

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-065

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 **Clark Fortune McDonald & Associates**
Appellant

And **Queenstown Lakes District Council**
Respondent

AMENDED Notice of Appeal

12 April 2019

Appellant's solicitors:

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**anderson
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To The Registrar
Environment Court
Christchurch

- 1 Clark Fortune McDonald & Associates (**CFMA**) appeals against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 CFMA made a submission (#414) on the PDP.
- 3 CFMA is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 CFMA received notice of the decision on 7 May 2018.
- 5 The decision was made by Queenstown Lakes District Council (**QLDC**).
- 6 The parts of the decisions appealed relate to:
 - (a) Chapter 3 Strategic Direction;
 - (b) Chapter 4 Urban Development;
 - (c) Chapter 27 Subdivision;
 - (d) All Planning Maps notified, including in particular planning Map 17 (Hawea).
- 7 Reasons for appeal

Overall PDP Issues

- 8 For clarification, all matters raised in this appeal are applicable specifically in respect of Hawea, the proposed Hawea Urban Growth Boundary (**UGB**), and Planning Map 17 (Hawea).
- 9 Submission point 1.0 of the CFMA submission opposed the PDP in its entirety for reasons that the PDP does not accord with, or assist, the Council to carry out its RMA functions, including the requirements of Part 2, section 32, and the reasonably foreseeable needs of future generations.
- 10 This general opposition to the PDP gives CFMA broad standing to seek relief in respect of a range of issues in the PDP on appeal. In this instance, CFMA is concerned with:

- (a) The Council's staging approach to the PDP which has resulted in duplication and potentially inconsistent decision making between different chapters of the PDP;
 - (b) The determination of residential and living zones, and the areas for which those are to be identified, in future stages of the PDP, where UGBs are identified in Stage 1. This will result in uncertainty to landowners seeking an up-zoning but which may be affected by a stage 1 UGB decision.
- 11 This specific relief relevant to the appeal against these issues are further set out in **Appendix A** to this Appeal.

Chapter 3 Strategic Direction

- 12 Chapter 3 provides for the overarching strategic direction for resource management in the Queenstown Lakes District. The nature of Chapter 3 applying as higher order provisions to all other provisions of the PDP means that CFMA interests are affected by Chapter 3.
- 13 Significant changes to content and structure of Chapter 3 have occurred between the notified PDP version and the decisions version. CFMA therefore considers that its appeal on this chapter is significantly broad and not limited in scope to original policies and objectives listed.
- 14 CFMA opposes those provisions of Chapter 3 which do not provide for efficient and effective urban development, and which do not provide sufficiently for the social, economic, and cultural wellbeing of people and communities.
- 15 The specific provisions of Chapter 3 and the relief sought by CFMA are set out in **Appendix A** to this Appeal.

Chapter 4 Urban Development

- 16 The submission sought that the entire chapter relating to the identification of urban growth boundaries (Chapter 4) be withdrawn from the Review and re-notified, given the flawed section 32 analysis supporting its promulgation. The consequence of this relief sought is to provide broad scope in respect of relief pertaining to urban growth and urban growth boundaries on planning maps, which stem from Chapter 4.
- 17 CFMA is in particular concerned that Chapter 4 as notified, and its approach to defining urban growth boundaries on planning maps, does not adequately address the reasonably foreseeable needs of future generations and social, cultural, and economic wellbeing of people and communities, as is required in Part 2 of the RMA. In particular, the growth needs of the Queenstown Lakes District are complex and unique as compared to other parts of the Otago Region

and around the country. The identification of Queenstown as a high growth area within the National Policy Statement Urban Development Capacity 2016 (**NPSUDC**) provides further policy support for a planning approach in the PDP to ensure that sufficient, feasible and realistic land is either zoned for future development, or is not otherwise precluded from such use. The Chapter 4 provisions and consequentially the placement of some UGBs on planning maps does not currently achieve this.

- 18 This approach in the PDP also does not provide for the proposed Otago Regional Policy Statement (**RPS**) which takes into account the requirements of the NPSUDC, and provides for urban growth and development, rather than constraining it.
- 19 Without derogating from the generality of the above, CFM considers particular provisions within Chapter 4 are those which seek to avoid urban development beyond an identified UGB and which otherwise unnecessarily constrain urban development from occurring within identified UGBs. There is a lack of section 32 analysis justifying the need for such a stringent regime in this District, where there is high growth pressures and demand for further residential development, as well as a lack of evidential basis pointing to inappropriate and ad hoc urban development.
- 20 Chapter 4 and the identification of UGBs will inappropriately constrain further residential subdivision and development, which will in turn result in increased affordability issues and housing shortages in the District. Chapter 4 is required to be amended to ensure that the unique aspects of the land development market are provided for.
- 21 The specific provisions of Chapter 4 and the relief sought by CFMA are set out in **Appendix A** to this Appeal.

