

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-148

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 **Allenby Farms Limited**
Appellant

And **Queenstown Lakes District Council**
Respondent

AMENDED Notice of Appeal

30 November 2018

Appellant's solicitors:

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To The Registrar
Environment Court
Christchurch

- 1 Allenby Farms Limited (**Allenby**) appeals against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 Allenby made a submission (#502) and further submission (#1254) on the PDP.
- 3 Allenby is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 Allenby received notice of the decision on 7 May 2018.
- 5 The decision was made by Queenstown Lakes District Council (**QLDC**).
- 6 The parts of the decision appealed relate to:
 - (a) Chapter 3 Strategic Direction;
 - (b) Chapter 6 Landscapes;
 - (c) Chapter 22 Rural Residential and Rural Lifestyle;
 - (d) Chapter 27 Subdivision;
 - (e) Chapter 33 Indigenous Vegetation;
 - (f) Planning Maps 18 and 21.
- 7 Reasons for appeal

Overview

- 8 Allenby sought in its submission to the PDP and in its case presented at the relevant PDP hearing, to rezone parts of its land located at Hidden Hills Drive Wanaka, and commonly known as Mt Iron and Little Mt Iron (**Site**), to provide for a comprehensive parkland type zoning; Mt Iron Park Rural Lifestyle (**MIPRL**) Zone. This zoning sought to enable a small number of further residential allotments on the lower flanks of Mt Iron and Little Mt Iron and to preserve significant parts of the balance land for the purposes of:

- (a) Formalizing, upgrading, and creating a number of recreational walking tracks over Mt Iron and surrounds, thereby significantly enhancing public access and recreation / commuter opportunities to the public;
 - (b) Creating an ecological enhancement, restoration regime, and pest control through a series of land covenants and provisions, binding new owners to contribute to the maintenance of Significant Natural Areas over the Site;
 - (c) A specific subzone rule regime to ensure that appropriate design and location of houses is carried out, and provide certainty that the positive benefits of the proposal will be realised and retained in perpetuity.
- 9 The MIPRL zone now being proposed includes a specifically tailored set of objectives, policies and rules has been developed to recognise the specific values of Mt Iron. The proposed zone provides for a comprehensively designed rural lifestyle development in areas on Mt Iron where the proposed development can be absorbed by the landscape and within the existing indigenous vegetation, while still being compatible with, and not affecting, adjacent large lot residential activities. Specific objectives and policies are proposed to minimise the removal of existing indigenous vegetation and are directive in maintaining and enhancing the ecological values of Mt Iron and Little Mt Iron (not just the MIPRL area). These objectives and policies are also directive in enhancing permanent public access to Mt Iron and Little Mt Iron through additional recreational trails and integrated recreation management with adjacent DoC land. In addition these policies require the implementation of legal mechanisms to ensure these objectives and policies are achieved on an ongoing, permanent basis at no cost to the community. These objectives and policies are specific, prescriptive, and provide for secured long term environmental and public access benefits.
- 10 The MIPRL zone objectives, policies and methods are considered more appropriate to achieve sustainable resource management in the site than the objectives of the Rural zone, and therefore in accordance with section 32 of the Act.
- 11 Overall the purpose of the rezoning proposal is to achieve sustainable management of the site and to provide for an integrated, holistic and enduring solution that guarantees environmental outcomes that protect and enhance the site's ecological, landscape and recreational values in such a way that is economic for the owners and the wider community. This revised rezoning proposal better achieves strategic and higher order provisions of the PDP, as well as relevant provisions of the Operative and Proposed RPS, and Part 2 of the Act.
- 12 Without derogating from the generality of the above background, Allenby disagrees with the Council's Decision for the following reasons:

- (a) The conclusion that the proposed rural residential development would not 'protect' the Mt Iron ONF did not apply the appropriate test from the PDP (draft) higher order provisions, which do not require blanket 'protection';
- (b) The decision placed primacy on the (draft) higher order PDP objectives and policies as reason to decline the rezoning. This is inconsistent with case law principles in rezoning, and the practicalities that those provisions are yet to be determined and therefore uncertainty in the PDP means that the decision must be made against Part 2 of the Act;
- (c) The decision did not give appropriate weight and regard to the range of significant positive benefits of the proposal, and consider those against and as outweighing and potential or perceived adverse effects;
- (d) Justification for retention of the Building Restriction Area (BRA) was based upon an erroneous conclusion as to the historical promulgation of that BRA;
- (e) Consideration of scope of the submission and relief available to Allenby was approached with 'legal nicety' and an unrealistically legalistic approach;
- (f) The approach to considering the significance and the consequential mapping and protection of the notified and proposed Significant Natural Areas (SNA) did not take into account the Allenby ecological evidence proposed, and the significant benefits of the Allenby rezoning approach to long term maintenance and enhancement of the SNA, beyond that which could otherwise be achieved through the PDP.

