

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2019-CHC-082

Under the Resource Management Act 1991 (**RMA**)

In the matter of An appeal under clause 14(1) of Schedule 1 of the RMA in relation to the proposed Queenstown Lakes District Plan

Between **Roger Monk**
Appellant

And **Queenstown Lakes District Council**
Respondent

AMENDED Notice of Appeal

17 February 2021

Appellant's solicitors:

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To The Registrar
Environment Court
Christchurch

- 1 Roger Monk appeals against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 Roger Monk made a Stage 1 submission (#780) and a Stage 2 submission (#2281) on the PDP.
- 3 Roger Monk is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 Roger Monk received notice of the decision on 21 March 2019.
- 5 The decision was made by Queenstown Lakes District Council (**QLDC**).
- 6 The parts of the decisions appealed relate to:
 - (a) Chapter 24 Wakatipu Basin Variation;
 - (b) Chapter 27 Subdivision;
 - (c) Planning Maps 13, 26 and 30.
- 7 The reasons for appeal are summarised below. The specific provisions and the relief sought by Roger Monk are set out in **Appendix A** to this appeal.

Background

- 8 Roger Monk has an interest in land set back from McDonnell Road, legally described as Lot 3 DP 506191 (**McDonnell Land**), and land at 74 Jean Robins Drive, legally described as Lot 1 DP 358538 (**Lake Hayes Land**)
- 9 In Stage 1 of the PDP the McDonnell Land was notified as Rural, and the Lake Hayes Land was notified as Rural Residential.
- 10 The McDonnell Land and the Lake Hayes Land were included in the Stage 2 Wakatipu Basin Variation (**Variation**), and both were notified as Wakatipu Basin Rural Amenity Zone (**WBRAZ**), identified in Schedule 24.8 as part of Landscape Character Unit (**LCU**) 24 "South Arrowtown" and LCU 13 "Lake Hayes Slopes" respectively.
- 11 In the Decision Version of the Variation both the McDonnell Land and the Lake Hayes Land were zoned WBRAZ.

Chapter 24 Wakatipu Basin

- 12 The Variation does not reflect the historical and existing development of the Wakatipu Basin. It provides for an arbitrary subdivision and development regime that is not compatible with the established character and land uses in the Basin, and does not sufficiently provide for or enable the social, economic and cultural benefits of rural living development.
- 13 The provisions of Chapter 24, together with the subdivision regime for the Basin set out in Chapter 27, create an unnecessarily restrictive regime for development and land use that unreasonably limits landholders' rights. The provisions of Chapter 24 should be amended to better recognise landholders' existing rights, to provide for appropriate future development, and to better enable rural living opportunities.
- 14 The specific provisions of Chapter 24 and the relief sought by Roger Monk are set out in **Appendix A** to this Appeal.

Chapter 27 Subdivision and Development

- 15 The subdivision regime proposed for the Wakatipu Basin is opposed. The change in the default activity status of subdivision from controlled in the ODP (for rural living zones) to restricted discretionary for the Wakatipu Basin is a significant change in the approach to management of subdivision, which introduces a level of uncertainty that is inconsistent with the higher order chapters of the PDP and Part 2 of the Act. Coupled with minimum lot sizes and the inclusion in Chapter 24 of restrictive standards on building height and setbacks, the regime is considered too restrictive on the building rights of landholders in the Wakatipu Basin.
- 16 The minimum lot densities introduced for the WBRAZ and WBLP are arbitrary and do not reflect existing landholdings. In particular, a minimum lot density of 80ha in the WBRAZ is illogical and unworkable, and will result in ineffective land use and wasted development opportunities, whilst not guaranteeing protection of landscape character and amenity values. An 80ha minimum is too large to be reasonably maintained as a rural lifestyle block, while being too small to be farmed economically. It ignores the potential for much of the Basin to be sensitively and appropriately developed, and is inconsistent with the high demand for housing in the District.
- 17 A minimum average lot size regime is supported for the WBLP, as opposed to a minimum lot size regime. This approach provides planning flexibility and the resulting range of lot sizes will provide variety and enhance landscape character throughout the Basin. 4000m² is considered to be an appropriate minimum average lot size, as this reflects the existing ODP position in the Rural

Residential Zone, and allows for a suitable degree of future development in existing WBLP landholdings.

- 18 The specific provisions of Chapter 27 and the relief sought by Roger Monk are set out in **Appendix A** to this Appeal.

