

IN THE ENVIRONMENT COURT

ENV-2018-

IN THE MATTER

of an appeal under clause 14(1) of
The First Schedule to the Resource
Management Act 1991

BETWEEN

**HOMESTEAD BAY TRUSTEES
LIMITED**

Appellant

AND

**QUEENSTOWN LAKES DISTRICT
COUNCIL**

Respondent

**NOTICE OF APPEAL BY HOMESTEAD BAY TRUSTEES LIMITED AGAINST
DECISION ON DISTRICT PLAN REVIEW HEARING STREAM 13**

18 June 2018

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To The Registrar Environment Court Christchurch

Introduction

1. Homestead Bay Trustees Limited ("**HBTL**") appeals against the decision made by Hearing Commissioners on behalf of Queenstown Lakes District Council ("**Council**") on District Plan Review hearing Stream 13 of the Queenstown Lakes District Plan ("**Plan Review**" and "**District Plan**").
2. HBTL made a submission on the Plan Review (attached as **Appendix A**) and appeared at the hearing on 8th August 2017.
3. HBTL is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("**RMA**").
4. HBTL received notice of the Council's decision on the Plan Review on 7th May 2018.
5. The particular parts of the Council's decision that HBTL is appealing are:
 - (a) District Planning Map 41 in relation to the extension of the Jacks Point Zone to include R(HB) - D, (Lots 6 & 7 DP 452315);
 - (b) District Planning Map 41 in relation to the extension of the Urban Growth Boundary to include R(HB) - D, (Lots 6 & 7 DP 452315);
 - (c) District Plan Chapter 41 (Jacks Point) Structure Plan: 41.7 to include Activity Area R(HB) - D, (Lots 6 & 7 DP 452315);
 - (d) Chapter 41 (Jacks Point) decisions version:
 - (i) Rule 41.4.4.12 (delete);
 - (ii) Rule 41.5.1.1 (delete);
 - (iii) Rule 41.5.2.5; (amend);
 - (iv) Delete Rule 41.5.4.7 (delete);
 - (v) Rule 41.5.1.13 (new);
 - (vi) Rule 41.5.4.8 (delete);
 - (vii) Rule 41.5.5.3 (amend);
6. These provisions are described in more detail below, followed by the grounds for this appeal and the relief sought by HBTL.

Activity status in Area D

7. Under the Operative District Plan's standard 12.2.5.1 the use of the Open Space Horticulture Activity Area was: *"restricted to horticultural activities and accessory buildings and activities, and residential activities, provided that:*
 - (i) No more than 15 building platforms are permitted within the Activity Area;*
 - (ii) Those 15 building platforms referred to in (i) above are confined to 3 or 4 clusters; and*
 - (iii) No building is to be erected prior to the horticultural activity being approved by the Council and planted."*
8. Building in the Open Space Horticulture activity area is a listed controlled activity under part 12.2.3.2 Operative District Plan.
9. Standard 41.5.4.8 of the notified version of the Proposed District Plan specifies the activities in (i) to (iii) above are restricted discretionary activities while it is a discretionary activity under rule 41.4.4.12 for "horticultural activities and accessory buildings and activities, and residential activities".
10. Proposed District Planning Map 41 identifies the Open Space Horticulture Activity Area within the Urban Growth Boundary. The Urban Growth Boundary is supported by Strategic Chapter 4 – Urban Growth and the PDP defines the urban growth boundary as *"...a boundary shown on the planning maps which provides for and contains existing and future urban development within an urban area."*
11. The recommendation of the Panel records:
 - (a) *"Strategically, we consider that the Coneburn Valley is suitable for urbanisation and would be a logical area for expansion of Queenstown long term."* [294]
 - (b) *"Self-servicing the development of Homestead Bay is the submitters' prerogative, we have been left wondering whether a thorough investigation of alternatives might have resulted in the opportunity to develop this land more intensively in future."* [322];
 - (c) Concerns in regards to enabling residential activity in R(HB) - D within close proximity of the airstrip and the fact that given the lack of any noise modelling data. [336];

- (d) Accepted and relied on the Memorandum of Traffic Conferencing insofar as it addresses the issue of access to SH6. However, raised concerns in the ability of any trigger rule in relation to monitoring when the residential equivalent of 244 ODP capacity for Homestead Bay had been reached. [346];
 - (e) R(HB) - D was not disputed in terms of the extent to which the submitters' amended relief satisfied the objectives and policies of the Plan concerning views of the ONL from the State Highway. [355];
12. The decision rejected medium density residential activity in Area D for reasons which included:
- (a) Failing to establish the proposed wastewater treatment would not compromise the existing water supply bore;
 - (b) Failing to confirm there the location of the 55dbh contour on the southern side of the existing airstrip;
 - (c) Failing to demonstrate how cumulatively the 244 dwelling residential equivalent is monitored.

