

**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

**ALEXANDER SCHRANTZ AND JAYNE
SCHRANTZ**

Appellants

AND

QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL BY THE SCHRANTZES
AGAINST A DECISION ON A PROPOSED PLAN**

15 JUNE 2018

Counsel instructed:

JGH BARRISTER

J D K Gardner-Hopkins

Phone: 04 889 2776

james@jghbarrister.com

PO Box 25-160

WELLINGTON

Solicitors acting:

GoldmanLegal

E Goldman

Level One, 1 Searle Lane

Phone: 03 441 2141

Fax: 03 441 2144

PO Box 1399

QUEENSTOWN, 9348

- TO:** The Registrar
Environment Court
PO Box 2069
20 Lichfield Street
CHRISTCHURCH
(Christine.McKee@justice.govt.nz)
- AND TO:** The Respondent
(dpappeals@glde.govt.nz)
- AND TO:** Submitters who made further submissions on the Schrantzes' and the Taverners' submissions

Notice of appeal

1. Alexander Schrantz and Jayne Schrantz ("**Schrantzes**") 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 Schrantzes 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 Schrantzes own Lot 35 in The Preserve at Jacks Point ("**Lot 35**"). They have resource consent to build on their land but have not given effect to that consent because of the continuing uncertainty as to the zoning, and potential development, surrounding their site.
4. The Schrantzes are not trade competitors for the purposes of Section 308D of the Act.

Decision

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

Submissions / further submissions

7. The Schrantzes in their submissions generally sought retention of the provisions in the then Operative Plan, in particular the Open Space and Landscape Protection Areas in the "tablelands" area of Jacks Point/Hanley Downs. The planning provisions in the then operative plan had arisen out of Variation 16, and those operative provisions formed the basis of the Schrantzes decision to purchase Lot 35.
8. The Schrantzes also opposed further development in the tablelands area, as well as development on the Peninsula Hill, both of which were originally proposed in the notified version of the PDP.

9. The Schrantzes in their further submissions (among other things) supported submission #131, by the Taverners. The issues raised by the Taverners and/or relief sought included:
- (a) That the policies established through Plan Change 44 process (only) be applied to the “Hanley Downs” area (which included the areas of concern to the Schrantzes). (Noting that the rules within the PDP were not prescriptive enough to ensure a high quality of landscape and visual amenity and urban design consistent with the receiving environment of Jacks Point).
 - (b) That the then current (ie, operative) structure plan “remain operational and unchanged with the relevant land use and activity areas remaining as they are”.
 - (c) That a district plan rule be added that:
 - ... specifically refers to assessment of effects on neighbouring properties / neighbourhoods of proposed resource consent applications, plan changes etc, as if the original Jacks Point vision becomes compromised (i.e increased residential density over and above what is anticipated) there needs to be a framework within the PDP for the existing residents to be appropriately considered.

Additional background / context

10. Prior to notification of the PDP, Plan Change 44 had been promoted (privately) to update various aspects of the Jacks Point/Hanley Downs provisions. The Schrantzes submitted, and were heard at the Council-level hearing in that process. As with their submissions on the PDP, the Schrantzes generally sought retention of the then Operative Plan provisions. They were satisfied with the Council decisions and did not appeal, but were concerned about the consequences of other appeals and joined as section 274 parties. The appeals on Plan Change 44 were settled by consent. Through that process, the “developers” effectively abandoned their aspirations for greater development in the tablelands, leaving those issues for resolution through the PDP process.
11. The Schrantzes were, and remain, concerned at the repeated attempts by the developers to enable greater development on the tablelands and surrounding areas (including the Landscape Protection Areas), and sought clarification of certain matters through the resolution of the Plan Change 44 appeals. Those matters were:
- (a) The strength of the policy direction to *avoid* adverse effects on the Peninsula Hill Outstanding Natural Landscape, including the relevance of the district-wide policies. The parties agreed that:
 - (i) the district wide objectives and policies relating to ONL-WB applied to that part of the Peninsula Hill ONL within PC 44;
 - (ii) the policies that applied to Jacks Point contained a solid basis from which to protect landscape values; and
 - (iii) where relevant, regard must be had to district wide objectives and policies relating to the ONL-WB when considering a consent application under s104(1)(b)(iv) in respect of the Peninsula Hill ONL.

It was for this reason that the Schrantzes agreed that the decisions-version of Policy 3.21 did not need to be included. That Policy had stated:

To avoid adverse effects on the landscape and amenity values of the Peninsula Hill ONL(WB) from subdivision and development.

- (b) The activity status for farm buildings. The parties agreed that they should be provided for as:
- (i) Controlled activities in the Tablelands part of the O/S Activity Area; and
 - (ii) Restricted Discretionary activities in the Peninsula Hill Landscape Protection Area part of the O/S Activity Area within the PC 44 boundary with discretion restricted to:
 - the external appearance of buildings with respect to the effects on visual amenity values and landscape values of the area and coherence with any surrounding buildings; and
 - infrastructure and servicing; and
 - associated earthworks and landscaping;
 - access;
 - location, including the effects of building location on visual amenity values and landscape values; and
 - compliance with any relevant Council approved development controls and design guidelines.
- (c) A site standard and assessment criteria to avoid consents from being obtained for farm buildings and then used as a baseline or considered part of the environment for the purpose of discounting effects of future applications (eg, to convert a farm building for use as residential or visitor accommodation, or add additional buildings).