Planning Maps 13d, 26 and 30

- 19 Roger Monk opposes the zoning of the McDonnell Land and Lake Hayes Land as WBRAZ.

McDonnell Land and LCU 24

- 20 Schedule 24.8 identifies LCU 24 as having a 'high' capacity to absorb additional development, a low level of naturalness, and a sense of place characterised by the predominant land uses of the golf course, rural residential development, and the Arrowtown Lifestyle Retirement Village.

- 21 Given the landscape character and amenity values identified in Schedule 24.8, it is unreasonable that the majority of the land within LCU 24 has been zoned WBRAZ. This zoning fails to provide for appropriate future development that is clearly anticipated for LCU 24 and is able to be adsorbed. It enforces limitations on development that are incompatible with the actual use of land within the LCU in practice, and undermines the economic investment of landowners. It is maintained that a higher density zoning is necessary to provide for the social, cultural and economic wellbeing of landholders and users of the various community activities within LCU 24.

- 22 At the Council hearing concerns were raised that despite the potential for LCU 24 to absorb further development and possibly provide for urban development in the future, rezoning the LCU to WBLP would make such future urbanisation difficult. If this concern is maintained by Council Roger Monk consider's it would be most appropriate to withdraw the McDonnell Land (and any surrounding area considered suitable for future urbanisation) from the Variation and Stage 2 of the PDP, so that an appropriate zoning providing for an efficient degree of urban development can be determined. The Independent Commissioners recommended that Council undertake a structure planning exercise for LCU 24. They proposed a Future Urban Zone or similar zoning might be appropriate for the LCU. Roger Monk would support withdrawal of the Land or the entire LCU 24 from the Variation to enable such a structure planning exercise to be undertaken.

- 23 Roger Monk seeks that the McDonnell Land and the entirety of LCU 24 be rezoned to WBLP with a minimum average lot density of 4000m².

Lake Hayes Land and LCU 13

- 24 The Lake Hayes Land and surrounding land within LCU 13 was zoned Rural Residential under the Operative District Plan and notified as such in Stage 1 of the PDP.
- 25 Schedule 24.8 identifies LCU 13 as having a predominantly rural residential land use, a close proximity to the key State Highway 6 transport route, and a low degree of naturalness. The majority of LCU 13 is within the Council reticulated wastewater treatment scheme. However, LCU 13 has been identified as having a 'low' capacity to absorb additional development. This determination is opposed.
- 26 The zoning of LCU 13 as WBRAZ does not reflect the existing character, land uses and lot densities of the area. It undermines the established building rights of landowners under the ODP, and unreasonably prevents further development that can be accommodated in the LCU.
- 27 The concerns raised regarding the water quality of Lake Hayes do not justify a complete bar of development within the Lake Hayes Catchment. Council's decision to 'down-zone' all land within the Lake Hayes Catchment not serviced by a reticulated wastewater treatment scheme to WBRAZ relied on one-sided presentations relating to the effects on water quality in the Lake Hayes Catchment which were not adequately supported by evidence.
- 28 Given that management of water quality is a Regional Council function, it is unreasonable for the District Council to use a zoning as a complete bar to development based on water quality concerns. Water quality should instead be addressed through the appropriate Regional Council mechanisms.
- 29 In this instance most of the land within LCU 13, including the Lake Hayes Land, is within Council's reticulated scheme, so this consideration should be of minor concern.
- 30 Roger Monk seeks that the Lake Hayes Land and the entirety of LCU 13 be rezoned to Rural Residential Zone as notified in Stage 1.
- 31 The specific amendments sought to the planning maps in relation to the McDonnell and Lake Hayes Land and LCUs 24 and 13 are set out in **Appendix A** to this Appeal.

Further and consequential relief sought

- 32 Roger Monk opposes any further provisions and seeks alternative, consequential, or necessary additional relief to that set out in this appeal to give effect to the

matters raised generally in this appeal, or such other changes that give effect to the outcomes sought in the submission.

Attachments

33 The following documents are **attached** to this notice:

- (a) **Appendix A** – Relief sought;
- (b) **Appendix B** – A copy of the Appellant's submission and further submissions;
- (c) **Appendix C** - A copy of the relevant parts of the decision; and
- (d) **Appendix D** - A list of names and addresses of persons to be served with this notice.

