Form 7

Notice of appeal by Marc Scaife against QLDC to Environment Court against decision on proposed policy statement or plan or change or variation

Clause 14(1) of Schedule 1, Resource Management Act 1991

To the Registrar

Environment Court

Christchurch

I, Jan-Marc Servaas Scaife appeal against a decision of QLDC on the following policy plan change:

Chapter 46 Rural Visitor Zone (RVZ) of the Proposed District Plan.

I made a submission on the RVZ of the PDP. I am not a trade competitor for the purposes of section 308D of the Act.

I am directly affected by an effect of the subject of the appeal that—

(a) adversely affects the environment; and

I received notice of the decision on 6 April 2021.

The decision was made by QLDC.

The decision that I am appealing against is:

The expansion in the number of RVZs and expansion of the scope of RVZs beyond the notified scope of Rural Zoned land with ONL classification in the District Plan Review, and, in particular, the proposed RVZ for Matakauri Lodge ltd.

The reasons for the appeal are as follows:

This appeal is in two parts.
Part 1 appeals chapter 46 the Rural Visitor Zone (RVZ) in its totality;
Part 2 appeals item 16 of chapter 46: the Matakauri lodge RVZ.

Part 1: Appeal of chapter 46 Rural Visitor Zone

1. Inadequate Public notification and opportunity for public participation

The Rural Visitor Zone was originally notified in stage 3 the PDP for seven existing sites with this zoning under the Operative District Plan. The purpose of the zone was stated as "providing for visitor industry activities in remote locations within Outstanding Natural Landscapes…" . Notification and consultation with the owners of these sites and adjoining owners was undertaken by QLDC as part of the District Plan Review.
Subsequent to the notification, submissions were received by QLDC seeking to extend the scope of the RVZ to sites that are neither remote, nor in the ONL, nor in the Rural Zone. As a result of these submissions and the subsequent hearings and recommendations by the

independent commissioners, QLDC adopted the RVZ with a widened purpose now defined as "to provide for visitor industry activities that enable people to access and appreciate the District's landscapes…" Under this definition RVZs do not need to be in remote, ONL and Rural zoned land. And new sites, in addition to the originally mapped seven sites, were now designated as RVZ on the basis of the widened scope.
The District plan review is meant to be an open, public process. But the substantial change in the purpose and scope of the adopted RVZ from what was originally notified, defies proper public input and participation. Despite the fact that an extra step of further public submissions was allowed following the first round of submissions, the process does not amount to proper public notification and participation because:

a)Unlike the originally notified RVZ , no notification or consultation took place with adjacent landowners of prospective RVZ sites.

b)The topic of Visitor accommodation and Visitor industry activities on land not in the Rural Zone and not in ONL had already been dealt with in stages 1 and 2 of the PDP (Report 19.2 Visitor Accommodation, Jan 2019 and Report 4B Visitor Accommodation Subzone in Rural Residential and Rural Lifestyle zones, March 2018). Decisions on visitor industry activities for areas outside of Rural ONL land had already been made by QLDC in 2018 and 2019 . There is therefore no good reason why landowners in these zones of the District would suspect in 2021 that they could be affected by RVZ provisions which were notified as applying to an entirely different zone and in remote areas. Consequently, any notification of a second step allowing further submissions was futile as far as public notification and participation goes.

The commissioners in stage 2 of the PDP refer to inappropriateness of the widening or divergence from the notified scope of planning provisions through submissions received: Report 19.2 par 360:

> "We accept that technically we have the scope through Mr Acland's submission to apply additional VASZ across Central Wanaka…we consider that the residents and landowners in this area may well not have been sufficiently aware from reading the submissions even if they had done so) that those from Mr Acland and Fisken would have led to areas of VASZ throughout central Wanaka. If we were to recommend additional areas of VASZ on the basis of those submissions, we consider that affected people's rights to be involved in the process would be seriously undermined. As a result we must accept…that these submissions be rejected."

Based on the same principle of divergence in scope of a proposal from what was publicly anticipated and notified, submissions seeking such a divergence for the RVZ, should have been rejected by QLDC.

2.Widenened scope of RVZ to non-remote sites outside of Rural ONL land contradicts and conflicts with earlier decisions in sages 1 and 2 of the PDP.

As described in 1b above, widening the scope of RVZ in stage 3 of the District Plan Review to include sites located in zones other than Rural Zone ONL classified land, transgresses on and contradicts decisions already made in stage 2 of the District Plan Review. This is poor planning process. Decisions should be made once only.

