1</sup> be rezoned to Large Lot Residential Zone B (**LLR B**). Although the existing LLR Zone may be entirely suitable for management of subdivision and development in Area A, the proposed bespoke objectives and policies of the MIPRL Zone have been retained within this Appeal in the instance scope is required to include location-specific provisions relevant to Area A and within the LLR B Chapter. The MIPRL zone objectives, policies and methods are considered more appropriate to achieve sustainable resource management in the site than the objectives of the Rural zone, and therefore in accordance with section 32 of the Act.
- 10 Overall the purpose of the rezoning proposal is to achieve sustainable management of the site and to provide for an integrated, holistic and enduring solution that guarantees environmental outcomes that protect and enhance the site's ecological, landscape and recreational values in such a way that is economic for the owners and the wider community. This revised rezoning proposal better achieves strategic and higher order provisions of the PDP, as well as relevant provisions of the Operative and Proposed RPS, and Part 2 of the Act.
- 11 Without derogating from the generality of the above background, Allenby disagrees with the Council's Decision for the following reasons:
- (a) The decision placed primacy on the (draft) higher order PDP objectives and policies as reason to decline the rezoning. This is inconsistent with case law principles in rezoning, and the practicalities that those provisions are yet to be determined and therefore uncertainty in the PDP means that the decision must be made against Part 2 of the Act;
  - (b) The decision did not give appropriate weight and regard to the range of significant positive benefits of the proposal, and consider those against and as outweighing and potential or perceived adverse effects;
  - (c) Justification for retention of the Building Restriction Area (BRA) was based upon an erroneous conclusion as to the historical promulgation of that BRA;

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<sup>1</sup> As determined by Environment Court decision, [2019] NZEnvC 160,

- (d) Consideration of scope of the submission and relief available to Allenby was approached with 'legal nicety' and an unrealistically legalistic approach;

12 Despite all of the above, the Decision concluded that:

Allenby has drawn attention to a number of unsatisfactory aspects of the status quo. The informal access the public enjoys to Allenby's private land, in particular, is something that the Council needs to address if it considers that private access to be of value to the community (as we do). Mr Cleugh's vision was that ultimately, the Allenby property would be part of a public park encompassing the entire mountain. That would be a highly desirable outcome if it could be achieved, but at the very least, we recommend Council negotiate additional easement rights in favour of the public, preferably paralleling those that the submitter has indicated it would be prepared to confer as recompense for the proposed rural lifestyle rezoning, whose rejection we have recommended.<sup>2</sup>

13 It follows from the above, that there is clear support for those positive aspects of the proposal, despite the Council's ultimate rejection of the rezoning. This Decision therefore does not:

- (a) Provide appropriately for the higher order provisions of the PDP, the Operative RPS and the proposed RPS;
- (b) Part 2 of the RMA; and therefore
- (c) Does not achieve the most appropriate zoning outcomes in terms of the requisite section 32 test.

14 General reasons for appeal on relevant PDP chapters is set out below, with relief sought in **Appendix A**. Specific relief in respect of the MIPRL rezoning is set out in **Appendix B**.

### **Chapter 3 Strategic Direction**

15 Chapter 3 provides for the overarching strategic direction for resource management in the Queenstown Lakes District. The nature of Chapter 3 applying as higher order provisions to all other provisions of the PDP means that Allenby interests are affected by Chapter 3.

16 Significant changes to content and structure of Chapter 3 have occurred between the notified PDP version and the decisions version. Allenby therefore considers that its appeal on this chapter is significantly broad and not limited in scope to original policies and objectives listed.

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<sup>2</sup> Para 244, Council Decision Report 16.14.

- 17 Allenby opposes those provisions of Chapter 3 which do not provide for efficient and effective urban development, and which do not provide sufficiently for the social, economic, and cultural wellbeing of people and communities.
- 18 The specific provisions of Chapter 3 and the relief sought by Allenby are set out in **Appendix A** to this Appeal.

### **Chapter 6 Landscape**

- 19 Allenby opposes those policies relating to the preference for farming as the means to protect landscape values as these are disproportionately weighted towards the protection of agriculture and fail to provide for those rural landscapes where pastoral farming does not occur. Farming is one method for using rural resources productively, but its long term sustainability is uncertain particularly in this district, and there are other uses of rural land that are compatible with the protection of landscape values, including the provision of recreation and access to public places.
- 20 Allenby opposes those landscape provisions which establish a more than minor threshold or transience of effects into the determination of what is appropriate development in a landscape. This is a higher standard than that which is provided for in section 6(b) of the Act and is unjustified where the legislature has provided that such landscapes are only required to be protected from 'inappropriate' development. What is appropriate or inappropriate in a particular landscape, and based on a particular proposal may be a broader question than simply a more than minor effects assessment.
- 21 The specific provisions of Chapter 6 and the relief sought by Allenby are set out in **Appendix A** to this Appeal.

