

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**ENV-2018-CHCH-0000**

**UNDER THE**

Resource Management Act 1991 ("**Act**")

**IN THE MATTER OF**

An appeal under Schedule 1, Clause 14(1), of the  
Act

**BETWEEN**

**BRETT GIDDENS**

**Appellant**

**AND**

**QUEENSTOWN LAKES DISTRICT COUNCIL**

**Respondent**

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**NOTICE OF APPEAL BY BRETT GIDDENS  
AGAINST A DECISION ON A PROPOSED PLAN**

**15 JUNE 2018**

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Counsel instructed:

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**QUEENSTOWN, 9348**

**TO:** The Registrar  
 Environment Court  
 PO Box 2069  
 20 Lichfield Street  
**CHRISTCHURCH**  
 ([Christine.McKee@justice.govt.nz](mailto:Christine.McKee@justice.govt.nz))

**AND TO:** The Respondent  
 ([dpappeals@gldc.govt.nz](mailto:dpappeals@gldc.govt.nz))

**AND TO:** Submitters who made further submissions on the appellant's submission

### Notice of appeal

1. Mr Giddens (“**appellant**”) appeal parts of the following decision (“**Decision**”):

Decisions on the submissions and further submissions to Stage 1 of the Queenstown Lakes District Proposed District Plan (“**PDP**”).

2. The appellant made a submission on the PDP on 22 October 2015, and a further submission on 18 December 2015.

### No prohibited trade competition purposes

3. The appellant has an interest or association with the land to which the appeal relates, being land located at land located at 16, 18, 18B and 20 McBride Street. The appellant's original submission related to all the land bounded by McBride Street, Grey Street, Burse Street and State Highway 6 (“**appeal site**”), as follows:



4. The appellant is not a trade competitor for the purposes of Section 308D of the Act, and in particular does not bring this appeal for the purposes of:
- (a) protecting the appellant from trade competition; and/or
  - (b) preventing any trade competitor from engaging in trade competition; and/or
  - (c) deterring any trade competitor from engaging in trade competition.

### **Decision**

5. The Decision was made by the Queenstown Lakes District Council ("**Council**") on 7 May 2018.
6. The appellant received notice of the Decision on 7 May 2018.

