

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

IN THE MATTER of the Resource Management Act 1991 (“**RMA**”)

AND

IN THE MATTER of the Queenstown Lakes Proposed District Plan

BETWEEN **Queenstown Park Limited**

Appellant

AND **Queenstown Lakes District Council**

Respondent

NOTICE OF APPEAL ON BEHALF OF QUEENSTOWN PARK LIMITED

Dated: 19 June 2018

**BROOKFIELDS
LAWYERS**

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To The Registrar
Environment Court
Christchurch

Queenstown Park Limited (“**QPL**”) appeals against part of the decision of the Queenstown Lakes District Council (“**QLDC**”) in respect of Stage 1 of the Proposed Queenstown Lakes District Plan (“**Proposed Plan**”).

1. QPL made submissions and further submissions on the notified Proposed Plan.
2. QPL is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (“**RMA**”).
3. QPL received notice of the Independent Hearings Panel’s (“**Panel**”) recommendations on the Proposed Plan (“**Recommendations**”) on the 28 March 2018, and notice of the Council’s decisions on the Recommendations (“**Decisions**”) on the 7 May 2018.
4. QPL owns a site approximately 1,800 hectares located on the true right bank of the Kawarau River which extends to an altitude of approximately 1,000masl (formerly known as Cone Peak Station).

Parts of the Decision that QPL is appealing

5. QPL’s appeal is in two parts.
6. The first part addresses its submission seeking that the land it owns be rezoned Queenstown Park Special Zone (“**QPSZ**”). This part of the appeal relates to the “Queenstown Mapping” hearing stream (Stream 13) recommendations and decisions from the Council hearing stage.
7. The second part seeks amendments to various chapters of the Proposed Plan. The relevant chapters are 2, 3, 4, 6, 21, 27, 30 and 33.

Grounds for appeal

8. QPL’s grounds for appeal in respect of the QPSZ is that the QPSZ is superior to the Rural Zone because it better:
 - (a) Promotes sustainable management;
 - (b) Enables social, economic and cultural wellbeing;

- (c) Meets Part 2 of the RMA; and
 - (d) Meets section 32 of the RMA.
9. QPL's grounds for appeal in respect of the various chapters of the Proposed Plan listed at paragraph 7 above is that the Decisions will not:
- (a) Promote sustainable management;
 - (b) Enable social, economic and cultural wellbeing;
 - (c) Otherwise be consistent with Part 2 of the RMA; and
 - (d) Be appropriate in terms of section 32 of the RMA.
10. Without limiting the generality of the above, the specific grounds of the appeal are set out below.

PART A – QUEENSTOWN PARK SPECIAL ZONE

11. QPL lodged a submission seeking that its land be zoned QPSZ. The QPSZ provisions supported by QPL are attached as **Appendix 1**. QPL seeks that these provisions replace the Rural Zone for the QPL land.
12. In addition to the above general grounds of appeal, QPL considers that the QPSZ is better than the Rural Zone because:
- (a) It provides effective protection of identified significant natural areas;
 - (b) It maintains and enhances public access to and along lakes and rivers;
 - (c) It protects the outstanding natural landscape;
 - (d) It reduces the risk of adverse effects on water quality;
 - (e) It recognises and enhances the recreational values of the QPL land and The Remarkables;
 - (f) It is an efficient use of the natural and physical resources of the QPL land;
 - (g) It implements higher order regional planning instruments; and

- (h) It delivers regional and national economic benefits.

Relief sought

- 13. QPL seeks that the QPSZ provisions attached as **Appendix 1** be applied to the QPL Land.
- 14. The QPSZ structure plan and Gondola Corridor is attached as **Appendix 2**. QPL seeks that:
 - (a) The QPSZ plan be included as part of the QPSZ provisions;
 - (b) The QPSZ be shown on the relevant planning maps as a special zone or resort zone (including but not limited to planning maps 13, 15a 30, 31, 31a and 33); and
 - (c) The proposed Gondola Corridor extend from the Remarkables Park Zone to the Remarkables Ski Area Subzone and be shown on the same planning maps as set out above at paragraph 14(b).

PART B – PROPOSED PLAN CHAPTERS

Chapter 2 – Definitions

- 15. QPL's further submissions supported expanding the definition for 'Passenger Lift Systems' to better make provision for the full range of commercial recreation activities associated with gondolas.

Relief

- 16. QPL seeks that the definition of 'Passenger Lift Systems' be amended to include facilities associated with gondola systems.

