

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-106

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	Te Anau Developments Limited Appellant
And	Queenstown Lakes District Council Respondent

AMENDED Notice of Appeal

~~2 November 2018~~ 9 September 2019

Appellant's solicitors:

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To The Registrar
Environment Court
Christchurch

- 1 Te Anau Developments Limited (**TDL**) appeals against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 TDL made a submission (#607) and further submission (#1342) on the PDP.
- 3 TDL is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 TDL 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 decision appealed relate to:
 - a) Planning Map 12a;
 - b) Chapter 12 Town Centre and Chapter 21 Rural (new water specific chapter);
 - c) Chapter 21 Rural;
 - d) Chapter 30 Energy and Utilities;
 - e) Chapter 36 Noise;
- 7 Reasons for appeal and relief sought.

Background

- 8 Te Anau Developments Limited is a wholly owned subsidiary of Real Journeys Limited and is the land owner for Real Journeys at Walter Peak, Convelle Wharves and of other Real Journeys land holdings predominately in Te Anau.
- 9 A range of tourism activities are currently provided at Walter Peak. These include: High Country Farm Tours; Dining at the Colonel's Homestead Restaurant, which is located close to the steamships destination; Guided Cycling; Independent Cycling; Horse Trekking; and Scenic flights. Clients can stop off at Walter Peak for lunch during their scenic flight moreover Walter Peak offers an important wet day alternative destination for charter group fly Milford Sound cruise fly bookings mainly for the meetings, incentive and conferences market.
- 10 These activities generate employment for about 45 Real Journeys staff some of whom are accommodated on site; more people are also employed at Walter Peak

by the horse trek; and guided cycling operators. The tourism activities provided at the base of Walter Peak rely on the ability for passengers to be transported from Queenstown Bay (primarily via the “TSS Earnslaw”) and the ability to use, maintain and develop the buildings, structures, waste water treatment plant, flood protection works, energy generation and communication facilities, and spaces on the land owned or occupied by Te Anau Developments, including an existing airstrip.

Zoning sought

- 11 TDL sought extensions to the existing Rural Visitor Zoning at Walter Peak, including confirmation of that zoning through Stage 1 of the PDP. TDL acknowledges that the Rural Visitor Zone is yet to be reviewed as part of stage 3 of the PDP, however as per the Hearing Panel's directions in respect of Stage 1 hearings, a submitter has the ability to seek any zoning / provisions applicable to their land which is notified as part of the Review through submissions. To this end, TDL acknowledges that there may be further amendments to the current Rural Visitor Zone provisions which will have an impact on the Site, TDL therefore seeks:
- (a) Any consequential, alternative or other amendments necessary to the Rural Visitor Zone prior to its review through Stage 3 of the PDP and which will better achieve the PDP scheme and purpose, and / or site specific issues; or
 - (b) That the Walter Peak Site as indicated in **Appendix A** be rezoned an interim zoning, which provides for a similar outcome to that achieved through a Rural Visitor Zone, for example one of the notified residential zones; or
 - (c) That the Council confirm it will re-notify the Site as part of any Stage 3 Rural Visitor Zone review, so as to enable TDL to pursue that relief through another stage.
- 12 TDL considers it is not reasonable to make landowners wait till a future stage of the PDP review in order to seek relief in respect of their land which is available for rezoning now. The delay of a review of the Rural Visitor Zones is also an inefficient and ad-hoc planning exercise.

Relief sought

- 13 This Appeal by Te Anau Developments Ltd is focused on the Proposed District Plan provisions affecting the significant tourism activities provided at Walter Peak, including supporting infrastructure, and the ability to provide and access water transport activities between Beach Bay and Queenstown Bay. The specific proposed district plan provisions this submission relates to, and the decisions sought, are as set out in **Appendix A**.

Further and consequential relief

14 TDL opposes any alternative provisions contrary to achieving the above outcomes 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 TDL's PDP submissions.

Attachments

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

- a) **Appendix A** – relief sought
- b) **Appendix B** - A copy of the Appellant's submission and further submissions;
- c) **Appendix C** - A copy of the relevant parts of the decision; and
- d) **Appendix D** - A list of names and addresses of persons to be served with this notice.