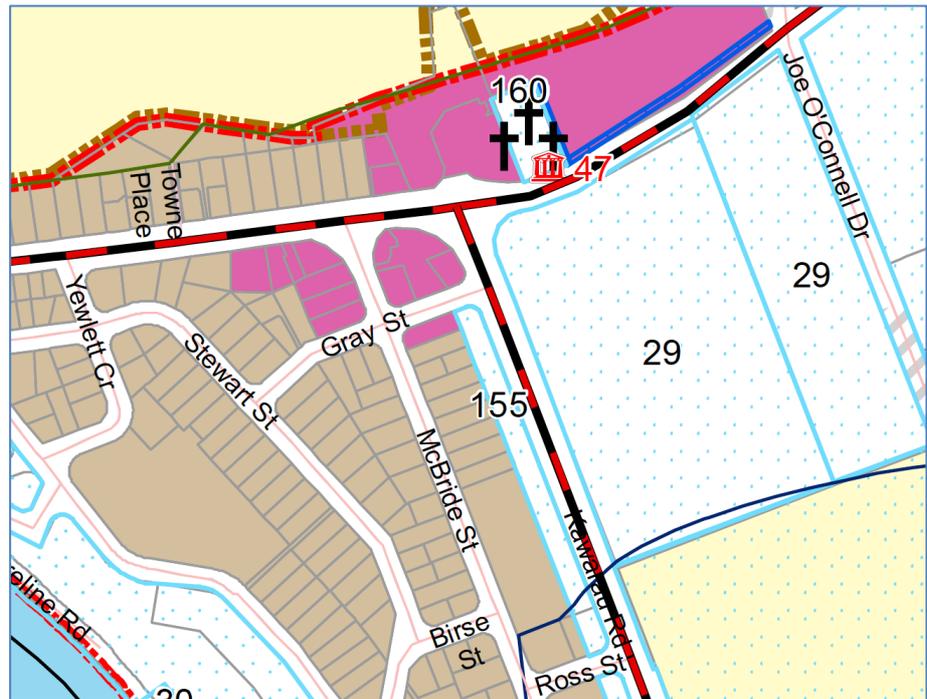
### **Submission**

7. The appellant in his original submission sought rezoning of the appeal site to Local Shopping Centre Zone ("**LSCZ**"), from Low Density Residential Zone ("**LDRZ**"), with a 12 metre height limit. As alternatives, the appellant also sought rezoning to:
- (a) High Density Residential zone; or
  - (b) Medium Density Residential; or
  - (c) Another zone or amended zone that would achieve the "outcomes" sought in the submission [this would include the Business Mixed Use zone].
8. In respect of those outcomes, the submission identified that it would be appropriate for the zoning to:
- (a) reflect some of the current [ie non-residential commercial] land uses on the site;
  - (b) provide an opportunity for commensurate growth;
  - (c) enable activities to be undertaken that would complement the surrounding residential area while not detracting from the Town Centres;
  - (d) introduce activities that are not directly sensitive to airport operations; and
  - (e) enable commercial activity;
- in a way that effects on the surrounding area would be avoided, remedied, or mitigated.
9. The appellant also opposed any objectives, policies and rules in the Proposed Plan that sought to constrain commercial or higher density residential land uses over and above what is specified in the Operative Plan. As an example, the Operative Plan provides for non-residential buildings on the appeal site as a Controlled Activity under Rule 7.5.3.2 (iii) (a) in respect of the matters listed in Assessment Matter 7.7.2 (iii). This has been removed in the PDP.

10. As indicated above, the original submission applied to all the land bounded by McBride Street, Grey Street, Burse Street and State Highway 6. The appellant focused at the Council-level hearing on a smaller area of land, but considers it more appropriate from a planning perspective for the entire block to be subject to a more appropriate zoning rather than just part of it.

#### Additional background

11. The wider context of the appeal site is further illustrated in this extract from Planning Map 33 (decisions version):



12. In terms of the existing environment of, or surrounding, the appeal site:
- (a) McBride Street intersects with SH6A at Frankton Junction, a local shopping centre zoned LSCZ.
  - (b) 14 McBride Street (the Council's LCSZ land) to the north of the site is currently used as a car park, but it has been previously suggested for use as a library.
  - (c) In respect of the appeal site:
    - (i) 16 McBride Street is a dental surgery and offices with no residential use. The first resource consent was approved in 1993 with full commercial use authorised in 2004 and enlarged further in 2012 (RM120459).
    - (ii) 18 McBride Street, sometimes identified as 18A McBride Street, has been used for offices for around 8 years and has resource consent in place for commercial offices with no residential use. Resource consent was first granted in 2006 with full commercial use authorised in 2017 (RM170556). In addition, resource consent has been recently granted for the full visitor accommodation use of the property for 365 days of the year (RM180573).

- (iii) 18B McBride Street is consented for office use with no residential use, granted in 2017 (RM170304).
  - (iv) 20 McBride Street is consented for office use with no residential use, granted consent in 2017 (RM170818).
  - (v) 22 McBride Street is in residential use, but did not submit in opposition to the proposed LSCZ rezoning [in fact, only Queenstown Airport and the Board of Airline Representatives submitted].
  - (vi) The larger parcel on the block is a rest home and the corner site (Ross/McBride) is a church.
- (d) A bus hub operates at the rear of 18B and 20 McBride Street and provides for commercial bus services, tour groups, public toilets and parking 24 hours per day, seven days per week. This facility was considerably expanded in 2009 and is the main public transport hub outside of the Queenstown Town Centre. The Council is presently seeking to further extend the bus stop provision at the hub, with additional noise and amenity effects to result from that.
- (e) Kawarau Road (SH6) to the east of the appeal site is an access route to the airport and has been under heavy demand for roadside and foot path parking. This demand had also placed pressure on off-street parking on McBride Street (to the west of the appeal site). However this demand has eased considerably with the opening of the Eastern Access Route.
- (f) The majority of properties on the western side of McBride Street are orientated towards Lake Wakatipu with the rear of the properties against McBride Street.
- (g) The area falls within the outer control boundary (“**OCB**”) of the Airport and so is subject to a high noise environment, such that the Airport opposes any intensification of activities sensitive to aircraft noise (“**ASANs**”) within the OCB.

