

In the Environment Court of New Zealand  
Christchurch Registry

I Te Koti Taiao o Aotearoa  
Ōtautahi Rohe

**ENV-2018-CHC-098**

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Under	the Resource Management Act 1991 ( <b>RMA</b> )
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	Friends of Wakatipu Gardens and Reserves, DJ and EJ Cassells, the Bulling Family, The Bennett Family, M Lynch, John Hayes, Neil Senauer, Joce and Philip Sanford ( <b>Friends of Wakatipu Gardens and Reserves and Associated Residents</b> )
	Appellant
And	<b>Queenstown Lakes District Council</b>
	Respondent

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**AMENDED Notice of Appeal (2)**

2 November 2018

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**Appellant's solicitors:**

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**To** The Registrar  
Environment Court  
Christchurch

- 1 The Friends of Wakatipu Gardens and Reserves and associated Residents named on the cover page to this appeal (**Friends**) appeal against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 The Friends collectively made submissions (#503), (#506) and further submissions (#1265) and (#1268) on the PDP.
- 3 The Friends are not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 The Friends 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 8 Medium Density Residential;
  - (d) Planning Maps.
- 7 Reasons for appeal

### **Background**

- 8 The Friends' case is focused on protecting the special residential and amenity character of the area bounded by Park Street/Frankton Road and Hobart Street, and intersected by Brisbane Street (**Park Street special character area** or **special character area**).
- 9 The Friends consider that the special character area has important amenity and residential values and exhibits character which warrants a level of recognition and protection beyond that provided through the MDR chapter and other parts of the PDP.
- 10 The special and distinctive character of the area is driven by the combination of small-scale, residential homes that have grown organically since the area was first settled in the 1870s.

- 11 The special character area holds a distinctive residential amenity that ultimately generates a strong sense of place for many of the residents who live there and call Queenstown their home. Part of its key distinctiveness and charm is that it is not wholly or obviously homogenous.
- 12 The important values of the area should be better protected both at the strategic level, by acknowledgement generally of the worth of those values, and at the operational level, by providing residential provisions that give appropriate weight to protection of those values and character.
- 13 The Friends of Wakatipu Gardens and Reserves ("**FOWGR**") is the pre-eminent community representative group which acts as a voice for the Wakatipu gardens and reserves areas. Protection of the character of the Gardens also requires consideration of protecting the amenity of the immediate surrounds of the Gardens.
- 14 Quality urban design, built form, and amenity, are relevant factors to be provided for through Part 2 of the Act and are recognised in the higher order provisions of the PDP. The Friends seek the rezoning of the site into a special character overlay, which should not just be viewed as an economic inhibitor by way of less yield being able to be realised. Economic considerations are broader than this, and include the potential economic benefits of creating a cultural overlay or node close to the Town Centre and Gardens which are frequented by international and domestic visitors. Specific provisions relevant to the Special Character Overlay are included in Appendix B to this appeal.
- 15 Increased densification of residential zones should not be provided for at the cost of adverse impacts on amenity and special character, which cannot otherwise be replicated or replaced. It is vital that unique character neighbourhoods are protected and that increased development is focused only in areas which are capable of absorbing the effects of such development.

### **Chapter 3 Strategic Direction**

- 16 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 the Friends' interests are affected by Chapter 3.
- 17 Significant changes to content and structure of Chapter 3 have occurred between the notified PDP version and the decisions version. The Friends therefore consider that its appeal on this chapter is significantly broad and not limited in scope to original policies and objectives listed.

- 18 The Friends 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.
- 19 The specific provisions of Chapter 3 and the relief sought by the Friends are set out in **Appendix A** to this Appeal.

#### **Chapter 4 Urban Development**

- 20 The Friends oppose those provisions of Chapter 4 which do not sufficiently provide for efficient functioning, good urban design outcomes, and cultural and community aspects of urban development.
- 21 The specific provisions of Chapter 4 and the relief sought by the Friends are set out in **Appendix A** to this Appeal.

