

**In the Environment Court  
at Christchurch**

**ENV-CHC-2021-**

**I Mua I Te Kōti Taiao o Aotearoa  
Ōtautahi Rohe**

**In the Matter**

of the Resource Management Act  
1991 (**Act**)

**And**

**In the Matter**

of the Queenstown Lakes  
Proposed District Plan – Stage 3

**And**

**In the Matter**

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

**Between**

J C Breen Family Trust

**Appellant**

**And**

Queenstown Lakes District  
Council

**Respondent**

**Notice of Appeal by J C Breen Family  
Trust against a decision on the  
Proposed Queenstown Lakes District  
Plan – Stage 3**

Dated: 18 May 2021

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To: The Registrar  
Environment Court  
Christchurch

### **Notice of Appeal**

1. The J C Breen Family Trust (**Appellant**) appeal against part of a decision of the Queenstown Lakes District Council (**Council**) on the Queenstown Lakes Proposed District Plan – Stage 3 (**PDP**).
2. The Appellant made a submission on the PDP (submission #3235) and further submission (#3453).
3. The Appellant is not a trade competitor for the purposes of section 308D of the Act.
4. The Appellant received notice of the Council's decision on 1 April 2021.
5. The decision was made by the Council through adopting the recommendations of the Independent Hearings Panel (**Panel**) on 18 March 2021.
6. The Appellant is appealing the parts of the Council's decision that reject the Appellant's submissions as they relate to the restrictions on office, commercial, retail, trade supply and other related activities in the General Industrial Zone (**GIZ**) and the extent and nature of the GIZ on and around Ballantyne Road/ Gordon Road, Wanaka. These parts of the decision are contained in Stream 17 – Chapter 18A – General Industrial Zone, Report 20.3 and the associated text and maps.

### **Background**

7. The Appellant owns 92 Ballantyne Road Wanaka. The Breen Construction Company Limited operates a construction business from this site. The Appellant also has resource consents to construct commercial buildings on the site.
8. The Appellant's land is zoned Industrial A under the Operative District Plan (**ODP**) which allows for a range of activities including offices, commercial and business not ancillary to an industrial use.

9. Under the Stage 3 Notified Proposed District Plan (**Stage 3**) the Appellants land was included in the GIZ.
10. The Appellant lodged a submission (submission #3235) seeking that that the proposed GIZ provisions be amended to allow for office, commercial, retail and other related activities not ancillary to industrial or service activity. Alternatively, the submission sought that the proposed amendments to the provisions be confined to the GIZ as it applies to the land along the Ballantyne Road corridor. The submission also sought smaller lot sizes along the Ballantyne Road corridor.
11. The Appellant also lodged a further submission (submission #3453).<sup>1</sup> Without limiting the reasons listed in the further submission the Appellant supported the following parts of the relevant original submissions:
  - (a) the proposals to rezone the area west of Ballantyne Road as Business Mixed Use Zone (**BMUZ**) with appropriate restrictions on residential and visitor accommodation use adjacent to industrial activities; and
  - (b) a variation of the GIZ to allow for office, retail, commercial trade supply and other related activities; and.
  - (c) the flexibility a varied GIZ or BMUZ would provide for existing uses and smaller lot sizes.
12. The Council's decision rejected parts of the Appellant's submission and further submission that sought the relaxation of the proposed GIZ zoning and declined to relax the provisions along the Ballantyne corridor to the extent sought in the submission.
13. In rejecting parts of the Appellant's submission, the Council retained the prohibition (through a prohibited activity status) on new office, commercial and retail activities not ancillary to industrial or service activities within the GIZ and maintained restrictions on trade retail within the GIZ.

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<sup>1</sup> The Appellant's further submission was on the following original submissions: Tussock Rise Limited (#3128), Bright Sky Land Limited (#3130), Tekoa House Limited (#3147), Alpine Estates Limited (#3161), Orchard Road Holdings Limited (#3165), Willowridge Developments Limited (#3201), Upper Clutha Transport Limited (#3270), Nigel Perkins (#3283), The Breen Construction Company Limited (#3234), Alpine Nominees Limited (#3266), 86 Ballantyne Road Partnership (#3286), NPR Trading Limited (#3298) and Ben and Hamish Acland (#3300).

### **General reasons for the Appeal**

14. The part of the Council's decision appealed:
  - (a) does not give effect to the higher order strategic directions, objective and policies in the PDP;
  - (b) does not give effect to the Otago Regional Policy Statement (**ORPS**) and National Policy Statement on Urban Development 2020 (**NPS-UD**);
  - (c) does not represent an efficient use of land under section 7(b); and
  - (d) overall, fails to promote sustainable management of natural and physical resources and therefore, does not achieve the purpose of the Act.

