

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2021] NZEnvC 144

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First
Schedule of the Act

BETWEEN CONEBURN PRESERVE
HOLDINGS LIMITED & OTHERS

(ENV-2018-CHC-137)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner J T Baines
Environment Commissioner M C G Mabin

Hearing: In Chambers at Christchurch

Last case event: 13 September 2021

Date of Decision: 20 September 2021

Date of Issue: 20 September 2021

SECOND INTERIM DECISION OF THE ENVIRONMENT COURT

Topic 22 – Jacks Point Zone



A: Under s293, RMA,¹ directions are made in relation to the Jacks Point Village Activity Area, as per Annexure 2.

B: Costs are reserved.

REASONS

Introduction

[1] This is the second interim decision relating to Topic 22 of the Queenstown District Plan review ('PDP') and the appeal by Coneburn Preserve Holdings Limited and Ors² ('Jacks Point'). It concerns appeal 'Issue 4' of the five issues that were identified for determination, namely the 'Village Activity Area'.³ As the parties agree, Issue 4 concerns changes to the PDP that, if confirmed, would go beyond the scope of relief in the appeal.⁴ Hence, requested associated directions have been made for the purposes of considering these matters through s293, RMA.⁵

Consultation package and associated directions

[2] Those directions required the parties to undertake various steps pursuant to s293. The stage now reached under those directions is that the parties have now

¹ Resource Management Act 1991.

² Coneburn Preserve Holdings Limited, Henley Downs Farms Holdings Limited, Henley Downs Land Holdings Limited, Jacks Point Land No. 2 Limited, Jacks Point Developments Limited, Jacks Point Land Limited, Jacks Point Management Limited, Jacks Point Residential No. 2 Limited, Jacks Point Village Holdings Limited, Willow Pond Farm Limited.

³ Issue 1 in the appeal, concerning the drafting of Pol 41.2.1.1, was withdrawn (see first interim decision [2021] NZEnvC 34). The first interim decision (see [2021] NZEnvC 34 at [10]) determined Issue 2 (as to the drafting of Pol 42.2.1.22) and Issue 3 (as to the appropriateness of the additional homesites included in the Ch 41 structure plan). The first interim decision records Issue 5 (as to the approach to the Peninsula Hill ONL/Peninsula Hill Landscape Protection Area overlay) as also remaining alive (see [2021] NZEnvC 34 at [15]). Directions are made in this decision for the parties to report on the status of Issue 5.

⁴ See [2021] NZEnvC 34 at [15].

⁵ Minutes dated 15 October 2020 and 11 March 2021, [2021] NZEnvC 34 at [15].

developed and agreed a set of proposed changes to Ch 41 (including Ch 41 text, the Structure Plan and the proposed Comprehensive Development Plan) and a related consultation package to be progressed through the s293 process ('Agreed Provisions and Consultation Package') comprising:⁶

- (a) a summary document explaining the proposed Comprehensive Development Plan and associated changes to the PDP provisions (as per Annexure 1); and
- (b) the following accompanying appendices:
 - (i) Appendix 1: Revised Jacks Point Zone Structure Plan;
 - (ii) Appendix 2: Proposed Comprehensive Development Plan;
 - (iii) Appendix 3: Revised Chapter 41 Jacks Point Zone;
 - (iv) Appendix 4: Section 32AA Evaluation;
 - (v) Appendix 5: Consultation and Options Report (30 June 2021);
 - (vi) Appendix 6: Summary of consultation and changes made since 30 June 2021; and
 - (vii) Appendix 7: Draft Design Guidelines (now Controls).

Directions sought

[3] The parties seek that the court make the following direction to progress the s293 process:

Under s293, RMA, to enable consideration of a change to Chapter 41 of the Proposed District Plan, including a change to the Structure Plan, the insertion of a Comprehensive Development Plan for the Jacks Point Village and associated changes to the text of Chapter 41 provisions, it is directed:

⁶ Joint memorandum dated 13 September 2021 at [4], [5]-[9]. Appendices 1 – 7 to the Agreed Provisions and Consultation Package are not included in this decision, given their size.