Chapter 3 – Strategic Direction

- 17. QPL's submissions and further submissions expressed concern the provisions in Chapter 3 that sought to constrain or minimise the function of existing commercial centres.
- 18. QPL also opposed the use of the word "avoid" in policies addressing present and future commercial zoning within the district.
- 19. QPL sought the inclusion of objectives and policies that encouraged diversification of land use, particularly in rural areas.

20. QPL opposed the strict application of urban growth boundaries and sought that some exceptions be enabled. It opposed the use of the word “avoid” in objectives and policies relating to urban growth boundaries.
21. QPL supported policies addressing effects on water quality and encouraging public trails and linkages.
22. QPL sought a more balanced approach to the management of Outstanding Natural Landscapes (“**ONL**”) and sought to avoid repetition between chapters 3 and 6 of the Proposed Plan.

Relief Sought

23. The objectives and policies in Chapter 3 have undergone significant amendment and reorganisation since the notified version of the Proposed Plan. Consistent with the issues set out in QPL’s submissions and further submissions (summarised above), QPL seeks:
 - (a) That the words “and risks detracting from rural landscapes, particularly its outstanding landscapes” be deleted from Issue 2;
 - (b) Deletion of Objective 3.2.1.2;
 - (c) That Objective 3.2.1.3 be amended to recognise the broader function of Frankton for visitors and residents;
 - (d) That Objective 3.2.1.8 be amended by deleting the phrase “provided that the character of rural landscapes, significant nature conservation values and Ngai Tahu values, interests and customary resources, are maintained”;
 - (e) Deletion of Objective 3.2.2.1 e;
 - (f) Deletion of Objective 3.2.5;
 - (g) That Policy 3.3.1 be amended to recognise the contribution of rural areas to the “Visitor Industry”;
 - (h) Delete the words after the phrase “...enhancement of the centres...” in Policy 3.3.2;
 - (i) Amend Policies 3.3.3, 3.3.4, and 3.3.6 to recognise that Frankton (and particularly the Remarkables Park Zone) function as a town centre;

- (j) Delete Policy 3.3.14 or amend to provide for exceptions to the urban growth boundary;
- (k) Delete the words “and on the basis that they would protect, maintain or enhance landscape quality, character and visual amenity values” from Policy 3.3.21;
- (l) Delete Policy 3.3.23;
- (m) Delete Policy 3.3.24;
- (n) Add a policy under the heading “Rural Activities” that recognises and encourages diversification of land use in the Rural Zones; and
- (o) Delete Policy 3.3.30.

Chapter 4 – Urban Development

24. QPL’s submissions and further submissions sought specific recognition of exceptions to the urban growth boundary. QPL also sought that the urban growth boundary be applied in a less onerous and unequivocal manner.

Relief Sought

- (a) Delete “and defensible urban edges” from Objective 4.2.1;
- (b) Delete Policy 4.2.1.3 or amend it to specifically provide for exceptions to the urban growth boundary in appropriate circumstances;
- (c) Delete Policy 4.2.1.4 f. or amend it to clarify that appropriate development can occur outside the urban growth boundary that is not “sporadic”;
- (d) Delete Policy 4.2.1.5; and
- (e) Add a policy that expressly states that urban development can occur outside the urban growth boundary in appropriate circumstances.

Chapter 6 – Landscapes and Rural Character

25. QPL's submissions and further submissions opposed the elevation of farming over other activities that benefit from a rural location. QPL supported diversification of rural land use and the encouragement of appropriately located and scaled activities such as tourism, recreation, residential and commercial activities.
26. The emphasis on diversification in QPL's submissions and further submissions was driven, in part, by a desire to use land efficiently and effectively. Traditional farming activities may no longer be viable, and the Proposed Plan should recognise and provide for this.
27. QPL also opposed a prescriptive approach to the sustainable management of landscapes and rural character and the use of the word "avoid". QPL sought recognition of the opportunity to establish various activities in the Rural Zone through an "effects based" planning regime.

Relief Sought

28. The Objectives and Policies in Chapter 6 have been amended significantly from the notified version of the Proposed Plan. QPL generally supports the move toward "management" policies as compared with the prescription in the notified Proposed Plan. However, it considers that the Chapter 6 Objectives and Policies still give sufficient recognition to diversification of rural land use. QPL seeks the following relief:
 - (a) Add a policy that expressly recognises that tourism activities may establish in the Rural Zone;
 - (b) Add a policy that expressly recognises that diversification of land use in rural area can deliver environmental benefits while also maintaining or compliment rural character;
 - (c) Add a policy that recognises that some commercial development may be appropriate in the Rural Zone to support existing and proposed non-farming activities (for example, food and beverage, recreation, retail and cultural activites);
 - (d) Delete Policy 6.3.4 or delete the word "Avoid" and replace with "Limit";
 - (e) Delete Policy 6.3.7 or amend by adding "..., and that such farming activity may need to be supplemented by other non-farming activities on large sites.";

- (f) Delete Policy 6.3.12;
- (g) Amend Policy 6.3.14 to recognise and provide for diversification of land use in the Rural Zone and acknowledge that farming is not the only important or valued use of rural land;
- (h) Delete Policy 6.3.16; and
- (i) Add a Policy that states “Tourism and associated activities may need to be located within Outstanding Natural Landscapes for functional reasons”.