### **The LSCZ**

13. The purpose of the LSCZ is stated to include:

The Local Shopping Centre Zone enables small scale commercial and business activities in discrete pockets of land that are accessible to residential areas and people in transit. The Zone seeks to reduce the necessity for people to travel longer distances to town centres to purchase convenience goods and access services.

Due to the nature of the Zone’s locations in predominantly residential environments, standards limit the potential adverse effects on residential amenity and discourage the establishment of inappropriate activities. ...

14. The objectives and policies, and rules of the LSCZ are intended to support that purpose.
15. A large number of LCSZ zoned land parcels adjoin residential zones, without special “buffer” provisions.

### The Decision

16. The Council's Decision adopted the recommendation of its Commissioners, as contained in Report 17-6, Part M. The recommendation was to reject the rezoning of the appeal site to LSCZ, and retain LDRZ.
17. The Commissioners erred in their recommendations, including by:
- (a) Applying the wrong legal test by requiring the appellant to demonstrate a "need" to increase the supply of commercial land in Queenstown generally and in the area of the appeal site particularly, at [246]:
    - (i) There is no requirement under the RMA to demonstrate "need" for a particular zoning, including under section 32.
    - (ii) Even if the Commissioners were right to consider "need", that burden was discharged by the evidence of current or consented, or pending consent, for commercial activities on the appeal site.
 

(As a matter of fairness, the Council elsewhere granted significant additional commercial re-zonings without proof of demand/need.)
  - (b) Failing to have regard to whether the LSCZ was more appropriate than the LDRZ in respect of the appeal site, given the existing environment of the appeal site; which must include the consented commercial activities which are likely to be given effect to.
  - (c) Having regard to the prohibited matter of trade competition and/or applying an inappropriate "licencing" regime (similar to historical approaches under the Town and Country Planning Act philosophies) by relying on Mr Heath's evidence that:
    - (i) rezoning the appeal site would "saturate the market" at [247]; and
    - (ii) providing for office activities on the appeal site would "undermine the zoned provision for office activities" at [248].
  - (d) Accepting that the LCSZ would materially risk intensification of ASANs within the OCB / on the appeal site, at [249]. The evidence demonstrated that the demand was for office and other commercial activities, not further accommodation; and that any increase that might be enabled by LSCZ would be minimal. This is significant in light of the Airport's further submission stating that they:
 

... remain neutral with respect to the submission point requesting rezoning of the area to LSCZ provided it does not result in the intensification of ASAN in the area
  - (e) Finding that traffic issues were caused by the proximity of the existing LSCZ at [250], rather than being a consequence of proximity to the Airport and wider network congestion.

- (f) Relying on traffic evidence of the Council that assessed the traffic environment prior to the opening of the Eastern Arterial Route, which has had the impact of considerably reducing traffic and off-street parking demand in the area.
- (g) Finding that the modified bulk and location standards proposed for the appeal site was evidence of “potential adverse effects on residential amenity from the rezoning” at [251], rather than those modifications being a further step to avoid or mitigate any such effects.

### **Scope of appeal**

- 18. The appellant appeals the entirety of the Decision as it relates to the appeal site.
- 19. To the extent that any issues of scope are raised in respect of the appeal site (for example, based on the appellant’s focus on a reduced area at the Council-level hearing), the appellant’s position is that:
  - (a) notwithstanding anything said at the Council-level hearing, there was no formal amendment of the submission to reduce its scope; and
  - (b) if the appellant’s submission had in fact been amended to reduce its scope, it would in any event be appropriate for the Court, after hearing the issues, to exercise its jurisdiction under section 293 of the Act to direct changes to the PDP in respect of the appeal site in its entirety. This notice of appeal provides early notice to all the parties of this possibility.