3) RVZ is inconsistent with section 7 of the RMA, the efficient use and development of natural resources.

a) Because the RVZ was not originally notified as applying to non- ONL and non-remote locations, only a select few applicants outside the notified purpose applied for RVZ status. The number of potential candidates is much greater than the submissions received, which means there is no guarantee that the best candidates for RVZ have been

selected. Efficient allocation of resources requires the highest benefit of resource use for the least environmental cost. To get the best trade-off between development and environment, the net of potential candidates for RVZ must be cast as widely as possible rather than just a select few. The first step in achieving this is to publicly notify the RVZ with the correct scope properly identified and defined at the outset, rather than changing it half way through the decision process.

b) Efficient allocation of resources also requires a level playing field for different types of development. No rationale has been provided why visitor industry should be given preferential treatment over other development through special zoning. The landscape does not discriminate between visitor industry and other types of buildings.

4) RVZ does not achieve its stated purpose of managing the effects of land use and development on landscape and is inconsistent with section 6 of the RMA, (b) the protection of outstanding natural Landscapes.

a) **Inappropriate landscape assessment**

Chapter 6 of the PDP, Landscape and Rural Character, is meant to set out the planning framework for rural landscapes consistent with of section 6 of the RMA including the protection of ONLs. To this end, policy 6.3.12 of the PDP states "subdivision and development is inappropriate in almost all locations in ONL and on ONF, meaning successful applications will be exceptional cases…"

The landscape assessment for RVZs is not consistent with this criterion. In the proposed RVZ's purpose statement, it is claimed that the effects on landscapes of RVZs are managed by "directing sensitive and sympathetic development to areas of lower landscape sensitivity identified within each Zone. No Zone comprises areas only high or moderately high landscape sensitivity".

But given that the RVZ is made up of separate zones each comprising a single site (including small sites of just a few hectares), the landscape assessment for RVZ boils down to evaluating which parts of a given site are relatively more sensitive than others. The assessment for an RVZ is therefore site specific and ignores landscape-wide classification. It therefore provides no objective, District-wide criteria whatsoever for determining where development is appropriate: if all sites contain areas of lower landscape sensitivity, as claimed in the RVZ's purpose quoted above, it follows that **all** sites are able to accommodate some level of development: that is a far cry from chapter 6's "exceptional cases". The RVZ assessment regime effectively renders ONL classification meaningless.

If the RVZ landscape assessment is to parallel that of the chapter 6, such that successful applicants will be exceptional cases, the landscape assessment for RVZ needs to be at a landscape or District-wide level, able to demonstrate exceptional attributes of an RVZ compared to other sites in that same landscape, for example, compared to adjacent or nearby sites in the same area. But no such comparative landscape assessment has taken place. The commissioners report for the RVZ states: "no assessment whatsoever has been made as to the extent of RVZs that this framework for landscape assessment might lead to, especially given the broadened scope of RVZ outside remote ONL locations."

b) Cumulative effects and Environmental Creep of RVZ ignored

RVZ purpose states: " the effects of land use and development on landscape are managed by the small scale and limited extent and of the Zoned areas".

Small scale of the RVZ does not preclude significant cumulative effects. In a death by 1000 cuts, each cut can be small, but cumulatively lethal. More-over, as is evident from consented RVZs and submissions to the PDP by existing RVZs, once established, an RVZ becomes a launching pad for ever-increasing mission creep.

Given that no landscape or District -wide landscape assessment has taken place to determine how much of the District's ONL could qualify for RVZ, the limited extent of RVZ is far from assured, opening the door to extensive long-term cumulative effects and environmental creep. "The Hearing Panel retains concerns regarding the appropriate planning approach to be taken to the RVZ. We can envisage broad RVZ provisions opening the door to multiple future plan changes for RVZ of different natures and scales across rural areas of the District. We consider this to have the potential for long term cumulative effects on landscape rural character and amenity values…. Neither had the Council(nor any of the planning witnesses before us) undertaken any form of long term planning appraisal of the potential for future RVZ sites across the District and potential effects and planning implications."

5) **RVZ is an *adhoc* planning measure, poorly thought-through and inconsistent with proper planning principles and with the rest of the PDP. It is contrary to section 31 of the RMA requiring integrated management of the effects of the land use.**

The failure to assess cumulative effects is an inherent risk of a case by case, "effects-based" planning regime. But a planning framework based on zoning can help to reduce this risk because inherent in the concept of a zone is the protection of common interests of the sites that make up the zone. Protecting the integrity of the zone recognizes that all sites in the zone need to play by the same rules because a breach of the rules on one site risks triggering a cascade or slippery slope of other rule breaches as a result of which all sites in the zone end up being losers.