13 Despite all of the above, the Decision concluded that:

Allenby has drawn attention to a number of unsatisfactory aspects of the status quo. The informal access the public enjoys to Allenby's private land, in particular, is something that the Council needs to address if it considers that private access to be of value to the community (as we do). Mr Cleugh's vision was that ultimately, the Allenby property would be part of a public park encompassing the entire mountain. That would be a highly desirable outcome if it could be achieved, but at the very least, we recommend Council negotiate additional easement rights in favour of the public, preferably paralleling those that the submitter has indicated it would be prepared to confer as recompense for the proposed rural lifestyle rezoning, whose rejection we have recommended.¹

¹ Para 244, Council Decision Report 16.14.

- 14 It follows from the above, that there is clear support for those positive aspects of the proposal, despite the Council's ultimate rejection of the rezoning. This Decision therefore does not:
- (a) Provide appropriately for the higher order provisions of the PDP, the Operative RPS and the proposed RPS;
 - (b) Part 2 of the RMA; and therefore
 - (c) Does not achieve the most appropriate zoning outcomes in terms of the requisite section 32 test.
- 15 General reasons for appeal on relevant PDP chapters is set out below, with relief sought in **Appendix A**. Specific relief in respect of the MIPRL rezoning is set out in **Appendix B**.

Chapter 3 Strategic Direction

- 16 Chapter 3 provides for the overarching strategic direction for resource management in the Queenstown Lakes District. The nature of Chapter 3 applying as higher order provisions to all other provisions of the PDP means that Allenby interests are affected by Chapter 3.
- 17 Significant changes to content and structure of Chapter 3 have occurred between the notified PDP version and the decisions version. Allenby therefore considers that its appeal on this chapter is significantly broad and not limited in scope to original policies and objectives listed.
- 18 Allenby opposes those provisions of Chapter 3 which do not provide for efficient and effective urban development, and which do not provide sufficiently for the social, economic, and cultural wellbeing of people and communities.
- 19 The specific provisions of Chapter 3 and the relief sought by Allenby are set out in **Appendix A** to this Appeal.

Chapter 6 Landscape

- 20 Allenby opposes those policies relating to the preference for farming as the means to protect landscape values as these are disproportionately weighted towards the protection of agriculture and fail to provide for those rural landscapes where pastoral farming does not occur. Farming is one method for using rural resources productively, but its long term sustainability is uncertain particularly in this district, and there are other uses of rural land that are compatible with the protection of landscape values, including the provision of recreation and access to public places.

- 21 Allenby opposes those landscape provisions which establish a more than minor threshold or transience of effects into the determination of what is appropriate development in a landscape. This is a higher standard than that which is provided for in section 6(b) of the Act and is unjustified where the legislature has provided that such landscapes are only required to be protected from 'inappropriate' development. What is appropriate or inappropriate in a particular landscape, and based on a particular proposal may be a broader question than simply a more than minor effects assessment.
- 22 The specific provisions of Chapter 6 and the relief sought by Allenby are set out in **Appendix A** to this Appeal.

Chapter 22 Rural Residential and Rural Lifestyle

- 23 Allenby seeks specific amendments to the Rural Lifestyle Zone (Chapter 22) providing for site specific MIPRL Zone and a location-specific suite of objectives, policies, and rules for development specifically in the MIPRL Zone.
- 24 These location specific objectives and policies provide for the specific and unique characteristics of the MIPRL Zone, while enabling limited scale rural residential development to occur in accordance with defined structure and landscape plans.
- 25 The revised suite of provisions is included in this appeal as **Appendix B**.

Chapter 27 Subdivision

- 26 Allenby seeks specific amendments to the Subdivision Chapter 27 to provide for location specific objectives, policies and rules which achieve the purpose and overarching objective of the MIPRL Zone, being; a rural lifestyle development is comprehensively planned with particular regard for the ecological, landscape, and recreational values of the setting on the Mt Iron outstanding natural feature.
- 27 The MIPRL Zone provides a structure plan type approach, consistent with other special zones in the PDP to ensure that the ecological, access, and recreation benefits as part of the rezoning proposal are carried out and implemented in perpetuity at the subdivision stage. These plans are provided in **Appendix B**.
- 28 The revised suite of provisions is included in this appeal as **Appendix B**.