### **Reasons for the appeal**

- 20. The Decision as it relates to the appeal site:
  - (a) was based on the application of erroneous tests and findings on the evidence by the Commissioners;
  - (b) fails to promote sustainable management of resources, including the enabling of people and communities to provide for their social and economic well-being, and will not achieve the section 5 purpose of the Act;
  - (c) fails to promote the efficient use and development of the appeal site, a matter to have particular regard to under section 7(b) of the Act;
  - (d) fails to achieve the functions of the Council under section 31 of integrated management of the effects of the use and development of land and physical resources;
  - (e) fails to meet the requirements of section 32;
  - (f) fails to recognise the (minimal) effects on the environment of rezoning the appeal site LCSZ; and
  - (g) fails to achieve or implement the relevant district-wide objectives and policies of the PDP.

21. In contrast, granting the appeal will:
- (a) promote the sustainable management of resources, including the enabling of people and communities to provide for their social and economic well-being, and will achieve the section 5 purpose of the Act;
  - (b) promote the efficient use and development of the appeal site, a matter to have particular regard to under section 7(b) of the Act;
  - (c) achieve the functions of the Council under section 31 of integrated management of the effects of the use and development of land and physical resources;
  - (d) meet the requirements of section 32;
  - (e) recognise the (minimal) effects on the environment of rezoning the appeal site LSCZ; and
  - (f) achieve or implement the relevant district-wide objectives and policies of the PDP

**Relief sought**

22. The appellant seeks:
- (a) Rezoning of the appeal site to Local Shopping Centre Zone (“LSCZ”), from Low Density Residential Zone (“LDRZ”).
  - (b) In the alternative, rezoning to:
    - (i) High Density Residential zone; or
    - (ii) Medium Density Residential; or
    - (iii) another zone or amended zone that would achieve the outcomes sought in the submission and/or address the issues recorded in the appeal.
  - (c) Provision for non-residential buildings on the appeal site as a Controlled Activity.
  - (d) Any other similar, consequential, or other relief as is necessary to address the issues raised in the appellant’ appeal or otherwise raised in the appellant’ original submission of the submissions it supported or opposed (as relevant).
  - (e) Costs.

**Alternative dispute resolution**

23. The appellant agrees to participate in mediation or other alternative dispute resolution of the proceeding.

**Attachments**

24. The following documents are attached to this notice:

- (a) a copy of the appellant's submission;
- (b) a copy of the relevant parts of the Decision; and
- (c) a list of names and addresses of persons to be served with a copy of this notice, being every person who made a further submission on the appellant's submission.

**DATED** 15 June 2018



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J D K Gardner-Hopkins

**Counsel for the appellant**

The appellant's address for service is c/- Elliot Goldman, Goldman Legal, Level 1 Searle Lane, Queenstown 9300.

Documents for service on the appellant may be left at that address for service or may be:

- (a) posted to PO Box 1399, 9348, Queenstown 9300; or
- (b) emailed to [elliott@goldmanlegal.co.nz](mailto:elliott@goldmanlegal.co.nz), and copied to [james@jghbarrister.com](mailto:james@jghbarrister.com).

## **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 on the matter of this appeal.

To become a party to the appeal, you must,—

(a) 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

(b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

If you are a trade competitor of a party to the proceedings, your right to be a party to the proceedings in the court may be limited (see [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 requirements (see [form 38](#)).

### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

**Attachment 1 - a copy of the appellant's submission**

# Form 5

## Submission on a Publicly Notified Proposal for Policy Statement or Plan

*Clause 6 of First Schedule, Resource Management Act 1991*

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To: **Queenstown Lakes District Council (“the Council”)**

Name of Submitter: **B. Giddens**

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### Introduction:

1. This is a submission on the proposed **Queenstown Lakes District Plan** (“the Proposed Plan”) notified on 26 August 2015.
2. The submitter could not gain an advantage in trade competition through this submission.
3. The submitter has an interest in the Proposed Plan as a whole, and as such the submission relates to the Proposed Plan in its entirety.
4. The submitter's properties are located at 18<sup>1</sup> and 20 McBride Street.
5. As part of the formulation of the Proposed Plan, the Council identified the submitter’s property and the surrounding area of Frankton as suitable for higher density residential development (medium density residential zone). This zoning, or a similar zoning, was supported by the submitter. During this initial consultation the submitter also requested consideration be given to a number of specific properties (16, 18A, 18B, 20 and 22 McBride Street) being changed to a commercial zoning to best reflect the existing land uses and enable a small level of growth commensurate with this environment.
6. The site is zoned Low Density Residential under the Operative Queenstown Lakes District Plan (“the Operative Plan”). The Proposed Plan seeks to retain this zoning. The applicable section 32 report is silent on the reason why the Low Density Residential Zone is sought to be retained.
7. The submitter considers that the Low Density Residential zoning is inappropriate for the sites and wider area for the reasons outlined in this submission.