### **Particular Reasons for the Appeal**

15. An industrial zone in this part of Wanaka that is more permissive in relation to office, commercial, retail (including trade supply) and other related land uses is more appropriate in terms of existing use, future demand and management of adverse effects.
16. The decision fails to have appropriate regard to the general character of the land to the west of Ballantyne Road, which is a mix of service, industrial, commercial, office and retail more appropriately suited to a more permissive zone framework.
17. The decision fails to have appropriate regard to the location, size and use of the GIZ land to the west of Ballantyne Road. It fails to address the lack of demand for heavy industrial activity in an area of the relevant size, location and proximity to residential activities. Accordingly, it fails to acknowledge that the GIZ zoning to the west of Ballantyne Road does not provide meaningful capacity for industrial activities.
18. Given the current mix of activities in the Ballantyne Road area, the proposed GIZ fails to give effect to Strategic Policy 3.3.8, which seeks to avoid non-industrial activity in industrial zones.

19. The decision errs in that it fails to recognise that the prohibited activity status for office, retail and commercial activity is unjustified in light of the historical land use and future demand in the area. A more relaxed zone framework that provides for office, retail, commercial and other related activity to be tested as to their appropriateness of establishing in an appropriate manner better reflects the balance of activities currently present in the area and is most appropriate in terms of future demand.
20. The decision errs in that it fails to appropriately recognise existing and consented commercial buildings on both the land subject of this appeal and the wider Ballantyne Road/ Gordon Road area. The decision fails to recognise the physical nature of these buildings, being designed for commercial, retail, office and trade supply use, and to address commercial reality in terms of the turn-over of tenants within the buildings.
21. The decision does not appropriately address the traffic effects of the GIZ near Wanaka Town Centre and the deterrent that transport effects will have on demand for industrial land uses.
22. The decision also included new Rule 18A.4.5, which provides for lawfully established activities to remain permitted. The rule is not sufficiently clear in terms of its application to activities that have received resource consent but are not yet constructed or have not yet received building consent. It is not clear that the rule would allow for such activities to continue as permitted activities or for building consents to be obtained in reliance on the plan rules (as opposed to relying on resource consents that have the potential to lapse).
23. Rule 18A.4.5 does not appear to provide for variations and renewals to be made to existing resource consents (and associated building consents). This is inappropriate as it fails to recognise the significant investment that landowners have made in the resource consent process in reliance on the ODP zoning of their land.
24. Associated Standard 18A.5.2 does not provide sufficient flexibility in terms of allowing for future change and expansion of existing and consented activities. The standard would appear not to allow new office, commercial or retail tenants in commercial premises or alterations to these premises. Such restriction does not reflect commercial reality in

terms of the long-standing business activities being carried out in parts of the GIZ zone.

### Relief Sought

25. The Appellant seeks that the following relief:
- (a) Amendments to the GIZ provisions to:
    - (i) allow office, commercial, retail (including trade supply and food and beverage) and other related land uses that are not ancillary to Industrial and Service Activities; and
    - (ii) provide for existing and consented office, retail, commercial and trade supply premises to continue to be used into the future in a flexible manner. Allow for such premises to be occupied by new tenants and appropriately upgraded and modified. Clarify that activities with resource consent can continue, that variations and renewals can be made to resource consents and that associated building consents can be obtained.
  - (b) Without limiting the generality of the relief set out at paragraph 25(a) above, the Appellant seeks the specific amendments to the provisions set out at **Appendix 1**.
  - (c) As alternative relief, the Appellant seeks that:
    - (i) the amendments to the GIZ provisions set out at paragraphs (a) – (b) above apply to the area of GIZ land on the west side of Ballantyne Road and Strategic Policy 3.3.8 is amended to provide that it does not apply to the relevant part of the GIZ; or
    - (ii) the area of GIZ land on the west side of Ballantyne Road identified in the map at **Appendix 2** be rezoned to BMUZ (with some restriction on residential and visitor accommodation use where sites are adjacent to industrial activities).

- (d) any other additional or consequential relief to the PDP text (including to the strategic chapters, objectives, policies, definitions and chapter names) or maps that will give effect to the matters raised in this appeal.

**Attached Documents**

26. The following documents are **attached** to this notice:

- (a) amendments sought to Chapter 18A GIZ as **Appendix 1**;
- (b) plan showing location of land proposed to be rezoned to BMUZ as **Appendix 2**;
- (c) a copy of the Appellant's Stage 3 submission as **Appendix 3**;
- (d) a copy of the Appellant's Stage 3 further submission as **Appendix 4**;
- (e) a copy of the relevant part of the Decision as **Appendix 5**; and
- (f) a list of names and addresses of persons to be served with a copy of this notice as **Appendix 6**.

Dated this 18th day of May 2021



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