Chapter 21 – Rural

- 29. Consistent with its submissions and further submissions on Chapter 6, QPL sought amendments to Chapter 21 to recognise that a variety of activities occur within the Rural Zone (such as viticulture, tourism, rural living, recreation) and, as such, the Proposed Plan’s focus on farming was misplaced. Traditional farming activities have the potential to degrade land and water resources.
- 30. QPL’s submissions and further submissions emphasised the importance of diversification of land use in the Rural Zone and the contribution rural areas can make to tourism (in particular, access to ski areas, lakes and rivers, rural environment use and education).
- 31. In this regard, Objective 21.2.1 is broadly supported, particularly the reference to enabling a “range of land uses”. However, QPL considers that the policies in Chapter 21 do not implement Objective 21.2.1 because they focus on enabling traditional farming while limiting other activities.

Relief Sought

- (a) Amend the opening words of policy 21.2.1.1 to read “Enable a range of activities while protecting, maintaining or enhancing...”;
- (b) Amend the opening words of Policy 21.2.1.10 to read “Provide for commercial activities in the Rural Zone that have a link with...”;
- (c) Delete Policy 21.2.1.11;
- (d) Amend Policy 21.2.1.15 by inserting the word “significantly” before the phrase “...diminish rural amenity...”;

- (e) Add a new Policy 21.2.3.4 that states “Provide for diversification of land use where water quality benefits can be achieved”;
- (f) Delete Objective 21.2.10 and Policies 21.2.10.1, 21.2.10.2, 21.2.10.3 and 21.2.10.4;
- (g) Amend Policy 21.2.12.3 to read “Enable people to have access to a wide range of recreational and educational experiences on, along and near the lakes and rivers...”;
- (h) Amend the Activity Status in Rule 21.4.17 to Controlled;
- (i) Amend the Activity Status in Rule 21.4.19 to Controlled;
- (j) Add a new activity to Table 1 “Commercial Activities linked to the natural and physical resources of the rural area” and apply “Controlled” Activity Status;
- (k) In respect of (h), (i) and (j) above, control is limited to the location of the activity and buildings, and rural amenity and landscape character;
- (l) Add a new activity to Table 1 “Commercial Activities complementing Passenger Lift Systems” and apply “Controlled” Activity Status. The matters for control should be the same as the discretions under Rule 21.4.24;
- (m) Add a new activity to Table 1 “Commercial Water Transport” and apply “Controlled” Activity Status;
- (n) Add a new activity to Table 1 “Restaurant/Café” and apply “Controlled” Activity Status; and
- (o) Amend the Activity Status in Rule 21.9.1 to Controlled.

Chapter 27 – Subdivision and Development

32. QPL’s submission sought amendments to Chapter 27 to better recognise that subdivision and development in the rural zones will be appropriate in some cases, and to recognise that change is not always detrimental and a balanced assessment to development is important. The amendments sought in QPL’s submission aimed to better give effect to the effects-based regime of the RMA whereby protection is not always necessary.

Relief sought

- (a) Rezone parts of QPL's land that are identified as 'pods' in the Structure Plan (attached as "B") as Rural Residential Zone.¹

Chapter 30 – Energy and Utilities

- 33. QPL's submission and further submission sought recognition of water-based transport and gondolas as transport infrastructure that can reduce reliance on private cars. It also sought that flood protection works could be undertaken by private interests. A review of Chapter 30 revealed a cross-referencing error at 30.5.1.5 in that it refers to Rule 30.4.5.1.2 and that rule appears to have been deleted or renumbered.

Relief Sought

- (a) Express confirmation in the rules or definitions that flood protection works can be undertaken by private interests and private landowners; and
- (b) Amend the cross-reference in Rule 30.5.1.5 to "30.5.1.2".