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<sup>1</sup> Also referred to as 18A McBride Street

8. Notwithstanding the above, the submitter opposes the Proposed Plan for the following reasons:
  - a. It does not accord with, or assist the Council to carry out its functions to achieve, the purpose of the Resource Management Act 1991 (“the Act”);
  - b. It does not promote the sustainable management of resources;
  - c. It does not meet section 32 of the Act;
  - d. It is not consistent with Part 2 of Act;
  - e. It does not represent integrated management or sound resource management practice;
  - f. It does not meet the reasonably foreseeable needs of future generations; and
  - g. It does not implement the most appropriate standards, rules or methods for achieving the objectives set out in the Proposed Plan.

**Outline of Submission:**

9. In reviewing the Low Density Residential zone, the Council has failed to take into account the changing nature of land use along the eastern side of McBride Street. The sites are located adjoining Queenstown’s most active bus terminal, the State Highway, Queenstown Airport, and commercial premises which continue to occupy and support the residential area with the benefit of approved resource consents.
10. Council has failed to adequately consult with landowners as to the appropriate zoning for their land or provide reasons as to why the Low Density Residential zone has been retained.
11. The Council’s evaluation of land to be rezoned as part of the District Plan Review is inadequate and has failed to undertake a detailed analysis of zoning requirements and community needs.
12. The submitter requests that the Low Density Residential zoning over the land bound by McBride Street, Grey Street, Burse Street and State Highway 6 is most appropriately zoned Local Shopping Centre. This zone would reflect some of the current land uses, provide the opportunity for commensurate growth, enable activities to be undertaken that would complement the surrounding residential area while not detracting from the Town Centres, introduce activities that are not directly sensitive to airport operations, while being an appropriate location for commercial activity such that effects to the wider area would be minimal.
13. Rezoning the sites Local Shopping Centre would also present an opportunity for the Council to potentially enlarge the existing public transportation hub at Frankton; retaining this land as residential would make such expansion very difficult, if not impossible, meaning that at some stage in the future the Council will be tasked with relocating the bus shelter to cope with growth demands in Frankton and Queenstown.

14. The area of land is relatively unique in that in that the sections are confined by legal road and there are no neighbours at the front or rear of the properties. This area is considered to be appropriate for additional building height on the basis that the effects could be largely contained within the properties, with the adoption of appropriate internal setback requirements with other measures, such as landscaping. In addition the land is very flat. The submitter considers that a building height of 12 metres (enabling three levels) in this location would be suitable to help achieve a higher density of potentially mixed use development.
15. The submitter opposes any objectives, policies and rules in the Proposed Plan that seeks to constrain commercial or higher density residential land uses over and above what is specified in the Operative Plan.
16. Rezoning of the land as requested will:
  - a. Promote the sustainable management of natural and physical resources, will be consistent with Part 2 of the Act and ultimately achieve its purpose;
  - b. Enable the social, economic and cultural well-being of the community;
  - c. Meet the reasonably foreseeable needs of future generations; and
  - d. Represent the most appropriate means of exercising the Council's functions, having regard to the efficiency and effectiveness of the provisions relative to other means.

**Relief sought:**

17. The submitter requests the following relief, that:
  - a. The land bound by McBride Street, Burse Street, Grey Street and State Highway 6 are altered from Low Density Residential zone to Local Shopping Centre zone; or as secondary options that are more appropriate than the Low Density Residential Zone:
    - i. High Density Residential zone; or
    - ii. Medium Density Residential; or
    - iii. Another zone or amended zone that will achieve the outcomes sought in this submission.
  - b. Any other additional or consequential relief to the Proposed Plan, including but not limited to, the maps, issues, objectives, policies, rules, discretions, assessment criteria and explanations that will fully give effect to the matters raised in this submission.
18. The suggested revisions do not limit the generality of the reasons for the submission.
19. The submitter wishes to be heard in support of its submission.