

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2019-CHC-

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 **Morven Ferry Limited**

Appellant

And **Queenstown Lakes District Council**

Respondent

Notice of Appeal

7 May 2019

Appellant's solicitors:

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To The Registrar
Environment Court
Christchurch

- 1 Morven Ferry Limited (**MFL**) appeals against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 MFL made a Stage 1 submission (#629) and further submission (#1327) and Stage 2 submission (#2449) and further submission (#2743) on the PDP.
- 3 MFL is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 MFL 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 6 Landscapes;
 - (b) Chapter 24 Wakatipu Basin Variation;
 - (c) Chapter 27 Subdivision;
 - (d) Planning Maps 13d and 30.
- 7 The reasons for appeal and general relief sought are summarised out below. The specific provisions and relief sought by MFL are detailed further in **Appendix A** to this Appeal.

Background

- 8 This appeal relates to land located on Morven Ferry Road owned by MFL (legally described as Lot 2 DP 411193, Lot 1 -2 DP 300661, Lot 12 DP 323200), and land owned by Barnhill Corporate Trustee Limited (legally described as Lot 2 DP 397602, Lot 3 DP 397602 and Lot 4 DP 397602) and DE, ME Bunn and LA Green (legally described as Section 1 SO 455511) (collectively the **Land**).
- 9 In Stage 1 of the PDP the Land was notified as Rural. MFL made a submission on Stage 1 of the PDP, seeking that the majority of the Land be rezoned to a combination of Rural Visitor and Rural Residential, within a 'Morven Ferry Road Subzone'.
- 10 The Land was included in the Stage 2 Wakatipu Basin Variation (**Variation**) and was zoned Wakatipu Basin Rural Amenity Zone (**WBRAZ**), identified in

Schedule 24.8 as part of Landscape Character Unit (LCU) 17 "Morven Ferry" and LCU 18 "Morven Eastern Foothills".

- 11 The MFL Stage 2 submission amended the Stage 1 submission and sought that the majority of the Land be rezoned to a combination of Wakatipu Basin Lifestyle Precinct (**WBLP**) (or Rural Residential), and Morven Ferry Road Visitor Precinct A and B, with site specific zoning provisions within a 'Morven Ferry Subzone' (**MFSZ**).

Chapter 6 Landscapes

- 12 MFL supports in principle the Stage 2 Variation to the provisions of Chapter 6, in so far as they clarify and confirm that the Outstanding Natural Feature, Outstanding Natural Landscape, and Rural Character Landscape categories (**Landscape Categories**) and associated policies of Chapter 6 do not apply to the WBRAZ, including the WBLP and the MFSZ.
- 13 However, MFL considers there is merit in retaining in some form the deleted provisions of Chapter 6 which expanded on the relationship between the Landscape Categories and the various rural zones, including the WBRAZ. Rather than the reinstatement of the deleted explanatory text and rules, MFL supports a new 'Interpretation' section, similar to that inserted into Chapter 3 via the planning experts' Joint Witness Statement as part of Stage 1 of the PDP. Such a section is supported to provide greater certainty for plan users.
- 14 As part of Stage 1 of the PDP, Chapters 3 and 6 are currently before the Court and have been subject to significant re-write through mediation and expert conferencing. MFL considers that following decisions from the Court on Topics 1 and 2 of Stage 1 of the PDP, and as the relationship between the Landscape Categories and the WBRAZ is further clarified, additional amendments to Chapter 6 may be required in respect of the policies that apply to the WBRAZ, the WBLP, and the MFSZ.
- 15 The specific provisions of Chapter 6 and the relief sought by MFL are set out in **Appendix A** to this Appeal.

Chapter 24 Wakatipu Basin

- 16 The Variation does not reflect the historical and existing development of the Wakatipu Basin, nor does it correctly recognise the potential for further rural living, commercial, and visitor activities to occur in certain parts of the Basin, where these activities can complement the rural environment.
- 17 The Variation undermines the value of non-residential activities such as rural retail (winery and produce) and visitor accommodation to the Basin and the

District more generally. As such, the Variation does not provide for or enable the social, economic and cultural benefits of these activities to landholders or to visitors.

