

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC145

IN THE MATTER of the Resource Management Act 1991
AND of appeals pursuant to clause 14(1) of the
First Schedule of the Act
BETWEEN FEDERATED FARMERS OF NEW
ZEALAND INC
(ENV-2018-CHC-53)
... (continued on page 9)
Appellants
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

Court: Environment Judge J J M Hassan

Hearing: In Chambers at Christchurch

Date of Decision: 22 August 2018

Date of Issue: 22 August 2018

DECISION ON APPLICATION TO STRIKE OUT (UNOPPOSED)

A: Under s279(4) of the Resource Management Act 1991, the Environment Court strikes out the parts of appeals by Universal Developments Limited and Slopehill Properties Limited as follows:

- (i) *Slopehill Properties Limited* (ENV-2018-CHC-129)
 - (a) Strategic Topic 2: Strategic Objective 3.2.5.2
 - (b) Strategic Topic 2: Strategic Policy 3.3.32
 - (c) Strategic Topic 2: Appeal point ENV-2018-CHC-129-004



- (ii) *Universal Developments Limited* (ENV-2018-CHC-101)
 - (a) Strategic Topic 1: Strategic Objective 3.2.1.3
 - (b) Strategic Topic 1: Strategic Policy 3.3.6.

B: Costs are reserved.

REASONS

Introduction

[1] Queenstown Lakes District Council ('QLDC') has made an application¹ ('the application') for orders under s279(4) of the Resource Management Act 1991 ('RMA') to strike out parts of appeals and s274 notices in relation to decisions on Stage 1 of the Queenstown Proposed District Plan ('Proposed Plan'). The application is supported by a notice of motion and the affidavit of Ian William Bayliss, respectively covering legal and factual matters.

[2] In its 6 August 2018 Minute, the court made directions for the filing of notices of opposition by any relevant party opposing the Council's application. This decision is in respect of those appeals in respect of which no notice of opposition to the Council's application has been received, namely:

- (a) Slopehill Properties Limited ('SPL'); and
- (b) Universal Developments Limited ('UDL').

[3] In each case, the Council's application is being treated as unopposed.

The law

Strikeout applications

[4] Section 279(4) RMA provides (relevantly):

¹ Notice of motion, dated 3 August 2018. Accompanied by affidavit of I W Bayliss, dated 3 August 2018.



279 Powers of Environment Judge sitting alone

...

- (4) An Environment Judge sitting alone may, at any stage of the proceedings and on such terms as the Judge thinks fit, order that the whole or any part of that person's case be struck out if the Judge considers –
- (a) that it is frivolous or vexatious; or
 - (b) that it discloses no reasonable or relevant case in respect of the proceedings; or
 - (c) that it would otherwise be an abuse of the process of the Environment Court to allow the case to be taken further.

[5] The discretion to strike out a proceeding under s279(4) is generally used sparingly. However, where there is an issue that concerns a want of jurisdiction to bring an appeal, the discretionary element falls away. As the court said in *Federated Farmers (Wairarapa Division) v Wellington Regional Council*,² "...if those [jurisdictional] boundaries are exceeded...then there is no discretion to be exercised "sparingly". The case must simply be struck out as legally frivolous or vexatious."

Standing

[6] Clause 14, Sch 1 RMA provides (relevantly):

14 Appeals to Environment Court

- (1) A person who made a submission on a proposed policy statement or plan may appeal to the Environment Court in respect of –
- (a) a provision included in the proposed policy statement or plan; or
 - (b) a provision that the decision on submissions proposes to include in the policy statement or plan; or
 - (c) a matter excluded from the proposed policy statement or plan; or
 - (d) a provision that the decision on submissions proposes to exclude from the policy statement or plan.
- (2) However, a person may appeal under subclause (1) only if –
- (a) the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan.

[7] In effect, cl 14 specifies the following jurisdictional prerequisites to appealing the Proposed Plan decisions:

²

Federated Farmers (Wairarapa Division) v Wellington Regional Council C192/99 at [17]. See also *Atkinson v Wellington Regional Council* W13/99 at [16].



- (a) the appellant must have made a submission in one of the specified circumstances (cl14(1)); and
- (b) the submission must have referred to the appealed provision or matter (cl14(2)).

[8] *Re Vivid Holdings Limited*³ sets out a useful checklist for the proper application of cl14 which I respectfully adopt:

- (1) Did the appellant make a submission?
- (2) Does the reference⁴ relate to either:
 - (i) A provision included in the proposed plan; or
 - (ii) A provision the local authority's decision proposes to include; or
 - (iii) A matter excluded from the proposed plan; or
 - (iv) A provision which the local authority's decision proposes to exclude?
- (3) If the answer to any of (2) is 'yes', then did the appellant refer to that provision or matter in their submission (bearing in mind this can be a primary submission or a cross submission).