#### **Chapter 8 Medium Density Residential**

- 22 A specific new objective and policy suite in Chapter 8 (MDR) which recognises the special character area and seeks to ensure that future subdivision and development complements and responds sensitively to the area's special character, and is of a form and design which maintains that character;
- 23 Specific policy considerations for urban design are set out, including scale, materials, built form, and use;
- 24 That policy and objective suite are then given support by additional site specific standards for the special character area which seek to essentially provide for the status quo as under the ODP, this includes:
  - (a) More onerous activity status for non-compliance in maximum building coverage over 70%;
  - (b) More onerous activity status for non-compliance of in maximum site density;
  - (c) Retention of ODP boundary setback and recession plane requirements and associated non-compliance status;
  - (d) Retention of minimum site landscaping requirements;
  - (e) Maximum building length requirements;
  - (f) Fencing restrictions;
  - (g) Retention of the minimum allotment size in the subdivision chapter;

(h) Additional matters of discretion for consideration of the special character area in respect of application of the standards.

- 25 The above additions to Chapter 8 are then intended to be complimented by the new proposed definition (**Appendix 3**) for the Park Street Special Character Area. This definition provides a character area statement and description of the area, as well as setting out a summary of the key values which contribute to that special character. The proposed definition states that an assessment of proposals for development and modifications to buildings will be considered against that definition and references in the PDP to 'the area's special character' has a corresponding meaning to the definition.
- 26 This framework is modelled on special character areas scheduled within the Auckland Unitary Plan, and which are supported by character statements. The intent of this is that specific matters of discretion and associated objectives and policies which reference special character are assessed against the definition and provide certainty and guidance to future decision makers. This also reflects a similar framework to that of the Arrowtown Design Guidelines and associated PDP provisions. For the Park Street Area however, the proposed definition is a simpler version of the Guidelines and does not require additional material to be incorporated or additional decision making steps, but instead guides consent applicants and decision makers towards additional character and amenity considerations.
- 27 The PDP Decision does not accept the submission for the Friends for reasons including that:

Overall, we conclude that the two western-most blocks i.e., the Park Street area, do not have a readily distinguishable special character although we concede that they exhibit tangible evidence of the pattern of Queenstown's development over 140 years. Managing an organically-growing area is difficult unless there is support within the community for additional regulation and the purpose of that regulation is clear. We do not think that the amended Chapter 8 MDRZ provisions proposed by the submitters met this standard.

We had some disquiet about this case because the Council appeared to miss the important point that the issue was about maintenance and enhancement of amenity values under s 7(c) (special character) not the protection of historic heritage values under s 6(f) of the Act. We lacked contestable evidence on special character, urban design and spillover parking and its effects which would have assisted in reconciling competing strategic objectives. In particular, there was a gap with respect to Mr Bulling's points about the role of the PDP in recognising the character of a residential area. For this reason, we recommend that the Council undertake a planning study of this area and other areas in and around the town centre to learn whether there are areas of special

character and/or community aspirations that ought to be recognised and provided for in the PDP. We consider that the relationship between development in the Park Street area and Queenstown Gardens warrants an urban design assessment which was lacking in this hearing. There is ample dwelling capacity enabled by the notified PDP therefore there is no urgency to change the zoning of this area at this time.<sup>1</sup>

- 28 The Decision clearly acknowledges the existence of Special Character, however the conclusion that the proposed MDR chapter 8 amendments prevents the relief from being approved is not consistent with the requirements of the Act to:
- (a) Give effect to higher order provisions of the PDP, operative RPS, and proposed RPS;
  - (b) Give effect to Part 2 of the Act; and therefore
  - (c) Achieve the most appropriate zoning in accordance with the section 32 evaluative test.
- 29 The Decision clearly acknowledges that the PDP omits important urban design approaches and specifically would benefit from a further planning study on special character of this area and the Queenstown Gardens. This omission in the PDP is a clear failure of the requirement to achieve higher order strategic direction provisions. The Appellants further do not consider this to be sufficient reasoning to refuse the area of special character recognition through Stage 1 Decisions.
- 30 The Appellants further seek that the recommendations of the Hearing Report above be accepted with respect to further planning studies of the area, ~~and that the Council confirm when this will become part of a future variation to the District Plan.~~ This will further assist and ensure that the PDP complements and is consistent with parallel cultural and character planning which is occurring in the District, such as through the Queenstown Town Centre Masterplan. This approach to planning is consistent with section 5 of the Act and section 7 (amenity values), the importance of protecting character and creating better urban design planning will also assist tourism and community growth and protection in the future.

