

**BEFORE THE ENVIRONMENT COURT
I TE KOTI TAIAO O AOTEAROA**

ENV-2019-CHC-

IN THE MATTER of the Resource
Management Act 1991
("Act")

AND

IN THE MATTER of an appeal pursuant to
Clause 14(1) to Schedule 1 of
the Act

BETWEEN **QUEENSTOWN TRAILS
TRUST**

Appellant

AND **QUEENSTOWN LAKES
DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON
PROPOSED PLAN UNDER CL 14(1) SCHEDULE 1**

Dated 7 May 2019

NOTICE OF APPEAL

To: The Registrar
Environment Court
Christchurch

1. Name and address of appellant:
Queenstown Trails Trust
C/- Vivian and Espie Limited
P O Box 2514
Wakatipu
Queenstown 9349
Attn: Carey Vivian
2. Queenstown Trails Trust ("**Appellant**") appeals the decision ("**Decision**") of the Queenstown Lakes District Council ("**Council**") on the Queenstown-Lakes Proposed District Plan (Stage 2) ("**Plan**").
3. The Appellant is a person who made a submission on Chapter 25 Earthworks of the Plan seeking to exempt the formation and maintenance of publicly accessible trails from (then) General Rule 23.3.4.
4. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
5. Notice of the Decision was received on 21 March 2019.
6. The Appellant appeals (now) Rule 25.3.2.10.
7. The reasons for the appeal are as follows:
 - (a) The Appellant made three submission points on Chapter 25 Earthworks of the Plan.
 - (b) The first submission point sought (now) Objective 25.2.2 be amended by deleting the words "*... while being protected from adverse effects*". The Council's Decision records this submission point as being accepted by adopting Objective 25.2.2 as follows:

Objective – The social, cultural and economic wellbeing of people and communities benefits from earthworks

- (c) The second submission point sought (now) Policy 25.2.2.1 be amended by deleting the words at the beginning "*Subject to Objective 25.2.1 ...*". The Council's Decision records this submission point as being accepted in part by adopting Policy 25.2.2.1 as follows:

Enable earthworks that are necessary to provide for people and communities wellbeing, having particular regard to the importance of:

- a. Nationally and Regionally Significant Infrastructure;*
- b. tourism infrastructure and activities, including the continued operation, and provision for future sensitive development of recreation and tourism activities within the Ski Area Sub Zones and the vehicle testing facility within the Waiorau Ski Area Sub Zone;*
- c. minimising the risk of natural hazards;*
- d. enhancing the operational efficiency of farming including maintenance and improvement of track access and fencing; and*
- e. the use and enjoyment of land for recreation, including public walkways and trails.*

- (d) The third submission point sought that the exemption to earthworks (then General Rule 23.3.4) be amended to include the words: "*(o) The formation and maintenance of publicly accessible cycle and walking trails*"

- (e) The Council's decision records this submission point as being rejected by adopting Rule 23.3.4 (Renumbered as 25.3.2.10) as follows:

25.3.2.10 *Earthworks for the following shall be exempt from the rules in Tables 25.1 to 25.3:*

- a. Erosion and sediment control except where subject to Rule 25.5.19 setback from waterbodies.*
- b. The digging of holes for offal pits*
- c. Fence posts.*
- d. Drilling bores.*
- e. Mining Activity, Mineral Exploration or Mineral Prospecting.*
- f. Planting riparian vegetation.*
- g. Internments within legally established burial grounds.*
- h. Maintenance of existing vehicle and recreational accesses and tracks, excluding their expansion.*
- i. Deposition of spoil from drain clearance work within the site the drain crosses.*
- j. Test pits or boreholes necessary as part of a geotechnical assessment or contaminated land assessment where the ground is reinstated to existing levels within 48 hours.*
- k. Firebreaks not exceeding 10 metres width.*
- l. Cultivation and cropping.*
- m. Fencing in the Rural Zone, Wakatipu Basin Rural Amenity Zone (excluding the Precinct), Rural Lifestyle Zone and Gibbston*

Character Zone where any cut or fill does not exceed 1 metre in height or any earthworks does not exceed 1 metre in width.

n. Earthworks where the following National Environmental Standards have regulations that prevail over the District Plan:

(i) Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009.

(ii) Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

(iii) Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016.

(iv) Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2016.

- (f) In fact, Rule 25.3.2.10 partially accepts this submission point (by referring to maintenance in subclause (h)) and partially rejects it (by excluding expansion or the formation of trails, also in subclause (h)).
- (g) The Council failed to consider the substance of the Appellant's submission in relation to formation, instead relying on the evidence of Mr Wyeth (Council's section 42A report author) who confused "maintenance" with the "formation" of trails when he stated:

"In terms of the exemptions for earthworks associated with the construction of accessways and recreational tracks, this is provided for by Rule 25.3.4.5.h. It exempts earthworks for "maintenance of existing and in service vehicle accesses and tracks, excludes their expansion". I note that this is largely consistent with the corresponding rule in the ODP (22.3.2.1(b)(i)) which exempts earthworks associated with the maintenance of farm track access, fencing, fire breaks, and public recreational tracks."

- 8. (a) The Appellant accepts those parts of the Council's Decision referred to in 7(a)-(f) above but does not accept the part referred to in (g) above.
- (b) The Appellant considers that formation of public trails should also be exempt under Rule 25.3.2.10 because:
 - (i) To give effect to Objective 25.2.2 and Policy 25.2.2.1 as decided above; and
 - (ii) To recognise that the trail network relies upon earthworks activities to modify land to create a world-class trail network that provides widespread benefits to the community.

9. The Appellant seeks the following relief from the Court:

- (a) Amend Rule 25.3.2.10.h by deleting the words "... *excluding their expansion*" specific to trails and/or by making Rule 25.3.2.10.h subject to new Rule 25.3.2.10.o below;
- (b) Amend Rule 25.3.2.10 by adding the following additional subclause (o):
 - "(o) *The formation of publicly accessible cycle and walking trails*":
- (c) Such further or other relief as may be appropriate or necessary to address matters raised in the Submission and this appeal.



QUEENSTOWN TRAILS TRUST as Appellant by its duly authorised agent CAREY
VIVIAN

Date: 7 May 2019

C/- Vivian Espie Limited, P O Box 2514, Wakatipu, Queenstown

Telephone: 03 441 4189

Email: carey@vivianespie.co.nz

The following documents are attached to this notice:

- (a) a copy of the submission (with a copy of the submission opposed by the further submission);
- (b) a copy of the relevant part of the decision;
- (c) any other documents necessary for an adequate understanding of the appeal;
- (d) a list of names and addresses of persons to be served with a copy of this notice.

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 further 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.

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 or the 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 at Christchurch.

Environment Court
Christchurch Registry
282 Durham Street
Central City
Christchurch

Postal address:

PO Box 2069

DX: WX11113

Christchurch

Telephone and fax numbers:

Telephone: (03) 365 0905

Fax: (03) 365 1740

Appendices

- [1] A copy of the submission (with a copy of the submission opposed by the further submission).**

Attached.

- [2] A copy of the relevant part of the decision.**

Attached.

- [3] Any other documents necessary for an adequate understanding of the appeal.**

Nil.

- [4] Names and addresses of persons to be served with a copy of the Notice of Appeal.**

Queenstown Lakes District Council

10 Gorge Road

Queenstown

E: dpappeals@qldc.govt.nz