

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-

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	Waterfall Park Developments Limited
	Appellant
And	Queenstown Lakes District Council
	Respondent

Notice of Appeal

19 June 2018

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To The Registrar
Environment Court
Christchurch

- 1 Waterfall Park Developments Limited (**Waterfall Park**) appeals against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 Waterfall Park is the successor in title to land the subject of a submission and further submission by Ayrburn Farm Estate Limited on the PDP (#430) and (#1258).
- 3 Waterfall Park is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 Waterfall Park 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:
- 7 The parts of the decision appealed relate to:
 - (a) Chapter 2 Definitions;
 - (b) Chapter 3 Strategic Direction;
 - (c) Chapter 4 Urban Development;
 - (d) Chapter 6 Landscapes;
 - (e) Chapter 22 Rural Residential and Rural Lifestyle;
 - (f) Chapter 27 Subdivision;
- 8 Reasons for appeal

Background

- 9 Waterfall Park owns land located at 343 Arrowtown-Lake Hayes Road legally described as Pt Lot 3 DP 5737 and Lot 1 DP 18109 BLK VII Shotover SD (**Site**). Under the PDP as notified this land was located in the Rural Zone. Waterfall Park submitted on the PDP to amend provisions of the Chapters of the Plan, as well as to rezone the Site to one of:
 - (a) An extended Rural Residential (north Lake Hayes) Zone;
 - (b) An extended Waterfall Park Zone;

- (c) A zone that recognises the ability of the land to absorb a significant amount of residential development.
- 10 The rezoning aspects of the Submission have been deferred to 'Stage 2' of the PDP. However provisions applicable in higher order chapters of the PDP in the Council's 'Stage1' Decision are relevant to the Site. This appeal therefore addresses Stage 1 provisions which affect the planning regime for the Site, pending its ultimate rezoning. Given the timing of rezoning decisions and decisions on the text of the plan running concurrently, Waterfall Park reserves the right to amend the relief as set out in this appeal to consequentially reflect the outcomes of any rezoning of its land in Stage 2.
- 11 Waterfall Park considers that the PDP Decision does not strike an appropriate balance between accepting appropriate growth and how landscape values should be managed in the face of this growth. Rather, the PDP is weighted too far in the direction of protection of all landscapes. This will frustrate appropriate development proposals. Further, the PDP Decision over-emphasises the importance of farming activities. Farming is one method for utilising rural resources, but its long term economic opportunities, in many rural parts of the District, are very uncertain. There are very few farmers that derive their income entirely from farming, particularly within the Wakatipu Basin.

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 Waterfall Park 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. Waterfall Park therefore considers that its appeal on this chapter is significantly broad and not limited in scope to original policies and objectives listed.
- 14 Waterfall Park opposes those provisions of Chapter 3 which do not provide for appropriate diversification of land uses (particularly in the Rural Zones and in Chapter 6 Landscapes which do not provide sufficiently for the social, economic, and cultural wellbeing of people and communities.
- 15 Waterfall Park opposes the insertion of the new definition of "Resort" and the second sentence of the definition of "Urban Development" which excludes a resort development in an otherwise rural area from the definition of 'Urban Development'. These issues should not have been determined through the Chapter 3 hearing without the benefit of evidence presented in relation to

rezonings in the Wakatipu Basin. Alternatively these definitions should have been deferred and reviewed in the Stage 2 Wakatipu Basin hearing.

- 16 The exclusion of development areas which are obviously urban in nature from the definition of 'Urban Development' creates an artificial distinction which invites future challenge and creates future uncertainty. It is artificial and inappropriate to determine the nature of 'Urban Development' with reference to the activity use and the occupants of buildings (visitor or permanent resident) when the physical nature of the development, including the buildings, is no different. These definitions appear to have resulted from a desire (for some reason) to exclude Millbrook from the definition of 'Urban Development' when Millbrook is obviously urban in nature and character, rather than being determined on reasonable planning principles and logic.
- 17 A consequence of these definitions is that the policy regime in the district plan in relation to urban growth boundaries, being an intention to constrain urban growth within identified urban growth boundaries, is significantly undermined as far as the Wakatipu Basin is concerned.
- 18 The specific provisions of Chapter 3 and the relief sought by Waterfall Park are set out in **Appendix A** to this Appeal.