### **PDP Planning Maps**

- 31 The Friends seek the rezoning of the special character area to provide for an overlay annotation which then links to the proposed definition and specific special character area rules, contained in Appendix B.

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<sup>1</sup> Paras 216-217, Council Decision Report 17-2.

### **Further and consequential relief sought**

32 The Friends oppose 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 the Friends' PDP submissions.

### **Attachments**

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

**Appendix A** – Relief sought to general PDP provisions

**Appendix B** – FOWGR specific relief

**Appendix C** - A copy of the Appellants' submissions and further submissions;

**Appendix D** - A copy of the relevant parts of the decision; and

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

Dated this 2<sup>nd</sup> day of November 2018



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Maree Baker-Galloway/Rosie Hill  
Counsel for the Appellant

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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
<b>Chapter 3 Strategic Direction</b>		
New strategic objective 3.2.3.x	<p>Currently, the overarching objective in 3.2.3 is: a quality built environment taking into account the character of individual communities.</p> <p>The intent of this objective is supported as the outcome of protecting and enhancing individual community identify and character is critical to resilient, prosperous, and culturally minded District. This objective is however currently supported by only one lower order objective, relating to protection of historic heritage. Historic heritage is not the only form of protection required to achieve this overarching goal about character and community</p>	<p>Add a new strategic objective 3.2.3.x as follows:</p> <p>Special character areas are recognised and protected from inappropriate development by ensuring development is sympathetic to those special character values</p> <p>Further objectives could also be added to this suite which recognise the protection of culture, the need for quality and integrated urban design planning, and the importance of residential amenity.</p>
<b>Chapter 4 Urban Development</b>		
New objective 4.2.2A.x	The urban growth chapter currently focuses on the constraints of urban development required through the implementation of urban growth boundaries, where those are to be located, and controlling development beyond those. There is a policy gap in the chapter which recognises the need for quality urban design and built form within areas identified for urban development	<p>Add new objective(s) into chapter 4 which recognise individual character and community (as per SO 3.2.3 above)</p> <p><u>Ensure that urban development and redevelopment protects and enhances the special character and identity of urban settings.</u></p>

Provision (PDP decision version)	Reason for appeal	Relief sought
<p>Policy 4.2.2.3 Enable an increased density of well-designed residential development in close proximity to town centres, public transport routes, community and education facilities, while ensuring development is consistent with any structure plan for the area and responds to the character of its site, the street, open space and surrounding area</p>	<p>and which are already developed.</p> <p>Increased densities within areas close to town centres may be appropriate for greenfield areas, but is not appropriate for historically developed residential suburbs, such as the special character area.</p>	<p>Amend Policy 4.2.2.3 as follows:</p> <p>Enable <del>an increased density of</del> well-designed residential development in close proximity to town centres, public transport routes, community and education facilities, while ensuring development is consistent with any structure plan for the area and responds <u>sensitively</u> to the <u>established</u> character of its site, the street, open space and surrounding areas.</p>
<p><b>Chapter 8 MDR</b></p>		
<p>New objective, policy, and rule suite sought for special character area</p>	<p>Specific provisions are requested to provide for the special character area and its protection from future inappropriate development and redevelopment</p>	<p>Amen Chapter 8 as set out in Appendix B</p>
<p><b>Planning Maps</b></p>		
<p>Include new special character overlay</p>	<p>Specific recognition is sought in the planning maps to schedule the special character area</p>	<p>Include an overlay annotation on planning maps which classifies the special character area identified in this appeal.</p>

**Appendix B – FOWGR specific relief**

**Appendix C** - A copy of the Appellants' submissions and further submissions;

**Appendix D** - A copy of the relevant parts of the decision; and

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