IN THE ENVIRONMENT COURT **ENV-2021-CHCH-0000**
AT CHRISTCHURH

UNDER THE	Resource Management Act 1991 ("**Act**")
IN THE MATTER OF	an appeal under Schedule 1, Clause 14(1), of the Act
BETWEEN	**CARDRONA VILLAGE LIMITED**
	Appellant
AND	**QUEENSTOWN LAKES DISTRICT COUNCIL**
	Respondent

NOTICE OF APPEAL BY CARDRONA VILLAGE LIMITED (WĀHI TUPUNA)

18 MAY 2021

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Counsel instructed:

JGH BARRISTER

J D K Gardner-Hopkins
Phone: 04 889 2776
james@jghbarrister.com
PO Box 25-160
WELLINGTON

TO: The Registrar
Environment Court
PO Box 2069
20 Lichfield Street
CHRISTCHURCH
(Christine.McKee@justice.govt.nz)

AND TO: The Respondent
(dpappeals@gldc.govt.nz)

(NOTE: Service on submitters and further submitters is waived pursuant to the Environment Court's directions of 1 April 2020]

Notice of appeal

1. Cardrona Village Limited ("**appellant**") appeals the following decision ("**Decision**"):

> Decisions on Chapter 39 Wāhi Tupuna, and related variations to Chapters 2, 12-16, 25-27, 29 and 30 of Stage 3 of the Queenstown Lakes District Proposed District Plan ("**PDP**").

Submission and further submission

2. The appellant made a submission on the PDP on or around 18 November 2019, referenced as #3404.

3. No further submissions were made.

No prohibited trade competition purposes

4. The appellant is not a trade competitor for the purposes of Section 308D of the Act.

Timing / key dates

5. The Decision was made by the Queenstown Lakes District Council ("**Council**") on 18 March 2021, by way of ratification of the recommendations of the Recommendations of the Stage 3 Independent Hearing Panel ("**IHP**").

6. The appellant received notification of the Decision by email on 1 April 2021.

7. The Environment Court, by way of a minute dated 1 April 2021, confirmed that the appeal period ends on 18 May 2021 (with the s274 period ending 16 June 2021).

Decision / part of Decision appealed against

8. The appellant appeals:

   (a) The entirety of the Decision as it relates to the adoption of objectives, policies and rules relating to wāhi tupuna.

   (b) In particular, those provisions which impose uncertainty, and an unnecessary and unreasonable burden on development of land,

including land that has been identified as wāhi tupuna without out proper justification.

Reasons for the appeal

9. The reasons for the appeal are as follows.

Overview/ background

10. As recognised in the Decision, Chapter 39 is an entirely new chapter proposed for the PDP that had no comparable chapter in the ODP. Its stated purpose is "to assist in implementing the strategic direction set out in Chapter 5 Tangata Whenua in relation to providing for the kaitiakitanga of Kāi Tahu as Manawhenua in the district".[1]

11. The appellant has no issue with the PDP seeking to implement that strategic direction. The question is whether Chapter 39 and the other wāhi tupuna provisions do so in a way that is "most appropriate" (and otherwise accords with the relevant statutory requirements) and does not inappropriately and unnecessarily impose process and/ or substantive hurdles to achieving use and development that is otherwise anticipated by the PDP.

12. The appellant is particularly affected by the wāhi tupuna overlay, as follows:

[1] Chapter 39.1

13. While it is a little difficult to tell from the plan, a large portion of the appellant's land at Cardrona is subject to the wāhi tupuna overlay. The overlay is not mapped to the cadastral land boundaries, or even existing physical features such the existing road boundary. The land is largely zoned Settlement Zone.

14. In addition consent was granted in November 2020 (RM190669) for a comprehensive village development, including the following land use activities:

(a) 264 hotel rooms (5,510m2);

(b) 72 serviced apartment units (6,245m2);

(c) 58 hostel beds (9 rooms plus managers flat) (445m2);

(d) 38 residential units (apartments and dwellings) (4,180m2);

(e) Lobby areas and accessory uses (3,097m2) being:

(i) Hotel food and beverage spaces
(ii) Hostel food and beverage space
(iii) Hotel reception and lounge spaces
(iv) Hostel reception and lounge space
(v) Hotel gym space
(vi) Hotel function space
(vii) Shared terrace unit function space

15. The consented development pattern is shown as follows:

16. As will be evident, the future development areas are largely, if not entirely within the wāhi tupuna overlay.

17. Table 39.6 identifies the relevant wāhi tupuna area for the Cardrona Settlement Zone as follows (Decisions version):

#	Name	Description	Values	Potential threats
11.	Ōrau (Cardrona River)	A traditional ara tawhito linking Whakatipu Waimāori (Lake Wakatipu) with lakes Wānaka and Hāwea. It also provided access to the natural bridge on the Kawarau River. Ōrau is also recorded as a kāika mahika kai where tuna (eels), pora ('Māori turnip'), āruhe (fernroot) and weka were gathered.	Mahika kai, ara tawhito, nohoaka	a. Earthworks b. Subdivision and development c. Activities affecting water quality d. Commercial and commercial recreational activities

18. The notified version of the wāhi tupuna provisions were uncertain in their effect, and had the risk of creating significant obligations and burdens on developers, which might not have been intended – and which were not necessary to achieve the objective of Chapter 39.