Grounds for appeal: Area D and Map 13

13. The reasons for the appeal in respect of Map 13 and the Homestead Bay Structure Plan of the Jack's Point Special Zone (Map 41) are that the Council's decision:
- (a) fails to promote the sustainable management purpose of the RMA, particularly by managing the use, development, and protection of natural and physical resources in a way which enables people and communities of Queenstown and the wider region to provide for their social, economic, and cultural well-being and for their health and safety while avoiding, remedying, or mitigating any adverse effects of activities on the environment;
 - (b) fails to ensure the efficient use and development of natural and physical resources;
 - (c) fails to achieve consistency with the relevant planning instruments and to give effect to the higher order planning instruments;
 - (d) fails to change the District Plan in accordance with the matters set out in section 74 and 75 of the RMA;

- (e) fails properly to evaluate the changes advanced by submitters to the provisions of the Plan Change as notified; and
 - (f) make changes to the provisions of Plan Review that were not based on any submissions and were therefore outside the Council's decision-making scope.
14. In addition, without derogating from the generality of the points above, other specific reasons for the appeal include that the decision:
- (a) fails properly to recognise Homestead Bay as having potential to provide for a supply of residential opportunities that allow people to provide for their social and economic wellbeing;
 - (b) fail properly to recognise the benefits of a strong and effective Homestead Bay Structure Plan in terms of:
 - (i) promoting the health and safety of people and communities;
 - (ii) facilitating appropriate medium density residential development; and
 - (iii) achieving the efficient use of natural and physical resources;
 - (c) are not consistent with the Jack's Point Zone objectives and policies;
 - (d) fail to give effect to objectives in Chapter 4 of the District Plan (Urban Growth) in that:
 - (i) a density of development within Homestead Bay's Area D (medium density) is able to be serviced by appropriate infrastructure whilst avoiding remedying and mitigating adverse effects, and
 - (ii) Homestead Bay Village Centre is recognised and supported by enabling appropriate establishment and operation of medium density residential activities within its immediate vicinity, and
 - (iii) infill development at Homestead Bay between Jack's Point to the north and Lakeside Estates to the south is the best use of the land resource and is ultimately inevitable.¹

¹ Panel's recommendation at xx

Servicing

15. Contrary to the Panel's findings at paragraph 319 of the Mapping Decision sufficient evidence was available that there are appropriate wastewater disposal solutions and HBTL's experts identified an area of land for the disposal of treated wastewater.
16. The Land can be entirely self-serviced without any assistance from the Council and access to Council-owned infrastructure can be provided.
17. The Respondent's experts agreed that the proposed storm water solution was appropriate for the proposal and HBTL considers that the concerns raised regarding the Coneburn Water Supply intake can be addressed at the regional consenting stage.

Noise Effects from the Airstrip

18. The Panel erred in its view that it did not have the necessary evidence in relation to noise effects associated with the use of the airstrip on the Land.
19. HBTL opposes Rule 27.7.5.4 set out at paragraph 378 of the Mapping Decision as Airport Noise Standard NZS 6805:1992 does not contemplate that residential activity is prohibited within the 55 dB LDN contour, rather new noise sensitive activities should be subject to a requirement to incorporate appropriate acoustic insulation to ensure a satisfactory internal noise environment.
20. Accordingly, HBTL considers that noise effects can be controlled by way for a rule to ensure that at the time of subdivision (after earthworks have been completed), contour lines are defined and appropriate steps taken to ensure an acceptable level of internal noise amenity. To ensure this, HBTL sought that the following rule be added to the subdivision chapter:

"27.7.14.8: Following the construction of State Highway Earthworks and prior to the subdivision of Residential Activity Areas R(HB) A – C an acoustic assessment (Homestead Bay Noise Contours) shall determine the extent of the 55dBA contour to the south of the existing air strip. Should any residential sites be located between the 55dBA contour and the airstrip the following consent notice shall be registered:

"Any residential building shall be designed to achieve an Indoor Design Sound Level of 40 dB Ldn within any Critical Listening Environment, based on the Homestead Bay Noise Contours. Compliance shall be demonstrated by either installation of mechanical ventilation to achieve the requirements in Table 4 of Chapter 36 or by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the Indoor Design Sound Level with the windows open."

21. The Panel erred in not providing for this rule mechanism to manage any noise effects associated with the airstrip and maintain amenity values while protecting the airstrip from incompatible land uses.

Access

22. In relation to traffic and access, all the traffic engineers agreed that access to the proposed rezoning could be provided and the Panel agreed at paragraph 349 of the Mapping Decision that access from either Maori Jacks Road or SH6 could be provided.