12. The Schrantzes do not wish to see the matters “go backwards” from what they achieved through Plan Change 44. They are also concerned about the ongoing costs and processes they are having to endure, simply to protect the outcomes that were achieved in the operative plan following Variation 19.

Scope of Schrantzes’ appeal / summary of issues

13. The Schrantzes appeal the following matters:

Protection for the Peninsula Hill ONL

14. The potentially relevant policies are:

- (a) Policy 41.2.1.23, which anticipates a level of farming and associated development while ensuring that “over-domestication” does not occur; and

- (b) Policy 41.2.1.27, but this relates only to the Tablelands Landscape Protection Area **not** the Peninsula Hill Landscape Protection Area). Policy 41.2.1.27 states:

Ensure that subdivision, development and ancillary activities within the Tablelands Landscape Protection Area maintain the character of the landscape.

15. There is no explicit policy protection for the Peninsula Hill Landscape Protection Area in Chapter 41 of the PDP.

16. In contrast, within the OSG (which surrounds the Home Sites in the Tablelands Landscape Protection area), there is strong policy protection as follows in Policy 41.2.1.22:

Avoid all buildings in the Open Space Golf (OSG) and Open Space Residential Amenity (OSA) Activity Areas other than ancillary small scale recreational buildings on the same site as the activity it is ancillary to, and that are of a design that is sympathetic to the landscape.

17. It is also significant that it is unclear whether the Chapter 6 “Landscapes and Rural Character” objectives and policies apply to Jacks Point or not. The introductory text to Chapter 3 “Strategic Direction” would suggest so:

... The principal role of Chapters 3 - 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan. In addition, they also provide guidance on what those more detailed provisions are seeking to achieve and are accordingly relevant to decisions made in the implementation of the Plan.

18. However, Policy 6.3.3 states (emphasis added):

Provide a separate regulatory regime for the ... Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories and the policies of this chapter related to those categories **do not apply unless otherwise stated**.

19. Rule 6.4.1 also addresses the issue, but is subject to a variation and submissions through Stage 1 of the PDP process.

20. Accordingly, there is significant uncertainty as to whether the district-wide landscape objectives and policies will apply. In light of that uncertainty, the most appropriate approach is to resolve the PC41 provisions on the basis that the district-wide provisions do not apply. (This is a quite different basis to that on which the PC44 appeals were resolved).

21. In terms of subdivision, Subdivision Policy 27.3.7.1 simply cross refers back to the objectives and policies of Chapter 41:

Ensure that subdivision and development achieves the objectives and policies located within Chapter 41.

22. Subdivision Policy 27.3.7.5 relating to the open space areas only focuses on the establishment and management of open space, including native vegetation.

23. The above objective and policy framework is problematic (and not most appropriate) because:

- (a) Buildings in the Peninsula Hill ONL are discretionary under Rule 41.4.4.6 (other than farm buildings which are restricted discretionary), as are activities that are not specifically provided for under Rule 41.3.2.1 (such as visitor accommodation).
 - (b) There is no policy direction in Chapter 41 providing guidance as to the anticipated outcomes or as to what is to be protected in respect of the Peninsula Hill Landscape Protection Area.
 - (c) The strongest policy signals in Chapter 41 relate to development in the Tablelands Landscape Protection Area – which suggests that that area should be afforded greater protection than the Peninsula Hill Landscape Protection Area.
 - (d) The Chapter 27 Subdivision policies provide no additional direction.
 - (e) The Peninsula Hill Landscape Protection Area remains in the Urban Area Urban Growth Boundary (“UGB”) – and so it could further be argued that development (including residential and/or visitor development, not just farming) is anticipated there.
 - (f) The district wide Chapter 6 objectives and policies may not apply to Jacks Point (and in the face of uncertainty should be assumed not to apply).
 - (g) Accordingly, the Peninsula Hill Landscape Protection Area remains insufficiently protected by the policy framework of Chapter 41 (or, subdivision under Chapter 27).
24. The issues are compounded as almost all land not owned by the developers is subject to covenants that the developer says amount to written approval or any development (whatever the scale or appropriateness). The validity and/or enforceability of the covenants is not accepted, but, if the covenants apply as the developers assert, there is an even greater imperative for the PDP to provide the consent authority with greater policy and rule guidance.

Additional house sites on the Tablelands

25. The Decision introduces **eighteen** new house sites into the Tablelands area. This is a significant increase over the “status quo” that was resolved in the Operative Plan, including as an outcome of PC44 in the Operative Plan, and the earlier Variation 16 processes.
26. The Schrantzes are particularly concerned about the increase overall, but also have particular concerns about the appropriateness of house sites 29, 38, 41, 42, 43, 44, 45, 51, 53, and potentially house sites 47,49, 50, and 52.
27. In addition, while Rule 41.5.4.2 appears to restrict any building (including a dwelling) in any Open Space area “created by a subdivision”, breach of that standard only triggers discretionary activity status. That is not appropriate for establishing a clear hierarchy of controls that can be easily understood and applied.