Dated this 17th day of February 2021



Vanessa Robb/Roisin Giles
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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).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and (or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

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

Appendix A – Relief sought

Provision (PDP decision version)	Reason for appeal	Relief sought
Chapter 24 Wakatipu Basin		
<p>Rule 24.5.7 Height of buildings</p> <p>Rule 24.5.7.1 <i>The maximum height of buildings shall be 6m.</i></p> <p>[non-compliance: RD]</p> <p>Rule 24.5.7.2 <i>The maximum height of buildings shall be 8m.</i></p> <p>[non-compliance: NC]</p>	<p>Oppose</p> <p>A maximum building height of 8m as a restricted discretionary activity is appropriate in the Basin.</p> <p>There are circumstances where higher buildings are appropriate and lead to positive design and landscape outcomes. Allowing for an 8m height limit as a restricted discretionary activity provides for flexible planning and promotes positive design outcomes where a taller building is appropriate.</p>	<p>Amend Rule 24.5.7 Height of buildings:</p> <p>Rule 24.5.7.1 <i>The maximum height of buildings shall be <u>6</u>8m.</i></p> <p>[non-compliance: RD]</p> <p>Rule 24.5.7.2 <i>The maximum height of buildings shall be 8m.</i></p> <p>[non-compliance: NC]</p>
<p>Rule 24.5.8 Setback from roads</p> <p><i>The minimum setback of any building from road boundaries shall be 75m in the Precinct and 20m elsewhere in the Rural Amenity Zone.</i></p> <p>[non-compliance: RD]</p> <p><i>Discretion is restricted to:</i></p> <p><i>a. Building location, character, scale and form;</i></p> <p><i>b. External appearance including materials and colours;</i></p> <p><i>c. Landscaping/planting (existing and proposed).</i></p>	<p>Oppose</p> <p>A 75m setback from roads in the Precinct is unworkable for the majority of lots in existence and thus creates an arbitrary standard that cannot be complied with.</p>	<p>Amend Rule 24.5.8 – Setback from roads</p> <p><i>The minimum setback of any building from road boundaries shall be <u>75</u>10m in the Precinct and 20m elsewhere in the Rural Amenity Zone.</i></p> <p>[non-compliance: RD]</p>
<p>Rule 24.5.13 Farm Buildings</p> <p><i>Farm buildings</i></p> <p><i>a. The maximum gross floor area of any farm building shall be 50m².</i></p> <p><i>b. All exterior surfaces shall be coloured in the range of black, browns, greens or</i></p>	<p>Oppose</p> <p>A maximum gross floor area of 50m² is unreasonably limited. A maximum of 150m² better provides for farming activities while maintaining landscape character and amenity values.</p>	<p>Amend Rule 24.5.13 Farm Buildings</p> <p><i>Farm buildings</i></p> <p><i>a. The maximum gross floor area of any farm building shall be <u>150</u>m².</i></p> <p><i>b. All exterior surfaces shall be coloured in the range of black, browns, greens or</i></p>

Provision (PDP decision version)	Reason for appeal	Relief sought						
<p>greys (except soffits).</p> <p>c. Pre-painted steel and all roofs shall have a reflectance value not greater than 20%.</p> <p>d. All other surface finishes shall have a reflectance value of not greater than 30%.</p> <p>[non-compliance: RD]</p> <p>Discretion is restricted to:</p> <p>a. Building location, character, scale and form;</p> <p>b. External appearance including materials and colours; and</p> <p>c. Landform modification/planting (existing and proposed).</p>		<p>greys (except soffits).</p> <p>c. Pre-painted steel and all roofs shall have a reflectance value not greater than 20%.</p> <p>d. All other surface finishes shall have a reflectance value of not greater than 30%.</p> <p>[non-compliance: RD]</p>						
<p>Schedule 24.8 Landscape Character Units</p> <p>Landscape Character Unit 24: Arrowtown South</p>	<p>Oppose</p> <p>The Queenstown Country Club is not within LCU 24 so this is likely to be an error which should instead refer to the Arrowtown Lifestyle Retirement Village.</p>	<p>Amend Schedule 24.8 LCU 24 as follows:</p> <p>1. On page 24-67 under 'Potential landscape opportunities and benefits associated with additional development': Delete reference to Queenstown Country Club' and replace with 'Arrowtown Lifestyle Retirement Village'.</p>						
<p>Chapter 27 Subdivision</p>								
<p>27.6 rules – Standards for Minimum Lot Areas</p> <p>27.6.1 No lots to be created by subdivision, including balance lots, shall have a net site area or where specified, an average net site area less than the minimum specified.</p> <table border="1" data-bbox="219 1252 752 1437"> <thead> <tr> <th colspan="2">Zone</th> <th>Minimum Lot Area</th> </tr> </thead> <tbody> <tr> <td>Rural</td> <td>Wakatipu Basin Rural Amenity</td> <td>80ha</td> </tr> </tbody> </table>	Zone		Minimum Lot Area	Rural	Wakatipu Basin Rural Amenity	80ha	<p>Oppose</p> <p>The minimum lot area approach is opposed in the first instance and a discretionary subdivision regime with no minimum lot sizes is preferred.</p> <p>In the alternative, it is considered appropriate to have no minimum lot size in the WBRAZ, in accordance with the approach taken for the Rural Zone and Gibbston Character Zone.</p>	<p>1. Delete Rule 27.6.1 (as it relates to the Wakatipu Basin) and replace with a discretionary subdivision regime.</p> <p>In the alternative</p> <p>2. Amend 27.6 rules – Standards for Minimum Lot Areas</p> <p>27.6.1 No lots to be created by subdivision, including balance lots, shall have a net site area or where specified, an average net site area less than the minimum specified.</p>
Zone		Minimum Lot Area						
Rural	Wakatipu Basin Rural Amenity	80ha						