By contrast, spot zoning of individual sites as exemplified by the RVZ, focusses on the self-interest of an individual site and ignores the shared or collective interests of sites which planning and zoning were set up to protect. It caters for the private interests of a single site at the expense of the collective interests and the integrity of the surrounding zone. The RVZ is not a zone. It is an exception from zoning, and thus in contradiction and conflict with the surrounding zone. It is spot zoning taken to its extreme with single-site "zones" with bespoke rules for each site. Spot zoning strikes at the very heart of planning and for this reason one of the first planning principles cited by commissioners for the PDP is: "Generally prevent very small sub-zones or single parcel sub-zones which result in spot-zoning" (Commissioners Reports 17.1 and 19.1).

6) No Cogent rationale for RVZ has been provided

Under Section 32 of the RMA the Council must provide cogent reasons for a proposed plan change and demonstrate that the proposed measures are preferable over the status quo and alternative options. QLDC's section 32 report for RVZ fails to this. No evidence has been provided that the standard planning provisions for respective zones are inadequate in providing for Visitor Industry activities in the District. Moreover, if the RVZ provisions parallel the general Rural Zone provisions as QLDC claims, and the RVZ sites are indeed exceptional cases where development can be accommodated whilst protecting or enhancing landscape and amenity values, what is the need for special RVZ zoning? These sites will in that case readily be able to demonstrate the merits of their case through the standard and contestable resource consent assessment process prescribed for their zone, in the same way that all other applicants are required to do. In short, the very definition of RVZs as being "appropriate" renders the need for them obsolete. The real reason why these sites seek special RVZ zoning, then, is to evade the robust scrutiny of publicly notified resource consents prescribed by the RMA.

7. RVZ assessment is limited to landscape, ignoring amenity effects on surrounding sites and thus contrary to section 7c of the RMA

The notified RVZ was located on large sites in remote ONL landscapes where amenity effects on surrounding sites could be assumed to be minimal. The subsequent broadened scope of the RVZ to sites located in residential and rural living zones raises further questions of conflicts of the RVZ with the surrounding and underlying zone. A proper assessment of RVZ therefore requires an assessment of effects such as noise, traffic, informal airports, and other effects on amenity that are pertinent to the surrounding zone.

The RVZ has no objectives, rules or standards regarding occupancy of buildings, vehicle movements, number of commercial patrons, hours of commercial operation etc. Nor are any assessment criteria stipulated in the RVZ for assessing effects of such activites on adjoining sites. Indeed it is how to see there could be rules or assessment criteria for amenity effects given that the RVZ are single lot zones so there are no effects on amenity within the zone, and the effects on amenity on adjacent properties outside the zone will vary depending on whether the surrounding zone is Rural, Rural living or Residential. The commissioners claim to have assessed the effects on amenity of each RVZ but it is hard to ascertain how they could have done so given the lack of any assessment criteria. Did they use the rules or assessment criteria of the zone surrounding the RVZ, or did the RVZ set an expectation of higher permissible level of effects on the surrounding zone? No answers to these questions are given in the RVZ provisions.

8) Non notification of activities classified as restricted discretionary in RVZ is contrary to section 95 of the RMA.

Activities in the RVZ which have Controlled Activity and Restricted Discretionary status are not subject to public or limited notification.

The commissioners for the RVZ hearings have recognised that in some locations such as in ONLs and sensitive sites surrounded by rural living areas a Controlled activity status for buildings is insufficient because the consent authority needs to retain the ability to refuse consent when, for example a certain level of building density is reached. The commissioners therefore recommend the activity status for buildings beyond a stipulated level of density in some RVZ be Restricted Discretionary.

The grounds for refusing consent could presumably be that the adverse effects on the environment are more than minor. But if the effects are more than minor, section 95 of the RMA requires public notification of the proposal. A consent authority's ability to refuse consent is therefore potentially in conflict with the RVZ's stipulation that the application be exempt from public notification.

It is often assumed that Discretionary activities are subject to section 95 Notification criteria, whereas Restricted Discretionary activities can be exempt. Be that as it may, it is questionable whether the activities listed as Restricted Discretionary in the RVZ can legitimately be granted this activity status, and should in fact be Unrestricted Discretionary. The commissioners of stage 1 Visitor Accommodation review stated that the ability to refuse consent in some cases led them to making the activity status for visitor accommodation buildings Discretionary rather than Restricted Discretionary: (Report 4B par 45) " In our view only by having the ability to refuse consent would Council be able to achieve the policies of the PDP when considering visitor accommodation in a VASZ. Having reached this conclusion, we examined whether provision could be made for VA as a restricted discretionary activity. However, …the range of matters discretion would need to be restricted to at a minimum so as to give effect to the objectives and policies of the PDP would be so extensive as to be tantamount to an unrestricted discretionary activity. Consequently we conclude that

provision for VA in the VASZ should be a Discretionary activity."