Dated this ~~2nd day of November 2018~~ 9th day of September 2019



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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
Planning Map 12a	<p>Rezone the "Rural General" zoned land identified in the image below (including land described as Pt. Sect 19 BLK III MID WAKATIPU SD, recreation reserve, Section 1 SO 10828, and marginal strip adjoining this land and adjoining the land owned by Te Anau Developments Ltd) to "Rural Visitor Walter Peak".</p> 	<p>Amend Planning Map 12A to extend the Rural Visitor Zoning as set out in the reasons for this Appeal.</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
Planning Maps	Consider rezoning all Rural Visitor Zones just Visitor Zones (i.e. remove them from the rural chapter provisions).	Amend the Rural Visitor Zone as requested in the relief set out
Chapter 21 Rural		
<p>Objective 21.2.11</p> <p>The location, scale and intensity of informal airports is managed to maintain amenity values while protecting informal airports from incompatible land uses.</p>	Amend objective to protect existing establishments to continue operating, or otherwise amend Objective 21.2.11 to specifically provide for the Walter Peak Rural Visitor Zone	<p>Amend Objective 21.2.11 as follows:</p> <p>The location, scale and intensity of <u>new</u> informal airports is managed to maintain amenity values while protecting <u>existing</u> informal airports from incompatible land uses.</p>
<p>Policy 21.2.11.1</p> <p>Ensure informal airports are located, operated and managed so as to maintain the surrounding rural amenity.</p> <p>Policy 21.2.11.2</p> <p>Protect rural amenity values, and amenity of other zones from the adverse effects that can arise from informal airports.</p>	Protecting rural amenity values could be problematic and for existing informal airports and is a higher level of protection than anticipated through section 7 or Part 2 RMA.	<p>Amend policy 21.2.11.1 as follows:</p> <p>Ensure <u>new</u> informal airports are located, operated and managed so as to maintain the surrounding rural amenity.</p> <p>Amend Policy 21.2.11.2 as follows:</p> <p>Protect rural amenity values, and amenity of other zones from the adverse effects that can arise from <u>new</u> informal airports.</p>
<p>21.4.27 New Building Platforms and Activities Sensitive to Aircraft Noise within the Outer Control Boundary – Wanaka Airport</p> <p>On any site located within the Outer Control Boundary, any</p>	<p>Rule prohibits appropriate rural activities, which include tourism and visitor industry activities.</p>	<p>Exclude tourism activities from the application of these rules</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
<p>new activity sensitive to aircraft noise or new building platform to be used for an activity sensitive to aircraft noise (except an activity sensitive to aircraft noise located on a building platform approved before 20 October 2010).</p> <p>21.4.28 Activities Sensitive to Aircraft Noise within the Outer Control Boundary – Queenstown Airport</p> <p>On any site located within the Outer Control Boundary, which includes the Air Noise Boundary, as indicated on the District Plan Maps, any new Activity Sensitive to Aircraft Noise.</p>		
New Rule 21.x.x	Insert new rule to protect existing airstrips from reverse sensitivity effects.	Amend Chapter 21 to include new rule 21.x.x as follows: <u>Construction of dwellings or noise sensitive activities within 500m of an existing airstrip shall be a restricted discretionary activity. Council's discretion shall be restricted to the protection of the operation of the existing airport in terms of reverse sensitivity effects.</u>
Chapter 30 Energy and Utilities		
Chapter 30 exclusions	Ensure that utilities required in the operation of tourism activities is enabled and provided for	Amend Chapter 30 provisions to exclude tourism activities within rural visitor zones. Or in the alternative, all provisions in chapter 30 be amended as required to ensure the development, operation,

Provision (PDP decision version)	Reason for appeal	Relief sought
		maintenance and upgrading of energy, utilities, and infrastructure related to tourism activities are specifically enabled or provided for as permitted, controlled, restricted discretionary or discretionary.
30.5.6.8 Antennas and ancillary equipment	Amend rule to increase the permitted diameter of circular dishes (telecommunications) to a minimum of 2m.	Amend Rule 30.5.6.8 as follows: ... Provided that for panel antennas the maximum width is 0.7m <u>1.8m</u> ,
Rule 30.4.13.4	Ensure that necessary earthworks associated with these provisions are excluded	Amend Rule 30.4.13.4 to exclude earthworks and trenching associated with the installation of any telecommunication and radio communication facility, navigation or meteorological communication facility.
Chapter 35 Temporary Activities		
Policy 35.2.1.2 Permit small and medium-scale events during daytime hours, subject to controls on event duration, frequency and hours of operation.	Delete the restriction of day time hours, and otherwise permit such events in remote locations where adverse effects are unlikely, such as Walter Peak	Amend Policy 35.1.2 as follows: Permit small and medium-scale events during daytime hours, subject to controls on event duration, frequency and hours of operation.