Chapter 27 Subdivision

- 22 The submission sought that the entire chapter relating to subdivision and development (Chapter 27) be withdrawn from the Review and re-notified, given the flawed section 32 analysis supporting its promulgation. The consequence of this relief sought is to provide broad scope in respect of relief pertaining to subdivision and development generally.
- 23 Without derogating from this generality, CFMA is in particular concerned with the removal of a controlled activity subdivision status for residential zoned land. Controlled activity status is critical to the successful development and completion of subdivision within developable zones (including Mixed Business Use, Township, Special, and residential). These are zones which are anticipated for further subdivision and development, and therefore subdivision should be

enabled to achieve the purpose as land use change is expected. These are zones in which the anticipated level of effects for the Zone have been considered and accepted at a local and District Wide level.

- 24 The specific provisions of Chapter 27 and the relief sought by CFMA are set out in **Appendix A** to this Appeal.

PDP Planning Maps (including Planning Map 17 Hawea)

- 25 As discussed above in respect of Chapter 4, the identification of UGBs on planning maps is opposed. Identification of UGBs on planning maps will inappropriately constrain future necessary subdivision and development. UGBs on planning maps are a blunt instrument, where ad hoc development can otherwise be controlled through effective zoning.
- 26 Without derogating from the general opposition to the identification of UGBs on planning maps, CFMA considers that there are particular locations where UGBs are identified in inappropriate locations and where this will constrain future planned development. A particular example is the UGB identified adjacent to the existing Hawea Township. This UGB was identified as a response to a community association submission, rather than the product of any in depth s32 analysis and in the absence of a full understanding of the township where QLDC has signalled an intention to review matters relating to the Township Zone at a later stage. Therefore, highlighting the deficiencies in considering urban growth matters in the absence of reviewing the township zoning as a whole
- 27 This UGB is an example of constraining development in appropriate locations, given it does not provide any sufficient room for expansion of the Township, despite its recognition as a growth area within the District.

Further and consequential relief sought

- 28 CFMA opposes any further provisions and seeks alternative, consequential, or necessary additional relief to that set out in this appeal and to give effect to the matters raised generally in this appeal and CFMA's PDP submission.

Attachments

The following documents are **attached** to this notice:

Appendix A – Relief sought

Appendix B - A copy of the Appellants' submission;

Appendix C - A copy of the relevant parts of the decision; and

Appendix D - A list of names and addresses of persons to be served with this notice.

Dated this 12th day of April 2019

A handwritten signature in black ink, appearing to read "Rosie Hill", is centered on the page. The signature is written in a cursive style with a large initial 'R'.

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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.

Provision (PDP decision version)	Reason for appeal	Relief sought
Entire PDP Issues - Hawea specific		
Staging approach and rezoning	The approach to staging the review is opposed, as this results in landowners incurring unnecessary costs and time and potentially missing out on relief which is available to them. In particular the approach to identifying UGBs prior to establishment and identification of Township and other living zones is opposed given that UGBs are being identified without knowing the full extent and location of urban areas and their zoning capacity.	Place Chapter 4 and all decisions on planning maps on hold related to the Urban Growth Boundary at Hawea, pending the outcome of Township rezoning; or
Chapter 3 Strategic Direction – Hawea Specific		
Strategic policy 3.3.13	This policy is opposed on the basis that as per submission in relation to urban growth boundaries, it is considered inefficient and ineffective in this District to control and constrain urban development through UGBs on planning maps	Delete Strategic policy 3.3.13
Strategic Policy 3.3.14 Apply Urban growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Jack's Point), Wanaka and Lake Hawea Township. (relevant to S.O. 3.2.2.1)	Identifying UGBs around current developed land, rather than future developable land will exacerbate housing shortage and affordability issues in the District. Requiring the avoidance of urban development beyond UGBs will stagnate future appropriate development and will restrict responsive planning	Delete Strategic Policy 3.3.14