### **Chapter 22 Rural Residential and Rural Lifestyle**

- 22 Allenby seeks specific amendments to the Rural Lifestyle Zone (Chapter 22) providing for site specific MIPRL Zone and a location-specific suite of objectives, policies, and rules for development specifically in the MIPRL Zone.
- 23 These location specific objectives and policies provide for the specific and unique characteristics of the MIPRL Zone, while enabling limited scale rural residential development to occur in accordance with defined structure and landscape plans.
- 24 The revised suite of provisions is included in this appeal as **Appendix B**.

### **Chapter 27 Subdivision**

- 25 Allenby seeks specific amendments to the Subdivision Chapter 27 to provide for location specific objectives, policies and rules which achieve the purpose and

overarching objective of the MIPRL Zone, being; a rural lifestyle development is comprehensively planned with particular regard for the ecological, landscape, and recreational values of the setting on the Mt Iron outstanding natural feature, or as a consequence of the Site being rezoned LLR B.

26 The revised suite of provisions is included in this appeal as **Appendix B**.

#### **PDP Planning Maps 18 and 21**

27 Allenby seeks the following amendments to Planning Maps 18 and 21 as relevant to the Site:

- (b) Amendment of the Outstanding Natural Feature boundary to align with the eastern edge of **Area A** on **Attachment B** within **Appendix B**.
- (c) Amendment of the Urban Growth Boundary to align with the eastern edge of **Area A** on **Attachment B** within **Appendix B**.
- (d) Amendment of the Outstanding Natural Feature boundary to align with the PDP Decisions Version Urban Growth Boundary and the Low Density Residential Zone boundary along the eastern edge of the **Area B** and **Area C** on **Attachment B** within **Appendix B**.
- (e) Remove the existing Building Restriction Area from land adjacent to the Wanaka – Luggate Highway (SH84) and create a new BRA containing the prominent western slopes of Mt Iron below the SNA;
- (f) Rezone the Area A, as shown on Attachment B, to LLR B, and if necessary include location specific objectives and policies for management of subdivision and development within that area.

30 Each of the above amendments sought to the mapping of the Site are further particularised in **Appendix B** to this appeal.

31 For the avoidance of doubt:

- (e) Allenby's challenge to the ONF boundary is now limited to relocating the ONF boundary along the eastern edge of **Areas A, B and C** shown on **Attachment B**.
- (f) Allenby's challenge to the UGB is limited to re-aligning it along the eastern edge of **Area A** shown on **Attachment B**.

#### **Further and consequential relief sought**

32 Allenby seeks alternative, consequential, or additional relief to that set out in this appeal necessary to give effect to the matters raised generally in this appeal and Allenby's PDP submission and further submission.

## **Attachments**

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

**Appendix A** – Relief sought on PDP provisions;

**Appendix B** – Specific MIPRL relief;

**Appendix C** - A copy of the Appellant's submission and further submission;

**Appendix D** - A copy of the relevant parts of the decision; and

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

Dated this 7<sup>th</sup> day of February 2020



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Maree Baker-Galloway/Rosie Hill  
Counsel for the Appellant