- 18 The Variation enforces an arbitrary subdivision and development regime which takes a generic approach to all development within areas of the WBRAZ and WBLP. This approach ignores the potential for certain predominantly rural areas of the Basin to accommodate rural living, commercial and visitor activities whilst maintaining landscape character and amenity values, through the use of site specific rules and standards.
- 19 MFL considers that amendments are required to Chapter 24, which better provide for both rural living opportunities and non-residential activities within the Basin, and which provide for further development in the proposed MFSZ specifically.
- 20 The specific provisions of Chapter 24 and the relief sought by MFL are set out in **Appendix A** to this Appeal.

Chapter 27 Subdivision and Development

- 21 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 size and coverage, height and setbacks, the regime is considered too restrictive on the building rights of landholders in the Wakatipu Basin.
- 22 The minimum lot densities introduced for the WBRAZ 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.
- 23 Within the WBLP, a minimum average lot size regime is supported, as opposed to a minimum lot size regime. Two 'sub-precincts' are proposed, so that Council may identify areas within the WBLP which have a greater capacity for higher density development. A two tiered minimum average approach will provide

planning flexibility and the resulting range of lot sizes will provide variety and enhance landscape character throughout the Basin. A minimum average lot size of 4000m² is proposed for the part of the Land sought to be rezoned to WBLP. This density is considered appropriate as the accessibility, topography and natural features (such as rocky outcrops, ponds and wetlands) of the Land will ensure that development is varied, sensitively located, and well integrated into the rural environment without adversely affecting landscape character and amenity values.

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

Planning Maps 13d and 30

- 25 WBLP zoning over the eastern-most block of the Land (the 6ha piece bordering the Arrow River) is supported, subject to amendments to the minimum lot size and the standards for building coverage, building height, and setbacks from internal boundaries, roads, and the Queenstown Trail.
- 26 The retention of WBRAZ zoning over the remainder of the Land is opposed. MFL seeks that the Land be rezoned to a combination of WBLP with a 4000m² minimum average lot size (or Rural Residential Zone in accordance with its Stage 1 submission) and Morven Ferry Road Visitor Precincts A and B, all within a 'Morven Ferry Subzone' within the Wakatipu Basin – as per the Proposed Zone Plan in **Appendix C** of this notice.
- 27 MFL also opposes the identification of LCU 18 as having a 'low' capacity to absorb additional development, as seeks amendments to Schedule 24.8 to better reflect the landscape values of LCU 18 – as set out in **Appendix B** to this notice.
- 28 The zoning of the Land as WBRAZ does not recognise the potential for further rural living, commercial and visitor development to be accommodated within LCU 17 and 18, whilst maintaining landscape character and amenity values through the use of site specific development controls. The zoning therefore acts as a barrier to appropriate development and reasonable land use in the future, ignores the economic wellbeing of landowners, and results in ineffective land use in the Basin generally. The proposed MFSZ in conjunction with the site specific controls offered is considered to be a more appropriate method to achieve these objectives.
- 29 The specific amendments sought to the planning maps to introduce the Morven Ferry Subzone are set out in **Appendix A** to this Appeal.

Further and consequential relief sought

30 MFL 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 and the MFL PDP Stage 1 and 2 submissions.

31 In the alternative MFL seeks withdrawal of the Variation.

Attachments

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

- (a) **Appendix A** – Relief sought;
- (b) **Appendix B** – Amendments sought to Landscape Classification Unit 18;
- (c) **Appendix C** – Proposed Zone Plan for the Morven Ferry Subzone;
- (d) **Appendix D** –A copy of the Appellant's submission and further submissions;
- (e) **Appendix E** - A copy of the relevant parts of the decision; and
- (f) **Appendix F** - A list of names and addresses of persons to be served with this notice.

Dated this 7th day of May 2019



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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.