

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC

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	New Zealand Tungsten Mining Limited
	Appellant
And	Queenstown Lakes District Council
	Respondent

Notice of Appeal

19 June 2018

Appellant's solicitors:

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To The Registrar
Environment Court
Christchurch

- 1 New Zealand Tungsten Mining (**Tungsten**) appeals against part of the decision of Queenstown Lakes District Council (**QLDC**) on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 Tungsten made a submission (#519) and further submission (#1287) on the PDP.
- 3 Tungsten is not a trade competitor for the purpose of section 308D of the Resource Management Act 1991 (**RMA**).
- 4 Tungsten received notice of the decision on 7 May 2018.
- 5 The decision was made by QLDC.
- 6 The parts of the decisions appealed relate to:
 - (a) Chapter 2 Definitions;
 - (b) Chapter 6 Landscapes and Rural Character
 - (c) Chapter 21 Rural;
 - (d) Chapter 26 Historic Heritage;
 - (e) Chapter 35 Temporary Activities and Relocated Buildings
- 7 Reasons for appeal

Chapter 2 Definitions

- 8 Chapter 2 defines key terms related to activities contemplated under the PDP. These definitions impact how an activity is categorised and assessed under the relevant provisions and Chapters.
- 9 Tungsten considers the definitions for Mining Activity and Temporary Activity require further amendment. The current definitions are too narrow and do not accurately describe the nature and scope of mining activities in the District. Accurate and detailed definitions are necessary to ensure mining activities can be adequately provided for in an integrated and not piecemeal way and appropriately assessed. The accuracy with which mining activities are defined in Chapter 2 is fundamental to how they are assessed under the provisions of the PDP Chapters, particularly Chapters 21, 26 and 35.

- 10 Chapter 2 does not define a "mining building". This definition is required to ensure mining is adequately provided for under the PDP, as mining buildings are fundamental to enabling and supporting mining activities, just as farm buildings are to farming. And just like farming and farm buildings, mining and mine buildings are restricted in their location due to the physical presence of the natural resource that supports the activity. Mining buildings are also unique in design and effect. As such it is not appropriate to define buildings associated with mining activities as buildings generally.
- 11 The specific provisions of Chapter 2 and the relief sought by Tungsten are set out in **Appendix A** to this Appeal.

Chapter 6 Landscapes and Rural Character

- 12 Chapter 6 seeks to protect and manage landscape values in the District's rural areas. The policies of Chapter 6 align to relevant objectives and policies of Chapter 3, and provide guidelines to assessment made under Chapter 21.
- 13 As currently drafted the policies of Chapter 6 disproportionately provide for farming activities within these areas and unreasonably restrict non-farming rural activities such as mining. Amendments should be made to Chapter 6 to ensure that mining can be provided for in Chapter 21 without unreasonable restriction.
- 14 The overly restrictive policy framework of Chapter 6 overlooks the fact that mining activities can be managed in a way consistent with landscape values, often more so than farming or rural living activities. Mining activities are temporary in nature and limited in location and scope to areas where minerals are present. Adverse environmental effects can be managed and mitigated throughout the duration of the activity. Following completion of the activity, environmental effects can be remedied and landscape values restored. As such it is unreasonable to restrict mining in the rural zone on the basis it is a non-farming activity that may impact landscape values – the appropriateness of mining activities should be determined on a case by case basis in the context of the particular activity and assessed against relevant assessment matters.
- 15 The specific provisions of Chapter 6 and the relief sought by Tungsten are set out in **Appendix A** to this Appeal.

Chapter 21 Rural

- 16 Chapter 21 seeks to protect, maintain and enhance landscape values, resources and rural amenity by providing for the management of activities in the four Rural Zones.

- 17 Tungsten considers the degree to which farming activities are provided for in Chapter 21 is disproportionate to the established character of the rural zone, the economic benefit of established activities, and the impact on the environment of these activities.
- 18 Mining is a well-established rural activity which provides significant economic benefit to the local and wider economy. Chapter 21 should be amended to better recognise and provide for mining within the rural zone. As currently drafted, Chapter 21 considers mining activities under 'non-farming activities'. Mining activities are distinguishable from all other non-farming activities – as discussed, the nature of mining activities is such that landscape values can be adequately maintained or restored and environmental impact can mitigated and remedied. As such, it is appropriate for mining activities to be considered separately.
- 19 The provisions of Chapter 21 create blanket restrictions on most mining activities. Not only are these restrictions unreasonable, but this approach is not supported from a planning framework perspective. The appropriateness of mining activities should be considered on a case by case basis, assessed against the relevant standards and assessment matters which will be considered when a resource consent is applied for.
- 20 The specific provisions of Chapter 21 and the relief sought by Tungsten are set out in **Appendix A** to this Appeal.

Chapter 26 Historic Heritage

- 21 Chapter 26 is concerned with promoting the sustainable management of historic heritage features in the District. Tungsten generally supports the recognition of past mining activities and associated sites as historic and deserving of protection. However, Chapter 26 is overly restrictive in that it does not recognise the potential for modern mining activities to continue at or near heritage sites without adversely impacting the maintenance of these sites. Further, it is considered that identification of key heritage mining sites should be as specific as possible to enable heritage to be observed and understood, and so as not to impose undue restrictions on future use.
- 22 The specific provisions of Chapter 26 and the relief sought by Tungsten are set out in **Appendix A** to this Appeal.

Chapter 35 Temporary Activities and Relocated Buildings

- 23 Mining is a temporary activity, in terms of duration, and requirements imposed under current legislation to remedy effects. As stated above, mining activities are limited to specific sites where minerals are located, and once extraction is completed the site will cease to be used for that purpose. It is also temporary in

that adverse environmental effects are not permanent – with modern day mining techniques, and the standard required under the RMA for rehabilitation, the temporary effects will be remedied following completion of the activity and the site can be rehabilitated for other uses. As such, provision should be made for mining activities in Chapter 35.

- 24 The specific provisions of Chapter 35 and the relief sought by Tungsten are set out in **Appendix A** to this Appeal.

Attachments

- 25 The following documents are **attached** to this notice:
- (a) **Appendix A** – relief sought
 - (b) **Appendix B** - A copy of the Appellant's submission and further 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 19th day of June 2018



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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.