### **Address for service of the Appellants**

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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
<b>Chapter 3 Strategic Direction</b>		
3.2.5 The retention of the District's distinctive landscapes. (addresses Issues 2 and 4)	It is unclear whether provision 3.2.5 is a heading or an objective	Clarify or delete provision 3.2.5
<p>Strategic objective 3.2.5.1</p> <p>The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration.</p>	<p>The threshold for protection provided for in this section goes beyond the section 6(b) legislative standard of protecting landscapes from inappropriate development. This departure is not justified or efficient.</p>	<p>Amend Strategic objective 3.2.5.1 as follows:</p> <p>The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse <del>inappropriate</del>-effects of subdivision, use and development <del>that are more than minor and/or not temporary in duration.</del></p>
<p>Strategic policy 3.3.20</p> <p>Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with significant nature conservation values or degrade the existing character of rural landscapes. (relevant to S.O. 3.2.1.7, 3.2.5.1 and 3.2.5.2)</p>	<p>The protection and primacy afforded to farming is not justified where there are significant landholdings which do not economically farm, and which could better provide for landscape, ecological, and access benefits if farming is not preferred</p>	<p>Delete policy 3.3.20</p>
<p>Strategic policy 3.3.23</p>	<p>It is unclear what annotations on planning maps this policy relates to as it is not specific to building restriction areas or other</p>	<p>Delete policy 3.3.23 or otherwise clarify what it applies to.</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
<p>Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas. (relevant to S.O. 3.2.1.8 and 3.2.5.2)</p>	<p>features. Avoidance of residential development is a blunt instrument where such unknowns exist about the application of this policy</p>	
<p>Strategic 3.3.24 Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character. (relevant to S.O. 3.2.1.8, 3.2.5.1 and 3.2.5.2)</p>	<p>By its nature, those areas identified for rural living development will change the nature and character of previously undeveloped land. This policy undermines the purpose of rural living zones</p>	<p>Delete policy 3.3.24 or otherwise amend to exclude rural living zones</p>
<p>Strategic policy 3.3.30</p> <p>Avoid adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor and or not temporary in duration. (relevant to S.O.3.2.5.1)</p>	<p>The threshold for protection provided for in this section goes beyond the section 6(b) legislative standard of protecting landscapes from inappropriate development. This departure is not justified or efficient.</p>	<p>Amend Strategic policy 3.3.30 as follows:</p> <p>Avoid <u>remedy or mitigate inappropriate</u> adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features <del>that are more than minor and or not temporary in duration.</del> (relevant to S.O.3.2.5.1)</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
<b>Chapter 6 Landscapes</b>		
<p>Policy 6.3.12</p> <p>Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site the subject of application. (3.2.1.1, 3.2.5.1, 3.3.21, 3.3.30).</p>	<p>The threshold for protection provided for in this section goes beyond the section 6(b) legislative standard of protecting landscapes from inappropriate development. This departure is not justified or efficient.</p>	<p>Amend Policy 6.3.12 as follows</p> <p>Recognise that subdivision and development is <u>may be</u> inappropriate in <del>almost all locations</del> in Outstanding Natural Landscapes and on Outstanding Natural Features, <del>meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from</del> <u>highly visible</u> beyond the boundary of the site the subject of application. (3.2.1.1, 3.2.5.1, 3.3.21, 3.3.30).</p>
<p>Policy 6.3.14</p> <p>Recognise that large parts of the District's Outstanding Natural Landscapes include working farms and accept that viable farming involves activities that may modify the landscape, providing the quality and character of the Outstanding Natural Landscape is not adversely affected. (3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1, 3.3.20, 3.3.30)</p>	<p>The protection and primacy afforded to farming is not justified where there are significant landholdings which do not economically farm, and which could better provide for landscape, ecological, and access benefits if farming is not preferred</p>	<p>Delete policy 6.3.14</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
New policy	Better recognition should be provided to encourage the benefits of enhanced access and recreation opportunities to section 6 landscapes	Add a new policy in Chapter 6 which encourages the benefits of enhanced access and recreation opportunities to section 6 landscapes
<b>Chapter 22 Rural Residential and Rural Lifestyle</b>		
New objectives, policies and rules proposed – MIPRL Zone	<p>New objectives policies and rules are proposed to be added to Chapter 22 to provide for the overall objective of the MIPRL Zone, being;</p> <p><b>Rural lifestyle development is comprehensively planned with particular regard for the ecological and landscape values of the setting on the Mt Iron outstanding natural feature.</b></p>	Amend Chapter 22 by including the new MIPRL subzone, as set out in Appendix B
<b>Chapter 27 Subdivision</b>		
New objectives, policies and rules proposed – MIPRL Zone	<p>New objectives policies and rules are proposed to be added to Chapter 27 to provide for the overall objective of the MIPRL Zone, being;</p> <p><b>A rural lifestyle development is comprehensively planned within a setting of indigenous vegetation</b></p>	Amend Chapter 27 as set out in Appendix B

Provision (PDP decision version)	Reason for appeal	Relief sought
<b>Planning Maps 18 and 21</b>		
<b>Planning maps 18 and 21</b>	<p>Amend planning Maps 18 and 21 to provide for:</p> <ul style="list-style-type: none"> <li>(e) Amendment of the Urban Growth Boundary to include Mt Iron within the UGB;</li> <li>(f) Amendment of the Outstanding Natural Feature Boundary for Mt Iron;</li> <li>(g) Remove the existing Building Restriction Area from land adjacent to (SH84) and create a new BRA;</li> <li>(h) Rezone the Area A, as shown on Attachment B, to LLR B, and if necessary include location specific objectives and policies for management of subdivision and development within that area.</li> </ul>	Amend Planning maps 18 and 21 as set out in Appendix B

**Appendix B – Specific MIPRL relief;**

**Appendix C** - A copy of the Appellant's submission and further submissions;

**Appendix D** - A copy of the relevant parts of the decision; and



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