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<p>Policy 35.2.1.7</p> <p>Recognise that noise is an anticipated component of temporary events and filming, while protecting residential amenity from undue noise during night-time hours.</p>	<p>Ensure that the policy is only applicable in residential areas given these activities are common in other areas such as rural visitor zones</p>	<p>Amend Policy 35.2.1.7 as follows:</p> <p>Recognise that noise is an anticipated component of temporary events and filming, while protecting residential amenity <u>in established residential zones</u> from undue noise during night-time hours.</p>
<p>Rule 35.4.12</p> <p>Temporary Storage</p> <p>Any temporary storage or stacking of goods or materials, other than for farming purposes, that does not remain on the site for longer than 3 months and does not exceed 50m² in gross floor area.</p>	<p>This rule could inhibit appropriate activities such as storage of goods in the off season on ski fields, or stacking firewood</p>	<p>Define temporary storage or otherwise delete this rule as unclear what this policy would extend to</p>
<p>Policies 35.2.5.1</p> <p>Permit temporary storage related to farming activity.</p>	<p>The policy should be amended to recognise the importance of tourism, transport, and associated activities</p>	<p>Amend Policies 35.2.5.1 as follows</p> <p>Permit temporary storage related to farming activity, <u>transport, tourism, and visitor accommodation activities.</u></p>
<p>Policy 35.2.5.2</p>	<p>The policy should be amended to recognise the importance of</p>	<p>Amend Policy 35.2.5.2 as follows:</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
Ensure temporary storage not required for farming purposes is of short duration and size to protect the visual amenity values of the area in which it is located.	tourism, transport, and associated activities	Ensure temporary storage not required for farming <u>transport, tourism, and visitor accommodation activities</u> . purposes is of short duration and size to protect the visual amenity values of the area in which it is located.
Rule 35.4.1; 35.4.2; 35.4.3	All SASZs and Rural Visitor Zones should be included in these permitted activity rules, and which are not necessarily on conservation or public land.	Include permitted activity rules for temporary storage and events carried out <u>in the Cardrona Ski Activity Area Subzone and Walter Peak Rural Visitor Zone</u> . Ski area subzones and Rural Visitor zones.
Rule 35.4.4	These rules should exclude SASZs and Visitor Zones as such activities are expected in those locations and their remoteness remedies adverse effects	Amend Rule 35.4.4 as follows: ... <u>This rule does not apply to temporary activities undertaken within the Cardrona Ski Activity Area or the Rural Visitor Zone Walter Peak.</u>
35.4.7 e. the use of land as an informal airport as part of filming activity is restricted to the Rural Zone.	Such activities are anticipated in the Rural Visitor Zones	Amend Rule 35.4.7 as follows ... e. the use of land as an informal airport as part of filming

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		activity is restricted to the Rural Zone <u>and Rural Visitor Zones.</u>
35.4.11 Temporary utilities	Such activities are anticipated in the Rural Visitor Zones and Ski Area Subzones	Amend Rule 35.4.11 as follows: ... <u>c. are required for power generation in the Rural Visitor Zones or Ski Area Subzones</u>
Rule 35.4.8 – permitted temporary construction related activities	Include provision for the necessary site controls related to maintenance of the Earnslaw, or otherwise amend and broaden the definition of temporary construction related activities, including through provisions for repairs and maintenance	Amend Rule 35.4.8 as follows: ... <u>• Associated with the construction (including reconstruction, repair, maintenance, upgrading) of vessel survey work undertaken in relation to the “TSS Earnslaw” and associated buildings and structures including slipway at Kelvin Peninsula;</u> <u>• Associated with the construction (including reconstruction, repair, maintenance, upgrading) of buildings, structures and infrastructure with the Rural Visitor Zone Walter Peak and</u>

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		<u>Cardrona Ski Activity Area.</u>
Chapter 36 Noise		
Chapter 36 Table 1 - Noise	Provide for existing operations at Walter Peak	Amend rule so that the noise limits are measured as Lmax, not Ldn. Also amend rule so that non conformance is a discretionary activity, not a non-complying activity specific to the Walter Peak Rural Visitor Zone
Chapter 2 Definition		
<p>Definitions</p> <p>Tourism Activity (new) and Visitor Industry (new)</p>	<p>The plan does not provide specific definition for tourism. The plan does introduce a new strategic policy for the “visitor industry” but does not define the “visitor industry”. The panel in its decision did not demonstrate an understanding of what the tourism/visitor industry is (e.g. any person from outside the district is a visitor/tourist, not just New Zealanders).</p>	<p>Insert new definition for “Tourism Activity”. Suggested wording is as follows:</p> <p><u>Tourism Activity:</u></p> <p><u>Means the use or development of a resource for the purpose of attracting visitors to the district, and includes associated buildings, structures, infrastructure, transport activities, and administration activities.</u></p> <p>And</p> <p>Insert new definition for “<u>Visitor Industry</u>” which reflects the intent of new strategic policies, and which recognises the</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
		breadth of the visitor industry applicable, including domestic tourists.
Chapter 6 Landscapes		
<p>Policy 6.3.2</p> <p>Exclude identified Ski Area Sub-Zones and the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps from the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories applied to the balance of the Rural Zone and from the policies of this chapter related to those categories. (3.2.1.1, 3.4.4.4, 3.3.21).</p>	<p>Amend the policy to also exclude Rural Visitor Zones and Resort Zones, as provision for landscapes are better to be included at the specific chapter level for those areas</p>	<p>Amend policy 6.3.2 as follows:</p> <p>Exclude identified Ski Area Sub-Zones, <u>Rural Visitor Zones</u>, and <u>Resort Zones</u> and the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps from the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories applied to the balance of the Rural Zone and from the policies of this chapter related to those categories. (3.2.1.1, 3.4.4.4, 3.3.21).</p>

Appendix B - A copy of the Appellant's submission and further submissions

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

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