Part 2 : Appeal of Matakauri Lodge RVZ.

9) In the ODP Matakauri lodge is located in the Rural Lifestyle zone. A review of the provisions for visitor accommodation in the Rural Lifestyle zone took place in stage 1 of the District Plan Review and QLDC has already made decisions for this site in stage 1 of the PDP. It is inappropriate for the council to re-decide Visitor Industry activity at Matakauri lodge in stage 3 when it has already done so in stage 1.

In the Stage 1 PDP review, Matakauri lodge planning consultants, Southern Planning, wrote a section 32 Report evaluating the merits or otherwise of a Visitor Accommodation Subzone(VASZ) of the Rural lifestyle zone for the Matakauri site. This section 32 report was adopted verbatim as the QLDC Section 32 report for RVSZ. The report recommended a VASZ be adopted for Matakauri lodge with liberal provisions for visitor accommodation buildings and commercial activities ancillary to visitor accommodation such as public dining and spa facilities. The rules for the subzone (eg rule 22.4.10) would allow 2500 sqm of building coverage, an increase in the number of overnight patrons, and an increase in public dining facilities as Controlled Activities. This contrasts with a building density in both the ODP and PDP in the underlying and surrounding Rural Lifestyle zone of a single residential unit on a 1000 sqm building platform, and a Discretionary activity status for visitor accommodation and ancillary activities.

Following public submissions, an independent hearings panel recommended (Report 4b) that the VASZ be deleted entirely. The main reasons for doing so were the lack a proper rationale for a greater intensity of development in the VASZ compared to the underlying zone and therefore the inconsistency and potential conflict of the RVSZ with the underlying zone: The commissioners noted that the Rural Lifestyle zone as proposed in the PDP allows for visitor industry activity as follows:

Objective 22.2 2 of the Rural Lifestyle zone states :" Ensure predominant land uses are rural, residential and where appropriate, visitor and community activities".

Policy 22.2.2.4 : "The bulk, scale and density of building used for visitor accommodation activities are to commensurate with the anticipated development of the zone and surrounding area."

The commissioners said: " No evidence has been provided either in the Section 32 Report or at the hearing to justify the differentiation between allowable building coverage in the VASZ versus that allowable elsewhere in the Rural Lifestyle zone."

And in par 21… " nor in our view, has any evaluation been made of the effects of applying the proposed rules on the environment outside the VASZ."

Consequently the commissioners concluded that the rules allowing for larger building density in the VASZ be deleted and provision be made in the Rural Lifestyle Zone planning provisions for visitor accommodation at an equal density to that of the surrounding zone, where appropriate. QLDC adopted the commissioners report in 2018.

10. The RVZ for Matakauri, and for all other RVZs, does not contain criteria for assessing amenity effects. Nor has any evidence been provided in the Decision demonstrating how effects on amenity, for example on adjoining property owners, have been assessed. This is contrary to section 7c of the RMA.

The stage 3 decision to allow a RVZ for Matakauri lodge is in direct contradiction to the stage

1 VASZ decision**.** Both the RVZ and the VASZ for Matakauri allow a level of development in excess of the surrounding zone as a permitted and controlled activities, and further building density as a restricted discretionary activity , exempt from public or limited notification. There are no rules on building occupancy or numbers of people using commercial facilities such as restaurants and bars. There is no minimum size on subdivision, no limit on vehicular traffic and informal airports are allowed as a permitted activity on the site. The commissioners claim to have assessed the effects on amenity of adjoining landowners, but, given the paucity of rules and assessment criteria described above (item 7), there is no evidence of what assessment criteria they have used, or what, in fact, they have assessed. The commissioners appear to have assumed that the lodge will forever be a single, un-subdivided site, and the buildings will forever be a low- density high-end lodge. But an RVZ zoning sets the rules for the indefinite future, and there is nothing in the rules that would enable the council to stop the current or future owner from subdividing the site, or of modifying or re-building to accommodate a much larger number of overnight guests and much more extensive commercial activities.

11. The landscape assessment for RVZs is not a proper substitute for that of hapter 6 of PDP and is contrary to section 6b of the RMA and also contrary to section 6a the protection of the margin of lakes.