19. The Decisions version significantly improves clarity and certainty of how Chapter 39 and the wāhi tupuna provisions in other chapters will be applied.

20. This arises from the amended objective, as well as the implementing policies that focus on the "identified wāhi tupuna areas":

    (a) Objective 39.2.1: Manawhenua values within identified wāhi tūpuna areas are recognised and provided for.

    (b) Policy 39.2.1.1: Recognise that the following activities may have effects that are incompatible with Manawhenua values where they occur within identified wāhi tūpuna areas; ...

    (c) Policy 39.2.1.2: Recognise that the effects of activities may be incompatible with Manawhenua values when that activity is listed as a potential threat within an identified wāhi tūpuna area, as set out in Schedule 39.6.

    (d) Policy 29.2.13: Within identified wāhi tūpuna areas: ...

21. They is also less inference on compulsory consultation with (if not approval of) manawhenua. This follows from Decisions version of Policy 39.2.14, advice note 39.3.2.1, and the relevant observations of the IHP, as follows:

    (a) Policy 39.2.14: Encourage consultation with Manawhenua as the most appropriate way for obtaining understanding of the effects of any activity on Manawhenua values in a wāhi tūpuna area.

    (b) Advice note 39.3.2.1: A resource consent application for an activity within an identified wāhi tūpuna area may require a cultural impact assessment as part of an Assessment of

Environment Effects so that any adverse effects that the activity may have on Manawhenua values can be better understood.

(c) Decision [188]-[189]:

> ... We do not consider that an applicant can be leveraged into undertaking consultation by the implicit threat that a cultural impact assessment might be required in the absence of consultation. Nor do we consider it appropriate to imply that a well-advised applicant might not wish to undertake a cultural impact assessment in an appropriate case.
>
> The obligation in the Fourth Schedule is to undertake an assessment of an activity's effects on the environment that, among other things, includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment. For an activity with potential cultural effects, then depending on the scale and significance of those effects, a cultural impact assessment might be desirable irrespective of whether consultation has occurred or not. Similarly, if the scale and significance of effects of cultural values is comparatively minor, an applicant may be justified in neither undertaking consultation, nor undertaking a cultural impact assessment.

22. The rules have also been clarified/ tightened up, or interpreted in light of the changes to the Objective and Policies above, and explanation of the IHP:

(a) The appellant does not have a major interest in farm buildings, and so does not comment on these rules 39.4.1-39.4.3.

(b) In respect of other buildings, Rules 39.4.4 and 39.4.5 now only applies to proposed buildings:

(i) within an identified wāhi tupuna area (ie not within a site that contains a wāhi tupuna area but the building is not proposed in that area); and

(ii) within specified zones that do not include the Gibbston Resort Zone (and less than 20m, or 30m, from a wetland, river or lake).

(c) In respect of the earthworks rules, it is clear that consent is only required for:

(i) earthworks over 10m3 for new roads "located within Wāhi Tūpuna areas outside the urban environment where roads have been identified as a potential threat to Manawhenua values" require RDA consent under Rule 25.5.7; and

(ii) earthworks within wāhi tupua areas not specifically identified in Rule 25.5.10A.1 over 10m3 within 20m of the bed of any wetland, river, or lake (and other requirements, of less interest to the appellant) which also require RDA consent under Rule 25.5.10A[2];

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[2] Noting that earthworks for the planting of indigenous species are exempt.

(d) In respect of subdivision, it is also now clear that where the subdivision is to occur "within a wāhi tupuna area" – "outside of the urban environment, where subdivision is a potential threat as set out in Schedule 39.6", that a RDA consent under Rule 27.5xx [sic] will be required.

(e) In each case, discretion is restricted to effects on Manawhenua values.

23. As the appellant understands it:

(a) With the current mapping, then almost any development of its future development sites at Cardrona will require a RDA consents under the wāhi tupuna provisions.

(b) The matters reserved for discretion is limited to effects on Manawhenua values.

(c) Notwithstanding this, consultation with Manawhenua is not mandatory, and Manawhenua will only be notified if the statutory tests for notification are met (even if not consulted).

24. If this understanding is correct, then the appellant's original concerns as to the scheme and effect of the wāhi tupuna provisions might be addressed, if the waahi tupuna overlay remains in place.