Notification

- (a) Within 20 working days [of the date of this decision], QLDC must:
- (i) serve notice on the parties to this appeal, and the residential precinct committee of the Jacks Point Owners and Residents Association;
 - (ii) serve notice on the owners of all properties within the Jacks Point Zone, by way of letter to all registered ratepayers of those properties either physically or electronically;
 - (iii) advise in the notices:
 - (A) a summary of what is being proposed through the section 293 process, and direction to where the section 293 documentation as set out in paragraph 4(a) can be accessed, on the QLDC website and on the Jacks Point website;
 - (B) that any person so notified may provide to QLDC and Jacks Point written comments and any supporting expert evidence (see (b) below) on the change by a date specified in the notice (not less than 20 working days after the date of service of the notice), which will be taken into account in the Council's report (see (d) below) but that;
 - (C) that any person so notified who wants to formally join the appeal as a section 274 party, which would give them the ability to be involved in any Environment Court hearing on the proposed change (if necessary) and future appeal rights, needs to have an interest greater than the interest of the general public.

Rights to make written comments

- (b) By the date specified in the notices in (a)(i) and (a)(ii) (being not less than 20 working days after the date of written notice), any person notified may provide to QLDC and Jacks Point by email (PDPenquiries@qldc.govt.nz, villageconsultation@jackspoint.com and maree.baker-galloway@al.nz:
- (i) written comments on the proposed changes to Chapter 41; and
 - (ii) any supporting expert evidence.

- (c) Within 20 working days after receiving written comments and any expert evidence, Jacks Point may provide written comments and any supporting evidence to QLDC. If Jacks Point decides not to provide any written comments to QLDC, it must notify QLDC of that within 5 working days of receiving written comments in accordance with direction (b).

Council Report

- (d) Within 20 working days after either: receiving advice from Jacks Point that it will not be providing written comments, or receipt of written feedback in accordance with (b), QLDC must file with the Court a report which:
 - (i) summarises the written comments and any expert evidence received (if any);
 - (ii) provides a link to all written comments and expert evidence received, which are to be uploaded to QLDC's PDP appeals webpage (should the Court wish to review that documentation); and
 - (iii) makes recommendations for the Court's consideration, on both the merits of the proposed change and procedural directions.

Court's determination

- (e) Once the Court has received the report from Council as directed in (d), this will be considered and the Court will then either, determine the changes to Chapter 41, or issue further directions.

Consideration

[4] We approach our consideration of the documentation and proposed directions mindful that Issue 4 pertains to land that is relatively central to what is a reasonably enclosed planning unit, namely the proposed 'Village Activity Area' of Jacks Point Zone. That means there is a relatively readily identifiable catchment of persons who may have relevant interests such that they should be notified, and given opportunity either to offer comments during directed consultation processes or, in some cases, to seek to join as s274 parties to the appeal. Having considered the documentation filed in that context, we are satisfied that the proposed directions and the associated documentation to be included in the consultation

package:

- (a) properly accord with the intentions of s293, notably in fairly providing for notification to relevant persons, and related opportunities to either comment or seek to join the appeal under s274; and
- (b) include suitably drafted proposed PDP provisions and relevant supporting information; and
- (c) are in all respects in suitable form for the making of the requested directions.

[5] Accordingly, we make the directions sought.

Directions

[6] Directions under s293 RMA are made in Annexure 2. Further, we direct the parties to confer and to file a status report on Issue 5 (insofar as it remains for determination) within ten working days of the date of this decision.

[7] Leave is reserved to seek further (or other) directions.

