

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

Decision No. [2019] NZEnvC 148

IN THE MATTER of the Resource Management Act 1991
AND of an appeal pursuant to s 120 of the Act
BETWEEN E GUTHRIE & OTHERS
(ENV-2019-CHC-15)
Appellants
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent
AND of appeals pursuant to clause 14 of Schedule
1 of the Act
BETWEEN M & E A HANAN
(ENV-2019-CHC-16)
BANCO TRUSTEES LIMITED & OTHERS
(ENV-2019-CHC-45)
Appellants
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

Court: Environment Judge J J M Hassan

Hearing: In Chambers at Christchurch

Date of Decision: 5 September 2019

Date of Issue: 5 September 2019

**DECISION ON APPLICATIONS FOR WAIVER
AND S274 STATUS**



A: The following people have standing to be a s274 party to this proceeding pursuant to s274(1)(d) RMA:

- (a) Ken Swain;
- (b) Jonathan Newson;
- (c) Judith Hanan;
- (d) David Hanan;
- (e) Ann Barrowclough;
- (f) Garrick and Jillian Tremain;
- (g) Ian and Patricia Henderson;
- (h) David and Elizabeth Palmer; and
- (i) Leo and Rayna Toshach.

B: The applications for waiver by the people listed in [A] above are granted.

C: Costs are reserved but are not encouraged.

REASONS

Introduction

[1] Queenstown Lakes District Council ('QLDC') is undertaking a staged review of its operative District Plan ('ODP' and 'ODP Review'). Several appeals have been filed against decisions in Stages 1 and 2 of the ODP Review. This decision determines some applications under s281 of the Resource Management Act 1991 ('RMA'), for waiver for the late filing of s274 notices to join two appeals on decisions in Stage 2. The appeals pertain to aspects of a proposed Wakatipu Basin Lifestyle Precinct ('WBLP') regime, namely appeals ('plan appeals') by:

- (a) E A Hanan & J M Hanan, ENV-2019-CHC-16 (the 'Hanan appeal') opposing related planning maps 26 and 27 and seeking reinstatement of Rural Amenity zoning; and
- (b) Banco Trustees Limited & others, ENV-2019-CHC-45 (the 'Banco appeal') seeking a minimum lot size of 4,000m² for subdivision in the WBLP, and controlled activity status for construction of buildings within approved/registered building platforms within the WBLP.



[2] The applicants for waiver ('waiver applicants'/'applicants') seeking to join both appeals (collectively 'PDP appeals') as 274 parties are as set out in [A].

[3] Banco Trustees Limited & others ('Banco')¹ filed a separate appeal against a decision by QLDC on their resource consent application to subdivide land at 112 McDonnell Road, Arrowtown ('Subdivision Appeal' and 'application site').² That application was for a 14 lot residential subdivision (with associated building platforms and an access lot) and was declined by independent hearings commissioners for QLDC.

[4] The waiver applicants were submitters on the subdivision application and are s274 parties to the Subdivision Appeal. Their status as parties to that appeal is not challenged. However, that does not automatically qualify them to join the Stage 2 ODP Review appeals. None of the waiver applicants was a submitter on the relevant Review provisions. Rather, as I shortly discuss, they claim s274 eligibility on the basis that they have "an interest in the proceedings that is greater than the interest that the general public has" (the alternative ground of eligibility under s274(1)(d) RMA).

[5] QLDC does not oppose the waiver applications and accepts that the applicants have standing under s274(1)(d) RMA.

[6] Banco and Boxer Hill Trust ('Boxer') both oppose the waiver applications. Boxer is a s274 party to both appeals. It owns approximately 8 ha of land on McDonnell Road. It supports the relief in the Banco appeal and opposes the relief in the Hanan appeal (that relief in essence being to 'downzone', or tighten development opportunity provided for under QLDC's Review decision for, Boxer's land).

[7] Enquiries were made by Minute as to whether any party sought to be heard.³ No party so requested, and I am satisfied that the memoranda and other documents filed give me a sufficient basis for making this determination on the papers.⁴

¹ The Subdivision Appeal also names E Guthrie and R Newman as co-appellants with Banco and Ors. However, from what I can ascertain, the appellants in the Banco appeal and the Subdivision Appeal are one and the same. In particular, notice of opposition to the waiver application is filed on behalf of Guthrie, Newman, Banco Trustees Limited and McCulloch Trustees 2004.

² Guthrie & others v Queenstown Lakes District Council, ENV-2019-CHC-15.

³ Minute dated 9 August 2019.

⁴ Summarised in memorandum on behalf of Boxer Hill Trust, dated 19 August 2019, at [5].