Provision (PDP decision version)	Reason for appeal	Relief sought
	for community needs, which is required under the NPS UDC	
Strategic Policy 3.3.15 Locate urban development of the settlements where no UGB is provided within the land zoned for that purpose. (relevant to S.O. 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2)	The policy is meaningless given that all development should proceed according to a particular underlying Zone purpose.	Delete Strategic Policy 3.3.15
Chapter 4 Urban Development – Hawea Specific		
Chapter 4	For the reasons set out above, delete chapter 4 in its entirety and re-notify the chapter subject to a more comprehensive section 32 analysis being undertaken	Delete Chapter 4 insofar as this has consequences for the planning regime at Hawea due to the identification of the Hawea UGB.
Provisions pertaining to control of urban development via UGBs Objective 4.2.1; 4.2.2A; 4.2.2B and associated policies	For the reasons identified above, UGBs identified on planning maps are considered to be a blunt instrument which will inhibit future appropriate planning and development. Provisions specific to control of urban development through UGB identification on planning maps do not better assist a planning regime which lends itself to quality built environment outcomes and which provide for social and community wellbeing.	Delete Objective 4.2.1; 4.2.2A; 4.2.2B and associated policies, or otherwise amend to provide a planning regime to enable and support appropriate urban development outcomes without UGB mechanisms at Hawea.
Upper Clutha Basin Specific Policies 4.2.2.22 and 4.2.2.23	These two policy suites exemplify the issues with urban growth	Delete policies 4.2.2.22 and 4.2.2.23 or otherwise amend to

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<p>4.2.2.22 Define the urban Growth boundaries for Wanaka and Lake Hawea Township, as shown on the District Plan maps that:</p> <ul style="list-style-type: none"> a. are based on existing urbanised areas; b. identify sufficient areas of urban development and the potential intensification of existing urban areas to provide for predicted visitor and resident population increases in the upper Clutha basin over the planning period; c. have community support as expressed through strategic community planning processes; d. utilise the Clutha and Cardrona Rivers and the lower slopes of Mt. Alpha as natural boundaries to the growth of Wanaka; and e. avoid sprawling and sporadic urban development across the rural areas of the upper Clutha basin. <p>4.2.2.23 Rural land outside of the urban Growth boundaries is not used for urban development until further investigations indicate that more land is needed to meet demand for urban</p>	<p>planning according to UGB mapping. The identification of UGBs based upon existing urbanised areas does not provide for future feasible and realistic development over the short, medium, and long terms, as is required by the NPS UDC. Applying UGBs to those areas around brownfield development constrains existing settlements even where there are significant growth pressures. Requiring that 'further investigations' be undertaken before land outside of UGBs is developed will mean that the Council cannot adopt quickly and respond adaptively to changes in growth pressures and predictions. This is also contrary to the proposed RPS and the NPSUDC.</p>	<p>provide a planning regime to enable and support appropriate urban development outcomes without UGB mechanisms at Hawea.</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
development in the upper Clutha basin and a change to the Plan amends the urban Growth boundary and zones additional land for urban development purposes.		
Chapter 27 Subdivision		
Rule 27.5.7 all subdivision defaults to RDA activity status	Subdivision within urban zones is anticipated and should be enabled through chapter 27, subject to appropriate matters of reserved control. Requiring RDA subdivision rather than controlled will result in a disconnect between the rules applicable to the Zone and the purpose of the Zone.	<p>Amend Rule 27.5.7 to a default controlled activity status for all zones unless otherwise specified.</p> <p>Zones to be included in a controlled activity status include;</p> <ol style="list-style-type: none"> 1. Lower Density Suburban Residential Zone; 2. Medium Density Residential Zone; 3. High Density Residential Zone; 4. Town Centre Zones; 5. Arrowtown Residential Historic Management Zone; 6. Large Lot Residential Zone; 7. Local Shopping Centre; 8. Business Mixed Use Zone; 9. Airport Zone – Queenstown. 10. Township Zones; 11. Rural Residential; 12. Rural Lifestyle.

Provision (PDP decision version)	Reason for appeal	Relief sought
Planning Map 17 Hawea		
Planning Map 17 Hawea	<p>As discussed above, the identification of UGBs on planning maps is considered a blunt instrument and disabling of responsive planning outcomes. Particular examples of where UGBs are located on planning maps in inappropriate locations, and where this will constrain future appropriate development include on Map 17 (Hawea). This UGB has been included in response to a community association submission, rather than any definitive evidence in terms of the effects of short, medium, and long term housing supply planning. Constraining development to just those urbanised areas already will inevitably lead to requirements for further plan changes and amendments, and which is therefore an inefficient planning mechanism.</p>	<p>In particular, amend Planning Map 17 (Hawea) to remove the identified Urban Growth Boundary, and / or;</p> <p>Amend Planning Map 17 (Hawea) to relocate the Urban Growth Boundary to take into account suitable developable land beyond the already built environment of the Township.</p>

Appendix B - A copy of the Appellants' submission and further submissions;

Appendix C - A copy of the relevant parts of the decision; and

Appendix D - A list of names and addresses of persons to be served with this notice.