As explained in section 1 of this appeal, identifying less sensitive area of a site is not the same thing as identifying less sensitive landscapes of the District. The former does not entail the latter. The site is ONL and directly adjacent to Lake Wakatipu, both of which place the site in a highly sensitive landscape classification. Identifying relatively less sensitive parts of the site does not alter this classification.
Moreover the landscape site assessment by Ms Rebecca Lucas for Matakauri lodge is false. It wrongly identifies the location of the existing and proposed building areas, at the edge of a terrace at the top of a steep slope down to the shoreline, as the less sensitive areas of the site. They are the areas with best lake views for the buildings, and are in fact the more sensitive areas, not the less sensitive buildable areas of the site.
The landscape assessment also falsely claims that the Matakauri lodge buildings are reasonably difficult to see from the lake. In fact, the buildings are in close proximity to the lake, and highly visible, with virtually no plant or other visual screening.
The landscape assessment for ML, as it is for other RVZs, is confined to the site and does not assess whether the site has unique characteristics that make it an exceptional case, as is required by chapter 6 if an ONL is not going to be degraded through environmental creep and cumulative development. It is stated that the site has the capacity to absorb further development, but that does not make it an exceptional case, except if other sites in the vicinity do not have that capacity. But no such assessment or evidence has been provided. On the face of it, the neighbouring sites in the surrounding zone have a greater capacity to absorb development considering they are part of the same landscape, and have similar topographical features and vegetation, but have much less existing built form.

12. **No cogent rationale for Matakauri Lodge RVZ. The RVZ is an *adhoc*, measure in conflict with the planning provisions for zone and at odds with the rest of the District Plan, and thus contrary to section 31 of the RMA.**
The stated motive in ch 46 for the Matakauri lodge RVZ is to provide a better planning regime for managing visitor industries on the site. But the lack of rules for the RVZ shows the opposite: RVZ provides a management regime free from rules and planning assessment criteria, and therefore at odds with the planning provisions of the surrounding zone.
Both Matakauri lodge and the Council's Section 32 Report refer to the need for an RVZ at Matakauri to "better recognise the existing visitor activity on the site", but this is not correct.

Objective 22.2.2 of the Rural Lifestyle Zone, quoted above, allows for visitor activity at a scale commensurate with the zone.
Matakauri Lodge and the Council have also claimed a further rationale for re-zoning, namely that the development on the site is now at odds with the current RL zoning. This is ironic considering that during years of successive resource consents for ever-greater development of the site, both applicant and Council have insisted the proposals were entirely consistent with the District Plan and the Rural Lifestyle zoning. However, recognition of a conflict with the zone does not strengthen the case for rezoning to RVZ. On the contrary it weakens it. Rezoning ML to RVZ eliminates the problem of conflict with the RL zone on paper, but it does not make the conflict go away. The site is still where it is. Changing the site's zoning just transforms the conflict into one between Matakauri RVZ provisions and the surrounding RL provisions. And by allowing more development through RVZ for Matakauri Lodge, the conflict is exacerbated. To see the RVZ as a "solution" to the conflict between Matakauri and its surrounding zone demonstrates a staggering lack of critical thinking in which planning is reduced to a process of papering over cracks with ad-hoc spot zoning.
RVZ zoning for Matakauri has nothing to do with sound planning. It is a deliberate and concerted effort to circumvent the planning provisions protecting the Rural Lifestyle zone Matakauri has always been located in, and to circumvent the prescribed publicly notified and contestable resource consent process applying to development in that zone.

I seek the following

relief:

It is unclear at the time of lodging this appeal which of the sites with RVZ zoning are still proposed to continue as RVZs in the PDP. The original 7 sites zoned RVZ under the ODP and notified by QLDC remain as such in the PDP, do not appear in the RVZ Decision and some, such as Walter Peak appear to now have fallen outside the hearings and Decisions for RVZ, as if some other, separate "bespoke" zone. The relief I seek would see no new RVZ sites being established except those that existed in the ODP, as originally notified in the PDP. In particular, I seek the decision to include Matakauri lodge as an RVZ be rejected by the Court.

I attach the following documents to this notice:

(a) Commissioners Report 4b on the Visitor accommodation sub zone March 2018

(b) Report 19b Visitor Accommodation and Visitor Accommodation sub zones Jan 2019

(c) Report 20.7 Chapter 46 Rural Visitor Zone April 2021

d) Ch 22 Rural Residential and Rural Lifestyle Zone March 2019

Date:14 May 2021

Signature of appellant:

Address for service of appellant:
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Notes for all appeals

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Act.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (*see* form 38).

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 Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of

the above timing or service requirements (*see* form 38).