BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY

ENV-2018-CHC-

IN THE MATTER	Of an appeal pursuant to clause 14 of the First Schedule of the Resource Management Act 1992 ("The Act")
BETWEEN	**MARK RICHTER**
	Appellant
AND	**QUEENSTOWN LAKES DISTRICT COUNCIL**
	Respondent

NOTICE OF APPEAL
ON PROPOSED QUEENSTOWN LAKES DISTRICT PLAN

GALLAWAY COOK ALLAN
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To: The Registrar

Environment Court

Christchurch

1. Mark Richter appeals against the decision of the Queenstown Lakes District Council ("the Council") on the Proposed District Plan ("PDP").

2. Wanaka on Water Body Corporate ("The Body Corporate") made submissions and further submissions on the PDP (OS 707 and FS 1028). The Body Corporate comprises six residential units and two commercial units. The Body Corporate made its submission on behalf of the unit owners. Mr Richter owns three of these units and now appeals as owner of those three units. Mr Richter is a 'successor' of the Body Corporate pursuant to Section 2A of the Act.

3. The Appellant is not a trade competitor for the purpose of section 308D of the Act.

4. Mr Richter received notice of the decision on 7 May 2018.

5. The decision was made by the Queenstown Lakes District Council:

6. The part of the decision which Mr Richter is appealing is:

   (a) Chapter 13 Wanaka Town Centre Zone;

   (b) Chapter 36 Noise.

7. The Reason for the Appeal are:

   (a) Mr Richter owns a residential unit located on the Wanaka waterfront and is exposed to noise resulting from activities in restaurants and bars, and from activities within road reserve generally.

   (b) Night time noise experienced within Mr Richter's residence can be managed to an acceptable level pursuant to the operative District Plan noise rules.

(c) Mr Richter's residence has been included within the Lower Ardmore Entertainment Precinct in the PDP.

(d) The Council's decision adopts a noise standard 60dBL$_{Aeq}$.hours per day. That level is only appropriate in an area where residential activity is discouraged. This is not achieved in Wanaka, nor is it possible given the existing residential units within the Lower Ardmore Entertainment Precinct.

(e) The PDP Wanaka Town Centre Zone provisions encourage higher building heights in identified parts of the Zone, and encourage mixed use, including further residential activity in these parts of the Wanaka Town Centre. The mixed use status conflicts with the intentions to separate noise generated by commercial / entertainment facilities from residential activities. It is clear that the same approach taken in Queenstown Town Centre cannot be used in the Wanaka Town Centre. Existing residences must be protected from unreasonable noise.

(f) The PDP does not provide adequate recognition or protection for residential activity within the Wanaka Town Centre zone. Residential units were purchased in reliance of an Objective and Policy framework that evenly balanced the values of both commercial operators and residential activity. The PDP places a distinct focus on 'night time activity' and increases the levels of permitted noise which is inconsistent with residential activity.

(g) The PDP imposes inappropriate noise limits on town centre activities. The decision gives inadequate consideration to the effects of noise on residential activity, particularly those already established.

(h) The PDP then fails to impose further requirements on noise generators to mitigate the effects of increased noise levels. It is inappropriate and impractical to require noise receivers to mitigate the effects of increased levels of noise made by others. The mitigation proposed unfairly favours the noise producers to the detriment of noise receivers. The decision fails to give adequate consideration to the difficulty of achieving acceptable

noise level within a residential dwelling with amplified music level outside the building of 60dBL$_{Aeq}$.

8. In summary, The Council has failed to adequately address the following:

   (a) Recognise that the Wanaka Town Centre Zone anticipates mixed use activity, including residential activity and inappropriately promotes 'night time activity';

   (b) Provide appropriate noise levels in an area that recognises existing and future residential activity;

   (c) Provide an appropriate and effective policy framework to enable residential activity to be developed and maintained in a manner that provides for the wellbeing of the community whilst managing effects on the environment.

Specific Points of Appeal

Wanaka Town Centre Zone

9. Mr Richter supports the retention of Objective 13.2.5. However this Objective is not implemented by the corresponding policy framework. The policy framework has undergone considerable changes since the original notified version:

10. Mr Richter sought the retention of Policy 13.2.5.1, which has been replaced by the Policy 13.2.5.6 and 13.2.5.7 below:

> ~~***Policy 13.2.5.1*** *Provide appropriate noise limits for town centre activities to minimise adverse noise effects received within the town centre and by nearby properties.*~~
>
> ***Policy 13.2.5.6:*** *Minimise conflicts between the Town Centre and the adjacent residential zone by avoiding high levels of night time noise being generated on the periphery of the Town Centre.*
>
> ***Policy 13.2.5.7*** *Recognise the important contribution that night time activity makes to the vibrancy and economic prosperity of the Town Centre and specifically provide for those activities while mitigating effects on residential amenity by:*

a. *enabling night time dining and socialising, both indoors and outdoors, to varying degrees throughout the Town Centre depending on the location of the activity; and*

b. *providing for noisier night time activity within the Lower Ardmore Entertainment Precinct in order to minimise effects on Residential Zones adjacent to the Town Centre; and*

c. *ensuring that the nature and scale of licensed premises located north of Ardmore Street result in effects that are compatible with adjoining Residential Zones; and*

d. *enabling night time activities within the Town Centre Zone provided they comply with the noise limits; and*

e. *requiring acoustic insulation for critical listening environments (including residential activities and visitor accommodation) to limit the impact of town centre noise on occupants.*

[My emphasis]

11. Mr Richter seeks the retention of the notified policy framework .

Noise limits

12. The PDP proposes to relax the noise limits within the Wanaka Town Centre Zone, including Lower Ardmore Entertainment Precinct. The proposed noise limits applying to activities are identified in Rules (13.5.10.1- 13.5.10. 5). These comprise different acoustic measurement relating to:

(a) The sound of activities;

(b) The sound from music;

(c) The sound of voices; and

(d) The sound of loudspeakers.

13. Those limits are:

(a) Unenforceable with respect to voices.

(b) Unreasonable with respect to music and loudspeakers.

(c) Unreasonable with respect to night time hours.

Relief sought

14. The deletion of Policy13.2.5.6 and 13.2.5.7 and reinstate Policy 13.2.5.1: *Provide appropriate noise limits for town centre activities to minimise adverse noise effects received within the town centre and by nearby properties*.

15. That the noise limits identified above are amended to reflect the noise limits within the Operative District Plan.

16. Chapter 13, in particular Rule 13.5.7 and Chapter 36 – Table 5 is amended to remove the presumption that the obligation to mitigate the effects of unreasonable noise rests with the noise receiver. Any mitigation obligation should be imposed on a noise maker.

Mr Richter attaches the following documents to this notice:

17. A copy of the original submission OS 707;

18. A copy of the further submission FS1028;

19. Excerpts of the decision's subject to this notice of appeal; and

20. A list of names and addresses of persons to be served with a copy of this notice.

D A McLachlan

Solicitor for the Submitter

DATED this 15th day of June 2018.

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Advice to Recipients of Copy of Notice

How to Become a Party to Proceedings

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court, and serve copies on the other parties, within 15 working days after the period for lodging a notice of appeal ends. 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 requirements (see form 38).

How to Obtain Copies of Documents Relating to Appeal

The copy of this notice served on you does not attach a copy of the relevant decision. These documents may be obtained, on request, from the Appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.