

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-101

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 **Universal Developments Limited**
Appellant

And **Queenstown Lakes District Council**
Respondent

AMENDED Notice of Appeal

2 November~~19 June~~ 2018

Appellant's solicitors:

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To The Registrar
Environment Court
Christchurch

1 Universal Developments Limited (**Universal**) appeals against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).

2 Universal made a submission (#177) and further submission (#1029) on the PDP.

3 Universal is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).

4 Universal 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 decisions appealed relate to:

(a) Chapter 3 Strategic Direction;

~~(b) Chapter 4 Urban Development;~~

~~(c) Chapter 8 Medium Density Residential;~~

(d) Chapter 9 High Density Residential;

(e) Chapter 16 Mixed Business Use;

(f) Chapter 27 Subdivision;

(g) Planning Map 31a.

7 Reasons for appeal

Frankton North Specific Issues

8 Universal Developments owns land legally described as Lot 2 DP 497316, held in CFR 764774 (**Site**), adjacent to SH6 Frankton-Ladies Mile Highway. The Site was notified as medium density Residential Zoning (**MDR**) through the PDP, and has been retained as such in the Council's Decisions. Universal submitted generally on the notified zoning of its Site and on submissions which sought alternative zonings (#717, #751, #847, #399).

9 A broad range of submissions were lodged to the PDP seeking alternative zoning outcomes for the Site and adjacent land, within the Urban Growth Boundary and zoned MBU / MDR to the north of SH6 (collectively referred to as **Frankton**

North) as indicated coloured orange and dark red in **Appendix B**. Those submissions sought a range of outcomes from Rural Zone, to alternative zoning which provides for residential, light industry, service activities, trade based suppliers, and storage, through any mixture of Low, Medium, or High Density Residential, Industrial, Mixed Business Use, or Local Shopping Centre Zones.

- 10 In the course of hearings on the Frankton North Land, Universal worked constructively with adjacent landholder submitters to present a joint proposal to Council which involved a comprehensive site-specific set of provisions for Mixed Business Use Zoning, including structure plan access and specific subdivision rules. Universal has broad standing in respect of seeking or supporting notified and alternative zonings of its site and the Frankton North land, if that is considered necessary or appropriate.
- 11 The Council's Decision in part accepted this relief; however the Universal Site has not been rezoned from MDR as originally notified. This Decision is contrary to the Council's expert evidence presented in the course of the hearings, seeking High Density Residential Zone over the Site, and contrary to the Submitter's expert evidence produced, seeking a specific Frankton North Mixed Business Use Zone. The Council's Decision is considered to be an inefficient and ineffective use of the Site as it does not provide for higher density residential opportunities and mixed commercial activities, for which there is a current and projected shortfall of zoning across the District.
- 12 The Council's reasoning for not rezoning the Site as HDR (despite Council's planning experts recommending that status) included the following:

The balance of the sites, which are outside the OCB should remain MDRZ in our opinion, rather than HDRZ recommended by Ms K Banks. This is for two reasons. Firstly, MDRZ would provide a better transition to the Rural land which would commence at the property boundaries slightly above the bottom of Ferry Hill. Secondly we do not think that the site would not really provide good alternative access to nearby commercial and employment centres by pedestrians, cyclists and public transport, as the zone purpose for HDRZ suggests, even after the installation of safe crossing points. Further, the nearest centre, which is Five Mile, does not provide a full range of commercial, community and social facilities in any case¹.
- 13 This reasoning is not justifiable given that a transition to rural land can be perceived as being provided for within the rural land, and the Site is within walking distance to the wider Frankton area including five mile, which once developed will be a full service centre. The consequence of the MDR provisions applicable to the Site also results in confusion as to whether future development within the Site must provide direct access to SH6, or whether access can be

¹ Para 99, Council Decision Report 17-6

facilitated through alternative routes to the Site. The Site currently has frontage to SH6, and potential access to the Highway (in the instance of future upgrading) however also has access options though Ferry Hill Drive and Tucker Beach. **Appendix A** further sets out detailed relief in respect of providing for these alternative access options.

- 14 Among other concerns, the Council's Decision referred to a concern for rezoning the Frankton North land Mixed Business Use as undermining the viability and functioning of the Frankton Commercial areas. Mechanisms to address these concerns can be included in any subsequent rezoning of the Frankton North land, such as by including limitations on ground floor areas so as to reduce impacts on other large format retail in Frankton.
- 15 The Council's PDP Decision fails to adequately provide for the higher order provisions of the PDP, the operative and proposed RPS, Part 2 of the Act, and therefore is not the most effective and efficient zoning having regard to the requisite section 32 assessment.
- 16 Without derogating from the generality of the issues identified above, Universal now seeks the following outcomes in the PDP:
 - (a) Rezoning of the Site and surrounding Frankton North land to enable higher density residential and / or mixed commercial and activities, through either a combination or a rezoning of the following: High Density Residential, or Mixed Business Use, or other zoning which would achieve similar outcomes; and
 - (b) Consequential amendments to the provisions of the above zone chapters to provide a site-specific regime for the Site and the Frankton North land, including by way of structure plan and associated subdivision rules; and
 - (c) Consequential amendments to any strategic and higher order provisions of the PDP so as to support and give effect to the ultimate Frankton North zoning; and
- 17 The particulars of the relief sought by Universal are further set out in Appendices **A, B, and C** to this Appeal.
- 18 The rezoning relief as set out in this Appeal is considered to provide for a more efficient and effective development regime for the Frankton north land, which will positively contribute to the District's projected shortfall in commercial zoned land and current housing affordability and supply issues. This relief better achieves:
 - (a) The higher order provisions of the PDP, proposed and operative Regional Policy Statements;

- (b) Section 32 of the Act;
- (c) Part 2 of the Act.