The waiver applications and other documentation

[8] None of the waiver applicants is legally represented and their supporting documentation is somewhat reflective of that. Nevertheless, looking beyond form, I am in a position to consider the substance of their claimed basis for joining the appeals.

[9] All of the waiver applicants note that they are party to the Subdivision Appeal and say that they seek to be involved in the Hanan and Banco appeals given that the issues are related. Judith Hanan,⁵ David Hanan⁶ and Ann Barrowclough⁷ argue that, unless they are allowed to join the plan appeals, they would be potentially disadvantaged by not being able to have a say about “which plan over rides the other”. Garrick and Jillian Tremain and Ian and Patricia Henderson say that they should be allowed to participate in the plan appeals “to enable a fair process to be undertaken”.⁸

[10] Ken Swain, Jonathan Newson, David and Elizabeth Palmer and Rayna and Leo Toshach similarly depose⁹ that they have an interest greater than the general public as their properties overlook the land in question and the proposed development affects their visual amenity. They raise concern that a change from Rural Amenity to the proposed WBLP could adversely impact on their property values.

[11] David Hanan explains that that he has been residing “from time to time” in the property (owned by his parents) situated at 82 McDonnell Road, Arrowtown.¹⁰ He deposes that it is his intention to live in the property with his family as his permanent home “in due course”. He says that the property has always adjoined rural amenity land and describes the surrounding rural land as “precious”. He values the rural activities on this land. He and his family value their privacy.¹¹

⁵ J M Hanan s274 notice; application for waiver by J M Hanan, dated 11 July 2019.

⁶ D M Hanan s274 notice; application for waiver by D M Hanan, dated 11 July 2019.

⁷ A R Leighton Barrowclough s274 notice; application for waiver, dated 11 July 2019.

⁸ Affidavit of G Tremain, dated 15 July 2019; affidavit of J Tremain, dated 15 July 2019; affidavit of I Henderson, dated 15 July 2019; affidavit of P Henderson, dated 15 July 2019.

⁹ K D Swain s274 notice; affidavit of K D Swain, dated 14 July 2019; J G Newson s274 notice; affidavit of J G Newson, dated 14 July 2019; affidavit of D M Palmer, dated 18 July 2019; affidavit of E B Palmer, dated 18 July 2019.

¹⁰ Affidavit of D M Hanan, dated 12 July 2019, at [2].

¹¹ Affidavit of D M Hanan, dated 12 July 2019, at [4]-[5].



[12] Garrick and Jillian Tremain¹² both claim to have an interest greater than the general public, who are “generally disinterested in the destruction of landscape, unless it happens to affect their view or wealth”.¹³

Opposing submissions

[13] Banco submits that the notices, applications for waiver and affidavits filed in support of the s274 applications do not explain the basis for which the parties seeking to join the appeal have standing to do so.¹⁴ It submits that none of the applications establishes an interest greater than the general public. Rather, the applications assert a status at best. It points out that the mere fact a person resides near to the appeal site is not sufficient. On the subject of mediation, Banco records that it would not oppose attendance by persons who are only party to the Subdivision Appeal, if the three appeals are to be mediated together.¹⁵

[14] Boxer raises a number of points in opposition to the applications. In summary, these are:

- (a) the applications are deficient in form, fail to engage with the legal issues on standing and waiver, reflect a pro-forma approach (broadly according to two pre-drafted options), and are deficient in substance as to why the applicants consider themselves qualified under s274(1)(d);¹⁶
- (b) the applicants claimed interests in the plan appeals are not such as to qualify them as having an interest in the proceedings that is greater than the interest that the general public has. While some can be inferred to reside or occasionally holiday in Arrowtown, none indicate their properties are located in proximity to the Banco and Boxer land or describe the nature or degree of effect on them. Claims of property value effects should be put to one side as not relevant considerations under the RMA.¹⁷ Claims as to landscape matters do not make applicants any different from the interest of a public pressure or environmental lobby group in such matters, which the

¹² Affidavit of G Tremain, dated 15 July 2019; affidavit of J Tremain, dated 15 July 2019.

¹³ Affidavit of I Henderson, dated 15 July 2019; affidavit of P Henderson, dated 15 July 2019.

¹⁴ Notice of opposition by Guthrie and others, dated 24 July 2019 at [2].

¹⁵ Notice of opposition by Guthrie and others, dated 24 July 2019 at [4].

¹⁶ Memorandum of counsel on behalf of Boxer Hill Trust, dated 24 July 2019, at [16]-[23], [28].

