

Before Queenstown Lakes District Council

In the matter of the Resource Management Act 1991

And

In the matter of the Queenstown Lakes District Proposed District Plan Topic
07 Designations

Legal Submissions

Dated 17 October 2016

Island Capital Limited #0769

Solicitors

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**anderson
lloyd.**

1. INTRODUCTION

- 1.1 These legal submissions are filed on behalf of Island Capital Limited ("ICL") in respect of Chapter 37 (Designations) of the Proposed District Plan ("PDP").
- 1.2 ICL made a submission on Chapter 37 and Planning Map 25 opposing the proposed designation 428 (Glenorchy Closed Landfill) which has been identified over the entirety of the ICL land (owned by Glenorchy Trustee Limited, LOT 1 DP 430468).

2. Executive Summary

- 2.1 The Queenstown Lakes District Council's ("Council") Notice of Requirement for Designation 428 does not provide justifiable reasons in terms of section 168A of the Resource Management Act 1991 ("RMA").
- 2.2 The ORC Discharge Permit (RM13.396.01) ("Permit") does not necessitate that the Council require a designation over the area of the closed landfill.
- 2.3 ICL and the Council have come to an agreement so as to remove the proposed designation over its land and grant rights to Council which will allow it to comply with the conditions of the Permit.
- 2.4 ICL agrees with the evidence of Council that instead of imposing a designation it would be more appropriate to include a notation on the relevant PDP maps recording sites as closed landfills. ICL however considers the appropriate mechanism for achieving this will be to withdraw the notice of requirement rather than amend or modify it, in accordance with clause 9(2) Schedule 1 and section 168A (3) and (4) of the RMA.

3. ORC Discharge Permit and plan notations

- 3.1 The ORC Discharge Permit RM13.396.01 (attached at "A") requires as condition 2:

"The consent holder shall ensure that the site is recorded in the Queenstown Lakes District Plan as a "closed landfill".

- 3.2 This condition clearly does not necessitate that Council require a designation over that land identified in the Permit.
- 3.3 Counsel for ICL agrees with the evidence of Erin Moogan, dated 23 October 2016 (assumed to be an error reference to September) that it would be more appropriate to include a notation on the relevant District Plan maps recording the sites as closed landfills.¹ A notation would be an appropriate way to ensure the location of the closed landfill is appropriately identified in the PDP, whilst not imposing an unjustified and unnecessary burden on the private land subject to that notation.

¹ Evidence in Chief, Erin Moogan dated 23 October 2016 , at [7.6]

- 3.4 For clarification, Counsel understands that the notation in the planning maps will have no corresponding regulatory effect through the PDP.
- 3.5 ICL further agrees with Ms Moogan's evidence, at para 7.7 where she states that any remedial works on the land affected by the closed landfill will likely require resource consents under the National Environmental Standards for Assessing and Managing contaminants in Soil to Protect Human Health ("NES").
- 3.6 As stated in the submission of ICL, 'landfill sites' are an activity identified in the "HAIL". Any subdivision, change in use, or soil disturbance (above permitted thresholds) will trigger resource consent under the NES.
- 3.7 The NES is an adequate regulatory tool to manage the remediation of the HAIL site before any subdivision or change in land use, in order to protect human health.
- 4. Landowner and Council agreement**
- 4.1 Glenorchy Trustees Limited (owner of the affected land) and Council have reached an agreement in light of the above, allowing Council to access and undertake work on the land.
- 4.2 This agreement will allow Council to comply with all conditions of the Permit in respect of only the land affected by the closed landfill, as noted in the Council's hazard maps.
- 4.3 For clarification, the evidence of Ms Moogan at para 7.9 states that Council seeks the panel confirm a planning map notation 'which accords with the location of the closed landfills in the hazard maps'. The hazard register maps are not included in the evidence, but are included in the section 42A report of Ms Holden at page 37.
- 5. Withdrawal of designation**
- 5.1 In light of this agreement, conditions of the Permit, and extent of the affected land, ICL agrees with the evidence of Council that the proposed designation should not be confirmed, and instead notated on the planning maps with no corresponding regulatory effect.
- 5.2 This will require a consequential withdrawal of the closed landfill Notice of Requirement (contrary to Mr Winchester's legal submissions seeking at para 5.1(e) that the designation be 'amended').
- 5.3 Replacing a proposed designation with a non-regulatory planning notation should not be considered an 'amendment' to the Notice of Requirement. This would result in the designation technically still existing; having the ability to be modified in the future² and having an interim effect currently.³ This would

² Section 181 RMA

³ Section 178 RMA

clearly not reflect the intention of the Council as stated in evidence and legal submissions, and as negotiated through the agreement with ICL.