[9] On the basis of its careful review of case law, *Re Vivid Holdings* also interpreted cl14 to require that any decision sought of the court on a proposed plan appeal (or 'reference') must be 'fairly and reasonably' within the general scope of an original submission, or the proposed plan as notified, or somewhere in between. *Re Vivid Holdings* accepted that the assessment of whether relief is reasonably and fairly raised in submissions should be approached in a 'realistic workable fashion' and that this same interpretative principle should apply when assessing the scope of appeals and whether they address cl14(1) criteria.⁵

[10] The High Court, in *Option 5 Incorporated v Marlborough District Council*⁶ held that a liberal approach should be taken when interpreting the wording of submissions:

As long as it is clear the submitter has broadly referred to the provision or matter in issue this should be sufficient to give the court jurisdiction to consider the appeal.

³ *Re Vivid Holdings Limited* [1999] NZRMA 468 at 474.

⁴ "Reference" is easily substituted with "appeal" to reflect current terminology.

⁵ Citing *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145; *Royal Forest and Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408.

⁶ *Option 5 Incorporated v Marlborough District Council* (2009) 16 ELRNZ 1 at [15].



Notices of motion and evidence

[11] I have considered the Council's notice of motion and the affidavit of Mr Bayliss. Mr Bayliss' affidavit attached relevant background material, including copies of submissions and further submissions filed. As uncontested documents, I accept and rely on both in this determination.

Slopehill Properties Limited (ENV-2018-CHC-129)

[12] SPL's original submission:

- (a) requested that all land accessed from Slopehill Road and not contained in an Outstanding Natural Feature be rezoned to a rural lifestyle zone; and
- (b) proposed a new strategic objective or policy to enable residential units to be constructed outside, and in addition to, approved residential buildings platforms where the primary use is to accommodate family.

[13] SPL's notice of appeal relevantly seeks:

- (a) amendments to strategic objective 3.2.5.2 and strategic policy 3.3.32 to provide a generally more permissive regime for subdivision and development in the Rural Zone; and
- (b) amendment to the objectives and policies in Chapter 3 or introduction of new objectives and policies to ensure that rural living opportunities are provided for outside Outstanding Natural Landscapes and Features.

[14] QLDC explains that SPL's submission on the Proposed Plan did not address:

- (a) a strategic objective equivalent to Strategic Objective 3.2.5.2 or the matter of new subdivision in the Rural Character Landscapes; or
- (b) any strategic objective equivalent to Strategic Objective 3.3.32 or the matter of land use change in Rural Character Landscapes.

[15] It seeks that the part of SPL's appeal seeking relief in relation to Strategic Objectives 3.2.5.2 and 3.3.32 be struck out on the basis that:



- (a) SPL does not have standing to pursue the relief sought under cl14(2) Sch 1 RMA; and
- (b) no reasonable or relevant case is disclosed and the relief sought in the appeal amounts to an abuse of process, being frivolous and vexatious in the sense that there is no jurisdiction to grant it.

[16] I am satisfied that the Council's application for strike out of the relevant parts of SPL's appeal is well founded in evidence and law. Therefore, being unopposed, this part of the Council's application is granted such that the following parts of SPL's appeal are now struck out:

Strategic Topic 2: Rural landscape

Strategic Objective 3.2.5.2

Strategic Policy 3.3.32

Appeal point ENV-2018-CHC-29-004.

Universal Developments Limited (ENV-2018-CHC-101)

[17] UDL made an original and further submission on the Proposed Plan:

- (a) its original submission focused on the existence of the Outstanding Natural Landscape line annotation over residential zones, the provisions of Chapter 8 Medium Density Zone and Chapter 27 Subdivision;⁷
- (b) its further submission relevantly focused on retaining the notified Medium Density Residential zoning of the land between State Highway 6 and the Quail Rise Zone, the provisions of Chapter 8 Medium Density Zone, the status of subdivision in Outstanding Natural Landscapes and Features and the activity status of subdivision in the Medium Density Residential Zone.⁸

[18] UDL's notice of appeal seeks relief that would amend Strategic Objective 3.2.1.3 and Strategic Policy 3.3.6, to recognise and provide for mixed business use and residential development in Frankton at a strategic level in the PDP.