¹⁷ *Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137.



court has held to be too remote to connote status under s274(1)(d).¹⁸ Claims that there are fair process reasons why, as s274 parties to the Subdivision Appeal, applicants should be allowed to join the plan appeals are not supported by reasons;¹⁹

- (c) acceptance of the applications in these circumstances would risk opening the floodgates for further applications from other persons not first instance submitters to joining these or other plan appeals;²⁰
- (d) Boxer would be prejudiced by grant of the applications, particularly in that it would give the applicants a right to participate in the issue of the zoning of Boxer's land even though they have not claimed an interest in that land.²¹

The Council's position

[15] The Council does not oppose the waiver applications and takes no issue with the standing of the aspiring parties to join the proceeding.

[16] On the issue of standing, the Council considers that the parties who have filed waiver applications meet the qualifications in s274 to join the appeals although it abides the decision of the court.²²

Discussion

[17] In the particular circumstances, I am satisfied that all the applicants qualify as parties to both plan appeals under s274(1)(d), RMA. Primarily, that is because each of them is a s274 party to the Subdivision Appeal. There is a relatively close relationship between the potential outcomes for both sets of proceedings insofar as subdivision and development of the land is concerned.

[18] The reasons given in the decision the subject of the Subdivision Appeal include reference to the progressing ODP Review process. A further indication of the inherent connection between the subdivision appeal outcome and residential land development rights in issue in the Banco and Hanan appeals is in the following stated reason in the

¹⁸ Memorandum of counsel on behalf of Boxer Hill Trust, dated 24 July 2019, at [29].
¹⁹ Memorandum of counsel on behalf of Boxer Hill Trust, dated 24 July 2019, at [32].
²⁰ Memorandum of counsel on behalf of Boxer Hill Trust, dated 24 July 2019, at [41].
²¹ Memorandum of counsel on behalf of Boxer Hill Trust, dated 24 July 2019, at [49].
²² Memorandum of counsel on behalf of the Council, dated 19 July 2019, at [5].



Banco appeal:

The whole idea of approving building platforms at the stage of subdivision is to give landowners confidence that if they acquire a lot with an approved platform or if they have them assessed as part of a subdivision, then there will be certainty when it comes time to build that if the dwelling is located within the platform then the application cannot be declined.

[19] The Banco appeal seeks more permissive development rights for subdivided land, whereas the Hanan appeal seeks more restrictive zoning than the WBLP provides.

[20] Because of those inter-relationships, I am satisfied that the plan appeal outcomes could well bear upon the legitimate interests of the applicants in the Subdivision Appeal proceedings. In that sense, I am also satisfied that all of the waiver applicants have a particular and greater interest than the general public has in the plan appeal proceedings. While I find those matters sufficient, I note they are supplemented by the affidavits and other documents provided by the applicants. For some, that is in terms of the potential for their outlooks from dwellings, or holiday homes, to be impacted. For others, their claimed interests are more generic, such as in regard to the landscape, but nevertheless of some relevance.

[21] I have reached that view having considered case law on the interpretation of s274(1)(d), including as discussed in *Mt Christina Ltd v Queenstown Lakes District Council*.²³ I am satisfied that the interest I have described is "one of some advantage or disadvantage" that is "not remote".²⁴ I have borne in mind that "remoteness" is a legal as opposed to a geographical construct,²⁵ and that relevant interests are not restricted solely to property rights and neither are they closed or prescribed.²⁶

[22] I do not find persuasive Boxer's submission that there would be a floodgates consequence to granting the applications. In principle, I should set aside such concerns insofar as I am satisfied the applicants qualify under s274(1)(d) and that, given proceedings are at an early stage, there is no significant prejudice to parties (including Boxer) by granting the application under s281. Having reached that position on the applications, I am satisfied that public interest weighs in favour of granting the

²³ *Mt Christina Ltd v Queenstown Lakes District Council* [2018] NZEnvC 190, at [56]-[67].

²⁴ *Purification Technologies Limited v Taupo District Council* [1995] NZRMA 197 at 204; cited in *Wallace Group Limited v Auckland Council* [2017] NZEnvC 106 at [23].

²⁵ *Powerco Limited v Thames-Coromandel District Council* [2017] NZEnvC 67 at [28].

²⁶ *Meadow 3 Limited v Queenstown Lakes District Council* C001/08, also *Wallace Group v Auckland Council* [2017] NZEnvC 106 at [25].



applications. In any case, my finding that the applicants qualify by virtue of their pre-existing s274 party status in the related Subdivision Appeal proceedings means there is no material risk of copycat applications being made.

[23] As far as mediation is concerned, I reiterate that parties are to abide directions that may be given by the Environment Commissioner for those purposes.

Outcome

[24] For those reasons, all applications for waiver are granted and the applicants are conferred s274 party status to both plan appeals.

[25] Costs are reserved but are not encouraged. Any application is to be filed and served within ten working days of this decision. Any reply must be filed and served within a further five working days.



J J M Hassan
Environment Judge