25. The primary relief sought by the appellant, however, is the removal of the wāhi tupuna overlay from the land it has an interest in. This is for two main reasons. The first is that the currently proposed wāhi tūpuna overlay includes a large part of what is in fact "historical" riverbed and its margins, rather than the current riverbed and its margins – and it should be adjusted accordingly.

26. The second reason is that the historical riverbed is subject to a land swap agreement with the Crown and is sought to be rezoned to Settlement Zone. The situation is shown on the following plans (blue land in the lefthand plan to be transferred and rezoned, the righthand plan showing the currently proposed wāhi tūpuna overlay):

27. It is somewhat arbitrary that what is currently riverbed is not proposed as subject to the wāhi tūpuna overlay, but the former riverbed is. There also appear to be some very clear (arbitrary) alignments of the wāhi tūpuna overlay to cadastral boundaries in this example. (As another oddity, the wāhi tūpuna overlay appears also to extend onto proposed streets, but not into the main parts of the proposed Settlement Zone at Cardrona.)

28. If the wāhi tūpuna overlay is intended to be mapped to a geographical feature, ie the river, then it should be aligned with the current river bed.

29. To the extent that past disturbance (including significant disturbance, from mining activities) is also relevant – which is should be, as urban "development" is relevant; then the historical mining activities should be taken into account – they are just a disturbing as urban development.

General reasons for the appeal

30. The general reasons for this appeal are that the Decision (as it currently stands) generally, and particularly in respect of land that the appellant owns or otherwise has an interest in:

(a) fails to promote sustainable management of resources, including the enabling of people and communities to provide for their social and economic well-being, and will not achieve the section 5 purpose of the Act;

(b) fails to promote the efficient use and development of the land, a matter to have particular regard to under section 7(b) of the Act;

(c) in respect of land that is anticipated by its zoning for use and development:

(i) fails to achieve or implement the relevant district-wide objectives and policies of the PDP that supported that zoning;

(ii) fails to achieve or implement the relevant objectives and policies of the zone in question; and/ or

(iii) otherwise to support and/or is otherwise inconsistent with achieving the land use outcomes anticipated by the relevant zoning;

(d) fails to achieve the functions of the Council under section 31 of integrated management of the effects of the use and development of land and physical resources;

(e) fails to meet the requirements of section 32;

(f) is procedurally unfair and inefficient.

31. In contrast, granting the appeal will generally, and particularly in in respect of land that the appellant owns or otherwise has an interest in will achieve all of the matters/ outcomes or otherwise address the issues identified above in paragraph [30] immediately above.

Relief sought

32. The appellant seeks the following relief:

(a) For jurisdictional purposes, deletion of all wāhi tupuna provision in their current form. (This is to enable the widest possible scope for resolving the issues raised by the appellant.)

(b) Deletion, removal, or the more appropriate mapping of the wāhi tupuna overlay to the current river boundaries (and its margins).

(c) If not, or issues arise in the Council's implementation of the Decisions version of the wāhi tupuna provisions, then the relief identified in (d)-(f) in particular is pursued:

(d) The Council, and any others defending the current wāhi tupuna provisions, provide further evidence generally and particularly in respect of land that the appellant owns or otherwise has an interest in, to identify:

(i) the values sought to be protected in each identified wāhi tupuna location;

(ii) the interrelationship of those values with the relevant land, including its zoning, and existing or past development and disturbance;

(iii) how the wāhi tupuna provisions can be amended or otherwise refined in light of that evidence;

(e) The deletion, amendment or other refinement to address the concerns raised by the appellant (including alternative ways of achieving some outcomes sought).

(f) Any other additional or consequential relief to the PDP, including but not limited to, the maps, issues, objectives, policies, rules, discretions, assessment criteria and explanations to fully address the concerns raised by the appellant.

(g) Costs.

Alternative dispute resolution

33. The appellant agrees to participate in mediation or other alternative dispute resolution of the proceeding.

Attachments

34. The following documents are attached to this notice.

(a) a copy of the appellant's original submission; and

(b) a copy of the Decision.

[The Environment Court has waived the requirement to serve submitters and further submitters, and so no list of submitters to be served is required

to be filed with this notice. It has also waived the "advice to recipients" requirement, and so that advice is omitted from the notice to the appeal.]

DATED 18 May 2021

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J D K Gardner-Hopkins
Counsel for the appellant

The appellant's address for service is C/- James Gardner-Hopkins, Barrister, PO Box 25-160, Wellington 6011.

Documents for service on the Applicant may be sent to that address for service or may be emailed to james@jghbarrister.com. Service by email is preferred, with receipt confirmed by return email.

Attachment 1 - the appellant's submission

Attachment 2 - the Decision