

**BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**IN THE MATTER** of an Appeal pursuant to Clause  
14 of the First Schedule to the  
Resource Management Act 1991

**BETWEEN** **FM CUSTODIANS LIMITED**

**Appellant**

**AND** **QUEENSTOWN LAKES  
DISTRICT COUNCIL**

**Respondent**

**NOTICE OF APPEAL TO ENVIRONMENT COURT OF AN APPEAL ON A  
DECISION ON PLAN CHANGE 19**

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**ANDERSON LLOYD  
LAWYERS  
QUEENSTOWN**

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**To:** The Registrar  
Environment Court  
Christchurch

1. FM Custodians Limited ("Appellant") appeals the decision on the following matter:
  - a. Plan Change 19; Frankton Flats ("Plan Change") to the Queenstown Lakes District Council Partially Operative District Plan ("District Plan").
2. The Appellant has an interest in land subject to the Plan Change, legally described as Lot 1 Deposited Plan 23542 contained in Certificate of Title OT15C/26 ("Site"). The Site is marked "Z" on the Structure Plan attached as Appendix A.
3. Five Mile Holdings Limited (in receivership) is the registered proprietor of the Site. The Appellant has a mortgage over the Site (Mortgage Number 7005016.1) and took possession of the Site on 17 November 2009.
4. Five Mile Holdings Limited (in receivership) made a submission and further submissions on the Plan Change. It received notice of the Plan Change decision on 6 October 2009. The Appellant, as mortgagee in possession, is a successor to Five Mile Holdings Limited (in receivership) pursuant to Section 2A of Resource Management Act 1991.
5. The Plan Change decision was made by Commissioners J G Matthews, A R Watson and I C Munroe, acting as independent Commissioners appointed by the Queenstown Lakes District Council ("Respondent").
6. The Plan Change decision is in respect of the proposed re-zoning of an area of the Frankton Flats, Queenstown, located between State Highway 6 and the Queenstown Airport, from Rural General to a proposed new mixed use urban zone.
7. The specific parts of the decision that the Appellant is appealing are:
  - a. Those parts of the decision that relate to the Site.

8. The reasons for the appeal are as follows:

- a. The Plan Change as notified proposed that approximately 1/3 of the Site, being that part within 50m of SH6, be part of the Activity Area A Landscape Buffer Zone. This would have precluded any development on that area of land. The same zoning was proposed to be applied to the Shotover Garden Centre land adjoining SH6 to the east of the Appellant's Site. Five Mile Holdings Limited (in receivership) lodged a submission requesting that the Appellant's land be zoned for development. The Appellant understands that the adjoining garden centre lodged a similar submission. The Plan Change decision has extended Activity Area E1 zoning over the adjoining garden centre land but has retained Activity Area A - Landscape Buffer Zoning on the Appellant's land.
- b. This aspect of the Plan Change decision is significant to the Appellant because it precludes any development on approximately 1/3 of the land contained in that title.
- c. The Appellant considers the whole of the Site should be zoned for development purposes for a number of reasons, including:
  - i. The historical use of the Site, as evidenced by existing buildings.
  - ii. The inconsistent findings in the Plan Change decision in relation to this area of land compared to the adjoining garden centre;
  - iii. The existing mature landscaping on the Appellant's land which means that very different landscape considerations apply to this area of land compared to the rest of Activity Area A to the west; and
  - iv. The efficient use and development of a valuable land resource.
- d. Given the Structure Plan outcome in the Plan Change decision, the Appellant accepts that extending the E1 zoning onto the whole of the Site would meet the Appellant's concerns, and may be a more

appropriate outcome than the C Zoning sought under the Five Mile Holdings Limited (in receivership) submission;

- e. The Plan Change decision effectively landlocks the Site. No access is allowed off SH6 into that area for any new activity (the Appellant understands the reason for that and does not challenge it). The Eastern Arterial Road ("EAR") is located to the west of, but not adjoining the Site so that land has no access off the EAR. No vehicle access is provided for the benefit of the Site on its southern or eastern boundaries. The Site cannot be developed without vehicle access.
  - f. The Appellant considers that the Structure Plan should provide for a "Required Road" (as a Zone Standard) on the Structure Plan, extending from the EAR to the boundary of the Site.
  - g. The Appellant understands that the EAR may be relocated as a consequence of the Notices of Requirement: Glenda Drive Roundabout and Associated Roads dated 29 October 2009 lodged with the Respondent. As far as this issue is concerned, the Appellant does not express a view as to the appropriate location of EAR, as long as vehicle access is provided from the EAR to connect to the Site boundary.
  - h. Those parts of the Plan Change decision under appeal are contrary to Part 2 of the Resource Management Act 1991.
9. The Appellant seeks the following relief:
- a. That the Structure Plan be amended to extend Activity Area E1 to the State Highway to include the entire Site.
  - b. That the Structure Plan be amended to provide for a Required Road marked by solid blue lines from the EAR (wherever the EAR is located) to connect the Site boundary.
  - c. Any such alternative or consequential relief to the Plan Change provisions considered necessary or appropriate to address the issues and concerns raised in this appeal.
10. The Appellant attaches the following documents to this Notice:
- a. Appendix A



- b. A copy of the relevant decision;
- c. A copy of the Appellant's submissions;
- d. A list of the names and addresses of persons to be served with this Notice.

Date: 18 October 2009

A handwritten signature in black ink, appearing to be 'V J Robb', is written over a horizontal line.

Signed by the Appellant's solicitor and duly authorised  
agent Anderson Lloyd Lawyers

V J Robb

Address for service of the Appellant:

FM Custodians Limited

C/- Anderson Lloyd

Attn: Vanessa Robb

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**Advice to recipients of copy of Notice of Appeal***How to become a party to the proceedings*

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court within 30 working days after this Notice was lodged with the Environment Court.

You may apply to the Environment Court under Section 281 of the Resource Management Act 1991 for a Waiver of the timing requirement (see Form 38).

*How to obtain copies of the documents relating to the appeal*

The copy of this Notice served on you does not attach a copy of the Appellant's submission or the decision appealed. The documents may be obtained, on request, from the Appellant.

**ADVICE**

If you have any questions about this Notice, contact the Environment Court Unit of the Ministry of Justice in Auckland, Wellington or Christchurch.

## Appendix A

### Plan Change Structure Plan showing the Appellant's Site