Chapter 33 – Indigenous Vegetation and Biodiversity

- 34. The central issues raised in QPL's submissions and further submissions related to the accuracy of Significant Natural Area ("SNA") mapping and enabling appropriate diversification of land use to enable sustainable protection of SNAs. The Proposed Plan imposes onerous restrictions on private landowners but does not provide an adequately flexible land use regime as a fair and equitable balance to those restrictions. Incentives should be offered.
- 35. The emphasis on protection of SNAs is misplaced because the policies acknowledge the indigenous vegetation can be cleared.
- 36. QPL supports enhancement of SNAs in the context of diversification of uses. However, QPL considers that the planning provisions provide no proper process by which revegetation proposals could be pursued (as one form of enhancement).
- 37. There are four SNAs identified on QPL's land. QPL opposes the identification of those SNAs.

¹ The pods form part of QPL's land identified as Lot 2 DP 492600 – 10.671000 Ha CT – 716491 and Lot 3 DP 475347 – 1.413000 Ha CT – 716491.

Relief Sought

- (a) Delete SNAs F32A (further itemised as F32A1, F32A2 and F32A3) and F32B.
- (b) Amend Objective 33.2.1 to read “Ensure that indigenous biodiversity is protected, managed, maintained or enhanced”;
- (c) Add a policy that states “Incentivise the protection of SNAs in rural areas through providing development rights or enabling diversification of land use where protection of SNAs is provided”;
- (d) Add a policy that states “Recognise the importance of providing for a range of activities that have the potential to achieve sustainable land management of SNAs”;
- (e) Add a policy that states “Enable access to SNAs for recreation and tourism purposes”;
- (f) Add a policy that states “Recognise that some rural based activities will require indigenous vegetation clearance”;
- (g) Add a policy that states “Recognise the importance of providing public access to SNAs and increasing the understanding of the values associated with these areas”;
- (h) Add a policy that states “Recognise the importance of providing public access to the Remarkables Alpine Recreation Area where alpine SNAs may be present”;
- (i) Delete Policies 33.2.1.3, 33.2.1.5, 33.2.2.1, 33.2.3.4 and 33.2.4.1;
- (j) Amend policy 33.2.2.2 to read “Allow the clearance of indigenous vegetation within Significant Natural Areas where that clearance is undertaken in a manner that retains the indigenous biodiversity values”;
- (k) Increase the level of permitted vegetation clearance in Rule 33.5.1.1 to 2000m²;
- (l) Increase the level of permitted vegetation clearance in Rule 33.5.1.2 to 20,000m²;
- (m) Increase the level of permitted vegetation clearance in Rule 33.5.2.1 to 250m²;
- (n) Increase the level of permitted vegetation clearance in Rule 33.5.2.2 to 5000m²;

- (o) Add a new Rule under 33.5 “Earthworks or clearance of indigenous vegetation for the formation of walking tracks” as a permitted activity; and
- (p) Amend Rules 33.5.3 and 33.5.4 to expressly exclude “earthworks for the formation of walking tracks”.

CONSEQUENTIAL AND FURTHER RELIEF

38. In addition to the specific relief set out above, QPL seeks such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this appeal and the relief requested in QPL’s submissions.

Service

39. An electronic copy of this notice is being served today by email on the QLDC at dpappeals@qldc.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice to other persons:

- (a) Where the appeal is based on an original submission made by QPL, notice has been electronically served by email to every person that made a further submission on the relevant submission; and
- (b) Where the appeal is based on a further submission made by QPL, notice has been electronically served on the person who made the related original submission and every other person who made a further submission on that same original submission.

40. A copy of this notice has been lodged today with the Environment Court:

- (a) electronically by email to Christine.Mckee@justice.govt.nz; and
- (b) by posting a hard copy to: PO Box 2069, 20 Lichfield Street, Christchurch.

Attachments

41. Copies of the following documents are attached to this notice:

- (a) QPSZ Provisions;
- (b) QPSZ Structure Plan and Gondola Corridor;

- (c) QPL's original submissions; and
- (d) The relevant parts of the Decision.

DATED the 19th day of June 2018



J D Young / R S Ward

Counsel for the Appellant

THIS NOTICE OF APPEAL is filed by **JOHN YOUNG**, solicitor for Queenstown Park Limited. The address for service of the appellant is at the offices of Brookfields Lawyers, Tower 1, 9th Floor, 205 Queen Street, Auckland.

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

1. Posted to the solicitors at PO Box 240, Auckland 1140
2. Left for the solicitors at Document Exchange for direction to DX CP24134.
3. Transmitted to the solicitors by facimile to 09 379 3224.
4. Emailed to the solicitors at youngj@brookfields.co.nz / ward@brookfields.co.nz

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

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 of the Resource Management (forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to Christine.Mckee@justice.govt.nz) and serve copies of your notice on the Queenstown Lakes District Council and the appellant.

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 RMA.

You may apply to the Environment Court under section 21 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

Advice

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