Provision (PDP decision version)			Reason for appeal	Relief sought									
	Zone												
	Wakatipu Basin Lifestyle Precinct	6000m ² 1.0ha minimum average	<p>The 80ha minimum lot size in the WBRAZ is an illogical and arbitrary value that is not representative of existing landholdings in the Wakatipu Basin, which will not be able to be reasonably enforced, and which will unreasonably limit appropriate development.</p> <p>In the WBLP an <u>average</u> density approach is proposed (should rule 27.6.1 not be deleted), with 4000m² as the average minimum. This minimum is appropriate for the WBLP as it reflects existing land use and provides for an appropriate degree of limited further development, which can be regulated by the standards proposed in Chapter 24 to maintain landscape character and amenity values.</p> <p>An <u>average</u> minimum as opposed to a minimum lot size allows for flexible design-led and innovative patterns of subdivision and development which leads to optimal landscape outcomes and better utilisation of land.</p>	<table border="1"> <thead> <tr> <th>Zone</th> <th></th> <th>Minimum Lot Area</th> </tr> </thead> <tbody> <tr> <td>Rural Wakatipu Basin</td> <td>Wakatipu Basin Rural Amenity Zone</td> <td>No minimum 80ha</td> </tr> <tr> <td></td> <td>Wakatipu Basin Lifestyle Precinct</td> <td>6000m² 4000m² minimum <u>average</u> 1.0ha minimum average</td> </tr> </tbody> </table>	Zone		Minimum Lot Area	Rural Wakatipu Basin	Wakatipu Basin Rural Amenity Zone	No minimum 80ha		Wakatipu Basin Lifestyle Precinct	6000m² 4000m ² minimum <u>average</u> 1.0ha minimum average
Zone		Minimum Lot Area											
Rural Wakatipu Basin	Wakatipu Basin Rural Amenity Zone	No minimum 80ha											
	Wakatipu Basin Lifestyle Precinct	6000m² 4000m ² minimum <u>average</u> 1.0ha minimum average											
Planning Maps													
Planning Maps 13d and 26			Oppose	<p>1. Rezone the McDonnell Land legally described as Lot 3 DP 506191 and the entirety of LCU 24 to WBLP with a minimum lot density of 4000m².</p> <p>2. Rezone the Lake Hayes Land legally described as Lot 1 DP 358538 and the entirety of LCU 13 to Rural Residential Zone as notified in Stage 1.</p>									
			Zoning of the McDonnell and Lake Hayes Land and LCUs 24 and 13 as Wakatipu Basin Rural Amenity Zone is opposed as this zoning does not reflect the actual established character of these areas as rural residential in nature, and fails to recognise the capacity of the areas to absorb further appropriate										

Provision (PDP decision version)	Reason for appeal	Relief sought
	development. It inappropriately limits the building rights of the landholder and does not recognise the social, cultural and economic benefits of rural living development.	

Appendix B - A copy of the Appellant's submission and further submissions

Appendix C - A copy of the relevant parts of the decision

Appendix D - A list of names and addresses of persons to be served with this notice.