PDP Planning Maps 18 and 21

- 29 Allenby seeks the following amendments to Planning Maps 18 and 21 as relevant to the Site:
- (a) Modification of Significant natural Area E18C is sought to reduce parts of the SNA which are not considered to meet the threshold required for

determining 'significance' under Chapter 33 of the PDP, and to extend the SNA over other areas which section 6(c) RMA values and which would benefit from further ecological maintenance and enhancement.

- (b) Amendment of the Outstanding Natural Feature boundary to align with the eastern edge of **Area A** on **Attachment B** within **Appendix B**.
 - (c) Amendment of the Urban Growth Boundary to align with the eastern edge of **Area A** on **Attachment B** within **Appendix B**.
 - (d) Amendment of the Outstanding Natural Feature boundary to align with the PDP Decisions Version Urban Growth Boundary and the Low Density Residential Zone boundary along the eastern edge of the **Area B** and **Area C** on **Attachment B** within **Appendix B**.
 - (e) Remove the existing Building Restriction Area from land adjacent to the Wanaka – Luggate Highway (SH84) and create a new BRA containing the prominent western slopes of Mt Iron below the SNA;
 - (f) Create the proposed MIPRL Zone. This zoning would replace the proposed Rural zoning of this area of the site in the PDP.
- 30 Each of the above amendments sought to the mapping of the Site are further particularised in **Appendix B** to this appeal.

31 For the avoidance of doubt:

- (a) Allenby's challenge to the ONF boundary is now limited to relocating the ONF boundary along the eastern edge of **Areas A, B and C** shown on **Attachment B** within **Appendix B**.
- (b) Allenby's challenge to the UGB is limited to re-aligning it along the eastern edge of **Area A** shown on **Attachment B** within **Appendix B**.

Further and consequential relief sought

32 Allenby seeks alternative, consequential, or additional relief to that set out in this appeal necessary to give effect to the matters raised generally in this appeal and Allenby's PDP submission and further submission.

Attachments

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

Appendix A – Relief sought on PDP provisions;

Appendix B – Specific MIPRL relief;

Appendix C - A copy of the Appellant's submission and further submission;

Appendix D - A copy of the relevant parts of the decision; and

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

Dated this 30th day of November 2018



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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 Christchurch.