Chapter 4 Urban Development

- 19 Waterfall Park Waterfall Park opposes amendments to Chapter 4 (compared to the notified version) relating to urban growth, and urban growth boundaries, which limit the application of Chapter 4 to "*key*" or "*main*" urban areas. Waterfall Park understands that the purpose of the UGB regime is to manage and control urban growth, particularly in the Wakatipu Basin. Those amendments will significantly undermine the purpose and intention of the UGB regime because the UGB regime will capture some (but not all) smaller urban areas, particularly in the Wakatipu Basin which is probably where the greatest likelihood of future urban growth arises.
- 20 If there is to be a distinction between urban and non-urban areas, and if there is to be a policy regime put in place to manage, control or avoid the spread of urban growth, Waterfall Park considers that the UGB regime should apply to all urban areas, not just the larger urban areas.
- 21 Waterfall Park opposes the need for a UGB to contain any "*transition to rural areas*". Waterfall Park considers that, in many cases, a 'hard' urban boundary is more distinctive, and is easier to defend, than a 'soft' urban boundary.
- 22 Waterfall Park opposes the concept that there should be no further urban development in the Wakatipu Basin until it is established that "*more land is*

needed to meet urban demand". That approach precludes the possibility of identifying and rezoning areas of land that might be entirely suitable for residential development and in respect of which urban development may be a more efficient and effective use of the land resource than an alternative, lower density, residential development.

- 23 The specific provisions of Chapter 4 and the relief sought by Waterfall Park are set out in **Appendix A** to this Appeal.

Chapter 6 Landscapes

- 24 Waterfall Park opposes those policies relating to the preference for farming as the means to protect landscape values as these are disproportionately weighted towards the protection of agriculture and fail to provide for those rural landscapes where pastoral farming does not occur such as in identified rural living zones. Farming is one method for using rural resources productively, but its long term sustainability is uncertain particularly in this district, and there are other uses of rural land that are compatible with the protection of landscape values.

- 25 Waterfall Park seeks in particular to clarify that provisions of Chapter 6 are not applicable to the Rural Lifestyle and Rural Residential Zones of Chapter 22 (and the Chapter 24 Wakatipu Basin Lifestyle Precinct once subsequently decided).

- 26 The specific provisions of Chapter 6 and the relief sought by Waterfall Park are set out in **Appendix A** to this Appeal.

Chapter 22 Rural Residential and Rural Lifestyle

- 27 Specific amendments are sought to the Rural Residential and Rural Lifestyle Zone to ensure an efficient and effective rural living development regime, consistent with the purpose of the Zone. This relief is sought in the alternative, given that the Site is potentially to be rezoned in Stage 2 of the PDP as Wakatipu Basin Lifestyle Precinct Zone.

- 28 The specific provisions of Chapter 22 and the relief sought by Waterfall Park are set out in **Appendix A** to this Appeal.

Chapter 27 Subdivision

- 29 Subdivision in the rural living zones has been amended through Stage 1 of the PDP to change from a controlled activity regime, to restricted discretionary. Waterfall Park opposes this change as it fundamentally undermines the ability for the Zone to achieve its purpose of rural living development to approved density standards. There is no adequate justification in the decision from Council to remove the controlled activity status, and consequentially significantly reduce certainty and landowners rights. The Council can adequately address and control

any adverse effects on infrastructure, landscape, amenity values, and other adverse effects through an effective controlled activity regime.

- 30 Rural living zones are sought to be included in the list of recognised non-notified subdivision activities in Chapter 27, given the strategic importance of rural living to the District.
- 31 The specific provisions of Chapter 27 and the relief sought by Waterfall Park are set out in **Appendix A** to this Appeal.

Further and consequential relief sought

- 32 Waterfall Park seeks alternative, consequential, or additional relief to that set out in this appeal necessary or desirable to give effect to the matters raised generally in this appeal and Waterfall Park's PDP submission.

Attachments

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

Appendix A – Relief sought

Appendix B - A copy of the Appellant's submission and further 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 19th day of June 2018



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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