Relief sought: Map 13, Area D and Structure Plan

23. In order to enable development of medium density residential dwellings and accessory buildings, HBTL seeks the following relief (or wording to like effect and any consequential changes that may arise):
- (a) The decision version of Planning Map 13 is amended to extend the Jacks Point Zone so as to include the R(HB) - D land as depicted in Attachment B of primary submission #715 attached as Appendix A;
 - (b) The decision version of Planning Map 13 is amended to extend the Urban Growth Boundary so as to include the full extent of the R(HB) - D land as depicted in Attachment B of primary submission #715 attached as Appendix A;
 - (c) The decision version of Part 41.7 of Chapter 41, "Jacks Point Structure Plan – Homestead Bay Insert" is deleted and replaced with the version contained in Attachment B of primary submission #715 attached as Appendix A, so as to include R(HB) - D land;
 - (d) Delete Rule 41.4.4.12;
 - (e) Amend Rule 45.5.1.1 as follows or, in the alternative, such greater density as deemed appropriate to achieve medium density:

45.5.1	Density	
	<p>41.5.1.1</p> <p>The average density of residential units within each of the Residential Activity Areas shall be as follows:</p> <p>R(jP) – 1 13 – 19 per Ha R(jP) – 2A 14 – 33 per Ha R(jP) – 2B 14 – 15 per Ha R(jP) – 3 14 per Ha R(jP-SH) – 1 10 per Ha R(jP-SH) – 2 9 per Ha R(jP-SH) – 3 5 – 27 per Ha R(jP-SH) – 4 5 – 12 per Ha R(HD-SH) – 1 12 – 22 per Ha R(HD-SH) – 2 2 – 10 per Ha R(HD) – A 17 – 26 per Ha R(HD) – B 17 – 26 per Ha R(HD) – C 15 -22 per Ha R(HD) – D 17 – 26 per Ha R(HD) – E 25 – 45 per Ha R(HD) – F 17 – 24 per Ha RL 2 per Ha</p> <p><u>R(HB)D 10-15 per hectare</u></p> <p>Density shall be calculated on the net area of land available for development and excludes land vested or held as reserve, open space, public access routes or roading and excludes sites used for non-residential activities. Within the Residential Areas of Hanley Downs, if part of an Activity Area is to be developed or subdivided, compliance must be achieved within that part and measured cumulatively with any preceding subdivision or development which has occurred with that Activity Area. Within the jacks Point Residential Activity Areas, density shall be calculated and applied to the net area of land across the whole Activity Area, as defined in 41.5.1.1 above.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. residential amenity values;</p> <p>b. traffic, access, parking;</p> <p>c. adequacy of infrastructure.</p>

(f) Delete Rule 41.5.2.5;

(g) Delete Rule 41.5.4.7;

(h) New Rule 41.5.1.13:

41.5.1	Residential Activity Area	
	<p><u>Foreshore Revegetation</u></p> <p><u>41.5.1.13</u></p> <p><u>In the R(HB)D and V(HB) Activity Areas, no residential units may be constructed until a revegetation plan (including species lists, planting density, weed and pest control strategies) is approved by Council for the gully area identified on the Structure Plan. This plan shall detail a five-year planting programme and maintenance plan. The goal of the programme shall be to achieve a self-sustaining colony of appropriate indigenous vegetation within ten years.</u></p>	<p><u>NC</u></p>

(i) Delete Rule 41.5.4.8;

(j) Amend Rule 41.5.5.3:

41.5.5	General Zone Wide Standards	
	<p>Access to the State Highway</p> <p>41.5.5.3</p> <p>Access from State Highway 6 shall be only at the intersections at Maori Jack Road, and Woolshed Road, <u>Homestead Bay Access</u> and in a third location as approved by RM160562, as shown on the Structure Plan.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. the safe and efficient functioning of the road network</p>

(k) Insert New Rule 41.5.5.5:

41.5.5	General Zone Wide Standards	
	<p><u>Homestead Bay Access</u></p> <p><u>41.5.5.5</u></p> <p><u>Only 244 residential lots, or non-residential activity that is projected to generate the equivalent traffic volumes, may be built within the Homestead Bay Area of the Jacks Point Zone and utilise Maori Jack Road.</u></p>	<p><u>NC</u></p>

(l) Delete Rule 41.4.2.1.

24. HBTL opposes any further provisions and seeks such further, other, amended, alternative or consequential relief as is necessary or appropriate to give effect to this appeal.

Appendices to this Notice of Appeal

25. The following documents are attached to this notice:

- (a) a copy of HBTL's submission and further submission on the Plan Review (**Appendix A**);
- (b) Map 13 as notified (**Appendix B**);
- (c) a modified Map 13 with expanded areas D and OSR - South (**Appendix C**);
- (d) a list of names and addresses of persons served with a copy of this notice (**Appendix D**).



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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 Auckland, Wellington or Christchurch.