- 5.4 The mechanism for making decisions in this instance is under clause 9(2) of Schedule 1. This clause gives broad discretion to make decisions as follows:

9(2) The territorial authority shall make its decision on provisions included in the proposed district plan under clause 4(6) in accordance with section 168A(3) or section 189A(3), as the case may be.⁴

- 5.5 The section 168A(3) considerations are well settled in case law and need not be traversed in these submissions. Section 168A(4) also provides that a territorial authority may decide to:

(a) Confirm the requirement;

(b) modify the requirement;

(c) impose conditions;

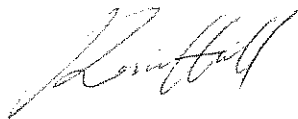
(d) withdraw the requirement.⁵

- 5.6 The Panel should exercise its discretion under clause 9(2) in this instance, having regard to the section 168A tests, to:

(a) Withdraw the requirement; and

(b) Replace the proposed designation with a non-regulatory planning notation.

- 5.7 There is no evidence in this instance to justify retaining the designation with 'modifications'.



Rosie Hill / Maree Baker-Galloway

Counsel for Island Capital Limited (#0769)

⁴ Clause 9(2), Schedule 1 RMA

⁵ Section 168A(4) RMA

"A"

COUNTERPART



Otago Regional Council

Our Reference: A577880

Consent No. RM13.396.01

DISCHARGE PERMIT

Pursuant to Section 104B of the Resource Management Act 1991, the Otago Regional Council grants consent to:

Name: Queenstown Lakes District Council

Address: 10 Gorge Road, Queenstown

To discharge up to 1,940 cubic metres per year of leachate to land in circumstances where it may enter water for the purpose of managing the Glenorchy Closed Landfill

For a term expiring: 20 November 2048

Location of consent activity:

Glenorchy, approximately 310 metres east north-east of the intersection of Shiel Street and Oban Street

Legal description of consent location:

Lot 1 DP 394250 and Lot 1 DP 430468

Map Reference:

NZTM2000 E1236011 N5023048

Conditions Specific

1. The consent holder shall manage the closed landfill in accordance with the procedures outlined in the most current version of the Landfill Closure Plan. If there are any inconsistencies between the Landfill Closure Plan and the conditions of this consent, the conditions of this consent shall prevail.
2. The consent holder shall ensure that the site is recorded in the Queenstown Lakes District Plan as a "closed landfill".
3. The consent holder shall ensure that a fence is erected around the perimeter of the landfill site. The fence shall be maintained in good condition.

Performance Monitoring

4. The consent holder shall visit the landfill site at six-monthly intervals and inspect for signs of erosion, pest species of flora and fauna, rubbish break-through, subsidence, reduction in cap integrity and leachate discharge. If any of the aforementioned are detected, the consent holder shall immediately take appropriate remedial action in consultation with the Consent Authority.



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5. The consent holder shall inspect the landfill site following heavy rainfall, flooding, fire, earthquake or drought events and inspect for signs of erosion, pest species of flora and fauna, rubbish break-through, subsidence and leachate discharge.
6. The consent holder shall supply the Consent Authority an annual written report by 30 September each year that shall include, but not be limited to:
 - (a) The results of the two previous six-monthly site inspections undertaken in accordance with Condition 4;
 - (b) The results of any additional monitoring undertaken in accordance with Condition 5;
 - (c) Details of any remedial action required;
 - (d) A record of any complaints received in relation to the landfill and corrective action taken; and
 - (e) An assessment of the actual and potential environmental impacts from the closed landfill.
7. The consent holder shall keep a register of complaints related to the landfill and report any complaints to the Consent Authority within one month of the complaint being received.
8. The Consent Holder shall ensure that groundwater monitoring wells MW1, MW2 and MW3 are maintained in good condition to prevent ingress of contaminants from above ground activities and to allow for future groundwater quality monitoring if required.

General

9. The consent holder shall ensure that the discharge does not give rise to any significant adverse effect on aquatic life or any groundwater user.
10. The Consent Authority may, in accordance with sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this consent within three months of each anniversary of the commencement of this consent for the purpose of:
 - (a) determining whether the conditions of this consent are adequate to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage;
 - (b) ensuring the conditions of this consent are consistent with any National Environmental Standards Regulations, relevant plans and/or the Otago Regional Policy Statement.



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Notes to Consent Holder

- 1. If you require a replacement consent upon the expiry date of this consent, any new application should be lodged at least 6 months prior to the expiry date of this consent. Applying at least 6 months before the expiry date may enable you to continue to exercise this consent until a decision is made, and any appeals are resolved, on the replacement application.*

Issued at Dunedin this 25th day of November 2013.

A handwritten signature in black ink, appearing to read "C. Shaw".

Christopher P. Shaw
Manager Consents



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