Provision (PDP decision version)	Reason for appeal	Relief sought
Chapter 3 Strategic Direction		
3.2.5 The retention of the District's distinctive landscapes. (addresses Issues 2 and 4)	It is unclear whether provision 3.2.5 is a heading or an objective	Clarify or delete provision 3.2.5
<p>Strategic objective 3.2.5.1</p> <p>The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration.</p>	<p>The threshold for protection provided for in this section goes beyond the section 6(b) legislative standard of protecting landscapes from inappropriate development. This departure is not justified or efficient.</p>	<p>Amend Strategic objective 3.2.5.1 as follows:</p> <p>The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse inappropriate effects of subdivision, use and development that are more than minor and/or not temporary in duration.</p>
<p>Strategic policy 3.3.20</p> <p>Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with significant nature conservation values or degrade the existing character of rural landscapes. (relevant to S.O. 3.2.1.7, 3.2.5.1 and 3.2.5.2)</p>	<p>The protection and primacy afforded to farming is not justified where there are significant landholdings which do not economically farm, and which could better provide for landscape, ecological, and access benefits if farming is not preferred</p>	<p>Delete policy 3.3.20</p>
<p>Strategic policy 3.3.23</p>	<p>It is unclear what annotations on planning maps this policy relates to as it is not specific to building restriction areas or</p>	<p>Delete policy 3.3.23 or otherwise clarify what it applies to.</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
<p>Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas. (relevant to S.O. 3.2.1.8 and 3.2.5.2)</p>	<p>other features. Avoidance of residential development is a blunt instrument where such unknowns exist about the application of this policy</p>	
<p>Strategic 3.3.24 Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character. (relevant to S.O. 3.2.1.8, 3.2.5.1 and 3.2.5.2)</p>	<p>By its nature, those areas identified for rural living development will change the nature and character of previously undeveloped land. This policy undermines the purpose of rural living zones</p>	<p>Delete policy 3.3.24 or otherwise amend to exclude rural living zones</p>
<p>Strategic policy 3.3.30</p> <p>Avoid adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor and or not temporary in duration. (relevant to S.O.3.2.5.1)</p>	<p>The threshold for protection provided for in this section goes beyond the section 6(b) legislative standard of protecting landscapes from inappropriate development. This departure is not justified or efficient.</p>	<p>Amend Strategic policy 3.3.30 as follows:</p> <p>Avoid <u>remedy or mitigate inappropriate</u> adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor and or not temporary in duration. (relevant to S.O.3.2.5.1)</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
Chapter 6 Landscapes		
<p>Policy 6.3.12</p> <p>Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site the subject of application. (3.2.1.1, 3.2.5.1, 3.3.21, 3.3.30).</p>	<p>The threshold for protection provided for in this section goes beyond the section 6(b) legislative standard of protecting landscapes from inappropriate development. This departure is not justified or efficient.</p>	<p>Amend Policy 6.3.12 as follows</p> <p>Recognise that subdivision and development is <u>may be</u> inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from <u>highly visible</u> beyond the boundary of the site the subject of application. (3.2.1.1, 3.2.5.1, 3.3.21, 3.3.30).</p>
<p>Policy 6.3.14</p> <p>Recognise that large parts of the District's Outstanding Natural Landscapes include working farms and accept that viable farming involves activities that may modify the landscape, providing the quality and character of the Outstanding Natural Landscape is not adversely affected. (3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1, 3.3.20, 3.3.30)</p>	<p>The protection and primacy afforded to farming is not justified where there are significant landholdings which do not economically farm, and which could better provide for landscape, ecological, and access benefits if farming is not preferred</p>	<p>Delete policy 6.3.14</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
New policy	Better recognition should be provided to encourage the benefits of enhanced access and recreation opportunities to section 6 landscapes	Add a new policy in Chapter 6 which encourages the benefits of enhanced access and recreation opportunities to section 6 landscapes
Chapter 22 Rural Residential and Rural Lifestyle		
New objectives, policies and rules proposed – MIPRL Zone	<p>New objectives policies and rules are proposed to be added to Chapter 22 to provide for the overall objective of the MIPRL Zone, being;</p> <p>Rural lifestyle development is comprehensively planned with particular regard for the ecological and landscape values of the setting on the Mt Iron outstanding natural feature.</p>	Amend Chapter 22 by including the new MIPRL subzone, as set out in Appendix B
Chapter 27 Subdivision		
New objectives, policies and rules proposed – MIPRL Zone	<p>New objectives policies and rules are proposed to be added to Chapter 27 to provide for the overall objective of the MIPRL Zone, being;</p> <p>A rural lifestyle development is comprehensively planned within a setting of indigenous vegetation</p>	Amend Chapter 27 as set out in Appendix B

Provision (PDP decision version)	Reason for appeal	Relief sought
Chapter 33 Indigenous vegetation		
E18C	<p>Amend the boundary of the SNA identified in Chapter 33 to align with the significant vegetation existing and which would benefit from enhancement. This revised area of SNA will result in a net increase in ecological values for the area.</p> <p>This appeal specifically does not seek partial grant of this relief. Those areas of SNA extension and reduction are proposed as collective relief. If the SNA reduction is not approved, then the relief requesting a SNA extension is withdrawn. The ecological enhancement of this area is intrinsically linked to the remainder of the overall MIPRL proposal.</p>	Amend E18C SNA as identified in Appendix B.
Planning Maps 18 and 21		
Planning maps 18 and 21	<p>Amend planning Maps 18 and 21 to provide for:</p> <ul style="list-style-type: none"> (a) Modification of Significant natural Area E18C; (b) Amendment of the Urban Growth Boundary to include Mt Iron within the UGB; (c) Amendment of the Outstanding Natural 	Amend Planning maps 18 and 21 as set out in Appendix B

Provision (PDP decision version)	Reason for appeal	Relief sought
	<p>Feature Boundary for Mt Iron;</p> <p>(d) Remove the existing Building Restriction Area from land adjacent to (SH84) and create a new BRA;</p> <p>(e) Create the new MIPRL Zone to provide for additional residential development through the MIPRL Zone. This zoning would replace the proposed Rural zoning of this area of the site in the PDP.</p>	

Appendix B – Specific MIPRL relief relating to the ONF boundary and the UGB;

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

Appendix D - A copy of the relevant parts of the decision; and

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