For the court



J J M Hassan
Environment Judge

Annexure 1

SUMMARY OF PROPOSED COMPREHENSIVE DEVELOPMENT PLAN AND ASSOCIATED CHANGES TO CHAPTER 41 OF THE PROPOSED DISTRICT PLAN

SECTION 293 PROPOSAL

ALTERATION TO CHAPTER 41 STRUCTURE PLAN AND PROVISIONS APPLYING TO LAND LOCATED AT MAORI JACK ROAD, JACKS POINT

1. This document provides a summary of the proposed alterations to Chapter 41 of the Proposed District Plan provisions and structure plan, including the addition of a Comprehensive Development Plan (**CDP**) that would apply to approximately 24ha of land located within the vicinity of Jacks Point Village. The land to which this proposal relates is located on Maori Jack Road, McAdam Drive, Black Spur Lane, Mulholland Drive and Inder Street, west of Homestead Bay Road, south of Ti Kouka Street and north of Lodge Road, Jacks Point, Queenstown.
2. This summary document incorporates the following documents, plans and supporting material:

APPENDIX 1 – Revised Jacks Point Zone Structure Plan

APPENDIX 2 – Proposed Comprehensive Development Plan

APPENDIX 3 – Revised Chapter 41 Jacks Point Zone

APPENDIX 4 – Section 32AA Evaluation

APPENDIX 5 – Consultation and Options Report (30 June 2021)

APPENDIX 6 – Summary of consultation and changes made since 30 June 2021

APPENDIX 7 – Draft Design Guidelines (aka Controls)

Background

3. In 2018 Jacks Point appealed the Council's decision on Chapter 41 of the PDP on a number of related provisions for the Jacks Point Village Activity Area. The appeal was heard by the Environment Court (Topic 22) in September 2020. At this hearing consensus was reached between Jacks Point, the Council and other parties on a process to advance the potential incorporation of a CDP into Chapter 41, together with related changes to the Chapter 41 provisions and the Structure Plan, through an application to use section 293.
4. On 15 October 2020, the Environment Court issued a minute directing a process for consultation on the formulation of a CDP and to submit an application to the Court to use section 293.

The proposed changes to Chapter 41

5. The proposed changes involve a set of integrated changes to Chapter 41 seeking the following:
 - a) Reclassifying land to provide for the expansion of the Village Activity Area and reflecting this reclassification in changes to the Jacks Point Zone Structure Plan;
 - b) The introduction of a CDP for the expanded Village Activity Area; and
 - c) A range of associated changes to the provisions of Chapter 41.

6. All of the proposed alterations to the PDP occur within Chapter 41 Jacks Point Zone, as detailed below.

Changes to the Jacks Point Zone Structure Plan

7. It is proposed to expand the Jacks Point Village Activity Area to incorporate the driving range, currently located with the Education Activity Area, to undertake realignments with the Open Space Golf Activity Area along the eastern side of Lake Tewa and an area of land immediately alongside the driving range within the current Open Space Golf Activity Area, and to include two new areas of Open Space Residential Amenity Activity Area (OSA) nested within the Village Activity Area, as shown on the revised Structure Plan (**Appendix 1**).