⁷ Affidavit of I W Bayliss, dated 3 August 2018, at [26].

⁸ Affidavit of I W Bayliss, dated 3 August 2018, at [27].



[19] QLDC submits that, as UDL did not make a submission on Chapter 3 Strategic Direction or any equivalent provision to Strategic Objective 3.2.1.3 or Strategic Policy 3.3.6, that part of its appeal should be struck out on the basis that:

- (a) UDL does not have standing to pursue the relief sought under cl14(2) Sch 1 RMA;⁹ and
- (b) no reasonable or relevant case is disclosed and the relief sought in the appeal amounts to an abuse of process, being frivolous and vexatious in the sense that there is no jurisdiction to grant it.

[20] I am satisfied that the Council's application for strike out of the relevant parts of SPL's appeal is well founded in evidence and law. Therefore, being unopposed, this part of the Council's application is granted such that the following parts of SPL's appeal are now struck out:

Strategic Topic 1: A resilient economy

Strategic Objective 3.2.1.3

Strategic Policy 3.3.6.

Determination of the remainder of the Council's application reserved

[21] Notices of opposition to the Council's application were received from:

- (a) Coneburn Preserve Holdings Limited (notice of appeal, s274 notice);
- (b) Glendhu Bay Trustees Limited (s274 notice);
- (c) Halfway Bay Lands Limited (notice of appeal);¹⁰
- (b) Mt Christina Limited (notice of appeal, s274 notice); and
- (e) Upper Clutha Environmental Society Incorporated (notice of appeal).

⁹ Affidavit of I W Bayliss, dated 3 August 2018, at [28].

¹⁰ While HBLL says it does not oppose the strikeout, this is qualified in its memorandum dated 10 August 2018, with the statement that it still wishes to "...be able to seek amendments to the Strategic Directions provisions as part of Stage 3 of the District Plan Review (Rural Visitor Zones)". Given the ambiguity of that qualification, the court has recorded its memorandum as being a notice of opposition.



[22] A timetable¹¹ is in place for the filing of any related affidavits in reply and legal submissions. Except where a hearing has been requested, these will be determined on the papers.

Outcome

[23] QLDC's strikeout application is granted in respect of Universal Developments Limited and Slopehill Properties Limited to the extent specified in [A].

[24] The remainder of the application is adjourned to be heard or determined on the papers as indicated.

[25] Costs are reserved and the following timetable set:

- (a) any application by the Council to be filed within ten working days of the date of this decision;
- (b) any reply by Universal Developments Limited and/or Slopehill Properties Limited to be filed within a further five working days.



J J M Hassan
Environment Judge



¹¹ Minute dated 6 August 2018.

List of Appellants

ENV-2018-CHC-053	Federated Farmers of NZ
ENV-2018-CHC-054	Gibbston Valley Station Limited
ENV-2018-CHC-055	Hawthenden Limited
ENV-2018-CHC-056	Upper Clutha Environmental Society Incorporated
ENV-2018-CHC-057	Clive Wood
ENV-2018-CHC-058	Ritchie Kerr Trust
ENV-2018-CHC-060	Brett Giddens
ENV-2018-CHC-061	Schranz
ENV-2018-CHC-062	Jeremy Bell Investments Limited
ENV-2018-CHC-063	Jeremy Bell Investments Limited
ENV-2018-CHC-064	Varina Pty Limited
ENV-2018-CHC-065	Clark Fortune McDonald and Associates
ENV-2018-CHC-066	Matakauri Lodge Limited
ENV-2018-CHC-067	Arthurs Point Protection Society
ENV-2018-CHC-068	Loch Linnhe Station
ENV-2018-CHC-069	Beresford
ENV-2018-CHC-070	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-071	van Brandenburg
ENV-2018-CHC-072	Kipke
ENV-2018-CHC-073	Southern District Health Board
ENV-2018-CHC-074	Wild Grass Investments No 1. Limited & others
ENV-2018-CHC-075	Jade Lake Queenstown Limited
ENV-2018-CHC-076	Arthurs Point Trustee Limited as trustee of the Arthurs Point Land Trust
ENV-2018-CHC-077	P D Gordon Family Trust
ENV-2018-CHC-078	Department of Conservation
ENV-2018-CHC-079	Otago Regional Council
ENV-2018-CHC-080	Grant
ENV-2018-CHC-081	Grant
ENV-2018-CHC-082	Kawarau Jet Services Holdings Limited
ENV-2018-CHC-083	Mt Cardrona Station Limited
ENV-2018-CHC-084	FII Holdings Limited
ENV-2018-CHC-085	Ngai Tahu Justice Holdings Limited & others
ENV-2018-CHC-086	Streat Developments Limited
ENV-2018-CHC-087	House Movers Section of the New Zealand
ENV-2018-CHC-088	Orchard Road Holdings Limited
ENV-2018-CHC-089	Macfarlane Investments Limited
ENV-2018-CHC-090	Remarkables Station Limited & others
ENV-2018-CHC-091	Burdon
ENV-2018-CHC-092	Trojan Helmet
ENV-2018-CHC-093	Queenstown Airport
ENV-2018-CHC-094	The Middleton Family Trust & others
ENV-2018-CHC-095	Seven Albert Town Property Owners
ENV-2018-CHC-096	Fairfax & others
ENV-2018-CHC-097	Mount Crystal Limited
ENV-2018-CHC-098	Friends of Wakitipu Gardens
ENV-2018-CHC-099	Bill and Jan Walker Family Trust & others
ENV-2018-CHC-100	Peter Manthey
ENV-2018-CHC-101	Universal Developments Limited
ENV-2018-CHC-102	RCL Henley Downs & Others
ENV-2018-CHC-103	Mt Christina Limited
ENV-2018-CHC-104	Soho Ski Area / Blackmans Creek
ENV-2018-CHC-105	Wright
ENV-2018-CHC-106	Te Anau Developments
ENV-2018-CHC-107	Treble Cone Investments
ENV-2018-CHC-108	Aurora Energy Ltd
ENV-2018-CHC-109	Homestead Bay Trustees Limited
ENV-2018-CHC-110	Richter