The location of the Peninsula Hill ONL boundary

28. The Peninsula Hill ONL boundary appears to have moved to the north. This has the consequence that so that new HS38 is not located right on the boundary as it otherwise would be, but further away from it.
29. Care needs to be taken to ensure that the extent of the ONL is appropriately identified (that being a matter of fact to be determined without regard to the potential planning consequences for a developer).

The Urban Growth Boundary

30. The mapping of the UGB to include the Peninsula Hill ONL is inappropriate and inconsistent with Policy 4.2.2.14(d) which required the UGB to “**avoid** Outstanding Natural Features and Outstanding Natural Landscapes”.
31. In order to implement that policy (as well as to more fundamentally achieve the purpose of the RMA), the UGB needs to be re-drawn to exclude the Peninsula Hill ONL.

Appeal – summary

32. The Schrantzes therefore appeal:
 - (a) All aspects of the Decision relating to the issues identified above.
 - (b) In particular, but without limitation, the scope of the appeal includes:
 - (i) Amendments to policies and/or inclusion of additional policies in respect of the Peninsula Hill Landscape Protection Area.
 - (ii) The subdivision policies and activity status for subdivisions within the Peninsula Hill Landscape Protection Area – including the appropriateness of non-complying activity status.
 - (iii) The activity status for buildings (other than farm buildings) and activities such as visitor accommodation in the Peninsula Hill Landscape Protection Area and the Tablelands OSG – including the appropriateness of non-complying activity status for such activities.
 - (iv) Removing the 18 additional house sites introduced into the Tablelands to return to the density provided for in the Operative plan.
 - (v) Amending the location of the Peninsula Hill ONL boundary.
 - (vi) The removal of the Urban Growth Boundary from the Peninsula Hill Landscape Protection Area.
33. To the extent that any issues of scope are raised (recognising, for example, that the Commissioners did not consider they had scope to amend the Urban Growth Boundary), the Schrantzes position is that:

- (a) there is in fact scope (for example, the Urban Growth Boundary not having been included in the then Operative Plan and the Schrantzes' submission (and others) seeking a retention of/return to those provisions); and
- (b) 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 to address the issues raised. This notice of appeal provides early notice to all the parties of this possibility.

General reasons for the appeal

34. In addition to the reasons given above, as part of the scope of the appeal /summary of issues, the general reasons for this appeal are that the Decision fails to avoid adverse effects on the Peninsula Hill ONL through its policies and rules, and to that extent the Decision:

- (a) fails to promote sustainable management of resources and will not achieve the section 5 purpose of the Act.
- (b) fails to recognise and provide for the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development under section 6(b) of the Act;
- (c) fails to give effect to the objectives and policies of the Regional Policy Statement;
- (d) fails to give effect to the district wide objectives and policies, including those in Chapter 6 Landscape and Natural Character;
- (e) 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; and
- (f) fails to meet the requirements of section 32.

Relief sought

35. The Schrantzes seek:

- (a) Amendments to the Jacks Point policies and/or inclusion of additional policies in respect of the Peninsula Hill Landscape Protection Area. One such policy could read:

To avoid adverse effects on the landscape and amenity values of the Peninsula Hill Landscape Protection Area from subdivision and development.
- (b) Amendments to Subdivision policies and/or inclusion of additional policies in respect of the Peninsula Hill Landscape Protection Area, together with a change to subdivision within that area to non-complying (other than in respect of boundary adjustments).
- (c) A change to the activity status for buildings (other than farm buildings) and activities such as visitor accommodation in the Peninsula Hill Landscape Protection Area as well as in the Tablelands OSG to non-complying.

- (d) Removal of the 18 additional house sites introduced into the Tablelands to return to the density provided for in the Operative plan.
- (e) Amending the location of the Peninsula Hill ONL boundary.
- (f) The removal of the Urban Growth Boundary from the Peninsula Hill Landscape Protection Area or otherwise altering it to exclude that area.
- (g) Any other similar, consequential, or other relief as is necessary to address the issues raised in the Schrantzes' appeal or otherwise raised in the Schrantzes' original submission of the submissions it supported or opposed (as relevant).
- (h) Costs.

Alternative dispute resolution

36. The Schrantzes agree to participate in mediation or other alternative dispute resolution of the proceeding.

Attachments

37. The following documents are attached to this notice.
- (a) a copy of the Schrantzes' submission and further submissions;
 - (b) a copy of the relevant parts of the Decision;
 - (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 Schrantzes' submission and the Taverners' original submission which is the subject of the appeal.

DATED 15 June 2018



J D K Gardner-Hopkins
Counsel for the Schrantzes

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

Documents for service on the Schrantzes 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, and copied to 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.