Village Activity Area - Comprehensive Development Plan

8. It is proposed to insert the Jacks Point Village CDP at a new Schedule 41.9, located at the end of Chapter 41, as contained within **Appendix 2**.
9. The CDP comprises a set of regulatory plans and controls, for activities within the Jacks Point Village Activity Area. The CDP implements Policy 41.2.1.19 of Chapter 41 that requires all subdivision and development to be in accordance with a Comprehensive Development Plan incorporated in the District Plan.
10. For activities to fall within the CDP and be considered as a controlled activity by Rule 41.4.2.1, they are required to be in accordance with the CDP and be of sufficient detail to enable the matters of control is to be fully considered. In response to Rule 41.2.1.19, the CDP provides for land uses according to land use areas, including Visitor Accommodation, Mixed Use, Medium Density Residential and Community. To be in accordance with the CDP, development will be required to comply with the regulatory plans and controls relevant to that land use area (or land use areas).
11. The CDP controls that have been developed for the Jacks Point Village establish a basis for:
 - (a) Defining the spatial arrangement of the range of activities anticipated by the Village Activity Area (Rule 41.4.2.1), according to identified land use areas
 - (b) The provision of pedestrian access and cycle trails
 - (c) Delivery of public amenities in Village and the new OSAs
 - (d) Providing a local shopping centre
 - (e) Minimum ground floor heights within the mixed-use land use area
 - (f) Road hierarchy
12. Separate from the CDP are the Design Guidelines (aka Controls), which are being formulated in order to achieve Rule 41.4.2.1 g. and that will provide further guidance over the urban design outcomes within the Jacks Point Village. The Design Guidelines are a non-statutory document outside of the District Plan and will be administered by the Jacks Point Village Design Review Board (**DRB**). The establishment of the DRB and the associated process for administration of the Design Guidelines occurs through private covenants registered over the land within the Jacks Point Village Activity Area. It is noted that the land currently owned by RCL has a different process for the review and approval of potential development, outside of the District Plan.
13. The plans incorporated into the CDP are:
 - (a) Plan 1 - Land Use Areas and Site Coverages – identifies land use areas and the activities that may be undertaken within them across the expanded Village Activity Area

- (b) Plan 2 - Road Network and Hierarchy – including areas for non-accessory parking
- (c) Plan 3 – Community Amenities, Pedestrian and Cycle Networks

Changes to Chapter 41 Jacks Point Zone Provisions

14. It is proposed to amend the Rules of Chapter 41 Jacks Point Zone, as shown in **Appendix 3**, and as follows:
- (a) Modify the heading above Policy 41.2.1.17 by removing the text “*and Education*”
 - (b) Modify Policy 41.2.1.19 to insert reference to the new Jacks Point Village Activity Area CDP located within Schedule 41.9.
 - (c) Delete Policy 41.2.1.20 relating to the Education Activity Area
 - (d) Modify the heading of Table 2 to remove the text “*and Education*”
 - (e) Modify Rule 41.4.2. to remove reference to the Education Activity Area
 - (f) Modify Rule 41.4.2.1 to delete the text with matters of control g. relating to “the formulation of” design controls. Delete Rule 41.4.2.2. relating to activities within the Education Activity Area
 - (g) Modify the heading of Table 7 and Rule 41.5.2 to remove the text “*and Education*”
 - (h) Modify standard 41.5.2.2 Building Coverage – Village (JP) Activity Area – to remove the current 60% coverage limitation, applied across the entire activity area with new building coverage areas for each of the land use areas identified on the CDP (contained within Schedule 41.9)
 - (i) Delete existing Standard 41.5.2.2 Building Coverage – Education Activity Area

Section 293 process / next steps

15. Section 293 of the RMA allows the Environment Court to direct appropriate procedural steps that provide for the consideration and determination of amendments to the Proposed District Plan.

Annexure 2

Under s293, RMA, to enable consideration of a change to Chapter 41 of the Proposed District Plan, including a change to the Structure Plan, the insertion of a Comprehensive Development Plan for the Jacks Point Village and associated changes to the text of Chapter 41 provisions, it is directed:

Notification

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 - (i) serve notice on the parties to this appeal, and the residential precinct committee of the Jacks Point Owners and Residents Association;
 - (ii) serve notice on the owners of all properties within the Jacks Point Zone, by way of letter to all registered ratepayers of those properties either physically or electronically;
 - (iii) advise in the notices:
 - (A) a summary of what is being proposed through the section 293 process, and direction to where the section 293 documentation as set out in [2] of this decision can be accessed, on the QLDC website and on the Jacks Point website;
 - (B) that any person so notified may provide to QLDC and Jacks Point written comments and any supporting expert evidence (see (b) below) on the change by a date specified in the notice (not less than 20 working days after the date of service of the notice), which will be taken into account in the Council's report (see (d) below) but that;
 - (C) that any person so notified who wants to formally join the appeal as a section 274 party, which would give them the ability to be involved in any Environment Court hearing on the proposed change (if necessary) and future appeal rights, needs to have an interest greater than the interest of the general public.

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