ENV-2018-CHC-111	Aspiring Lifestyle Retirement Investments Limited
ENV-2018-CHC-112	Queenstown Views Limited
ENV-2018-CHC-113	CSF Trustees Limited
ENV-2018-CHC-114	Transpower NZ Ltd
ENV-2018-CHC-115	Willowridge Developments Ltd
ENV-2018-CHC-116	Wei Heng Fong
ENV-2018-CHC-117	Cardrona Alpine Resort Limited
ENV-2018-CHC-118	Wakatipu Holdings Limited
ENV-2018-CHC-119	Halfway Bay Lands Limited
ENV-2018-CHC-120	Anderson Branch Creek Limited
ENV-2018-CHC-121	Tussock Rise Limited
ENV-2018-CHC-122	Trojan Holdings Limited
ENV-2018-CHC-123	Skyline Enterprises Limited
ENV-2018-CHC-124	Waterfall Park Developments Limited
ENV-2018-CHC-125	Kopuwait Investments Limited
ENV-2018-CHC-126	Remarkables Park Limited
ENV-2018-CHC-127	Queenstown Park Limited
ENV-2018-CHC-128	Well Smart Investment Holding (NZQN)
ENV-2018-CHC-129	Slopehill Properties Limited
ENV-2018-CHC-130	SYZ Investments Limited
ENV-2018-CHC-131	Real Journeys Limited
ENV-2018-CHC-132	Aircraft Owners and Pilots Association
ENV-2018-CHC-133	Royal Forest and Bird
ENV-2018-CHC-134	Ngai Tahu Tourism Limited
ENV-2018-CHC-135	Republic Hospitality Group
ENV-2018-CHC-136	Burgess
ENV-2018-CHC-137	Coneburn Preserve Holdings & Others
ENV-2018-CHC-138	Real Journeys (go Journeys)
ENV-2018-CHC-139	Westwood Group Holdings Limited
ENV-2018-CHC-140	The Otago Foundation Trust Board and Wakatipu Community Presbyterian Church
ENV-2018-CHC-141	Glendhu Bay Trustees Limited
ENV-2018-CHC-142	Queenstown Wharves GP Limited
ENV-2018-CHC-143	Wyuna Preserve Residents Association
ENV-2018-CHC-144	James Wilson Cooper
ENV-2018-CHC-145	Glen Dene Limited
ENV-2018-CHC-146	Real Journeys Limited (trading as Canyon Food & Brew Company Ltd)
ENV-2018-CHC-147	Glen Dene Holdings Limited & Others
ENV-2018-CHC-148	Allenby Farms Limited
ENV-2018-CHC-149	Alps Investment Limited
ENV-2018-CHC-150	Darby Planning LP
ENV-2018-CHC-151	NZ Tungsten Mining
ENV-2018-CHC-152	Queenstown Airport Corporation Limited (designation)
ENV-2018-CHC-160	Lake McKay Station Limited
ENV-2018-CHC-163	Boyd, Redai & others