General Medium Density Residential Issues

- ~~19 Universal also has interests in land elsewhere in the District, and which is affected by Chapters 3, 4, and 8 (MDR) of the PDP. Universal seeks general amendments to those chapters to facilitate a more efficient and effective planning regime for residential development in residential zoned areas. Universal considers it important that the residential zones, in particular the MDR Zone, enable residential development unconstrained by unnecessary subdivision and land use rules which otherwise inhibit the ability for those zones to achieve their purpose. Broader activities, such as community and commercial activities, are also important to facilitate in the MDR Zone, where this contributes to an integrated outcome for mixed residential communities.~~
- ~~20 The particular relief set out in respect of these Chapters, applicable to areas other than the Frankton North land, is set out in **Appendix A** to this Appeal.~~

Chapter 3 Strategic Direction

- 21 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 Universal interests are affected by Chapter 3.
- 22 Significant changes to the content and structure of Chapter 3 have occurred between the notified PDP version and the decisions version. Universal therefore considers that its appeal on this chapter is significantly broad and not limited in scope to original policies and objectives listed.
- 23 Universal 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.
- 24 The specific provisions of Chapter 3 and the relief sought by Universal are set out in **Appendix A** to this Appeal.

Chapter 4 Urban Development

- ~~25 Chapter 4 provides for 'hard' urban edges by ensuring a transition to adjacent rural zones is provided for within a UGB. This is opposed on the basis that land zoned for development within a UGB should be used for that purpose and not unnecessarily constrained.~~

~~26 The specific provisions of Chapter 4 and the relief sought by Universal are set out in Appendix A to this Appeal.~~

Chapter 27 Subdivision

27 Universal is in particular concerned with the removal of a controlled activity subdivision status for residential and business zoned land. Controlled activity status is critical to the successful development and completion of subdivision within developable zones (including Mixed Business Use, Township, Special, and Residential). These are zones which are anticipated for further subdivision and development, and therefore subdivision should be enabled to achieve the purpose as land use change is expected. These are zones in which the anticipated level of effects for the Zone have been considered and accepted at a local and District Wide level.

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

Further and consequential relief sought

29 Universal 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 Universal's PDP submission and further submission.

Attachments

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

Appendix A – Relief sought

Appendix B – Location of Frankton North Land

Appendix C – Proposed Frankton North Structure Plan

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

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

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

Dated this 19th 2nd day of ~~June~~ 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
Planning Map 31a and Frankton North specific issues		
Planning Map 31a	The current Zoning of the Site and the adjacent Frankton North land is an inefficient and ineffective zoning regime, taking into account current and projected shortfalls in commercial zoned land and housing affordability and supply issues in the District.	<p>Rezone the Site and the adjacent Frankton North land, as indicated in orange and dark red in Appendix B to either of the following zones (or a combination thereof);</p> <ul style="list-style-type: none"> • High Density Residential; • Mixed Business Use; • Or other similar zoning to achieve the above outcomes <p>Provide for site-specific provisions for the rezoned Frankton North Land.</p>
Chapter 27 – Rules 27.2., 27.7.1 and Chapter 16, Chapter 9 Structure Plan	The access rules for the Frankton North land are unclear and are not facilitated by the agreed Structure Plan as presented in the hearing.	<p>Amend Chapter 27 and Chapters 9 / 16 to provide for the Frankton North Structure Plan (included as Appendix C) and associated provisions, as necessary, including:</p> <p><u>16.x.xx Structure Plan</u></p> <ul style="list-style-type: none"> • <u>Internal road access shall be provided in accordance with the Structure Plan in Rule 16.7 as follows:</u> • <u>Road access into the zone from State Highway 6 shall be via the fourth (northern) leg of the Hawthorn Drive/State Highway 6 roundabout (Designation #370), unless otherwise approved by the NZ</u>

Provision (PDF decision version)	Reason for appeal	Relief sought
<p>Policy 8.2.8.8</p> <p>Ensure coordinated, efficient and well-designed development by requiring, prior to, or as part of subdivision and development, construction of the following to appropriate Council standards:</p> <p>a. a 'fourth leg' off the Hawthorne Drive/State Highway 6 roundabout;</p> <p>b. all sites created in the area to have legal access to either Hansen Road or the Hawthorne Drive/State Highway 6 roundabout; and</p> <p>c. new and safe pedestrian connections between Hansen Rd</p>	<p>The combination of policy 8.2.8.8 and Rule 8.5.3.1 provides an uncertain outcome with respect to how and when any upgrade access to the State Highway will be facilitated. It is unclear how the location, extent, and contributions to the upgrade would be provided for through the land use standards, as compared to a structure plan approach proposed by the Appellant. Furthermore there is a disconnect between the policy and rule 8.5.3.1, as the policy appears to require State Highway access and upgrade as a precondition of development, whereas Rule 8.5.3.1 anticipates that development will provide for connections via Hawthorne Drive or State Highway 6 Roundabout and / or Ferry Hill Drive.</p> <p>The Site has available access presently through Ferry Hill Drive, and if the Appellant is not successful in seeking HDR</p>	<p><u>Transport Agency:</u></p> <p><u>Subject to compliance with a. above, Required Primary Road Access shall be provided as shown on the Structure Plan except that the exact location of such roading may vary by up to 50 metres.</u></p> <p>Consequentially amend Rule 16.2.3.8 and 16.2.3.9 and Chapter 27</p> <p>Delete policy 8.2.8.8, pending further amendments in the course of hearings to clarify its intention and effect.</p>

Provision (CDP decision version)	Reason for appeal	Relief sought
and the southern side of SH6, and the Hawthorne Drive/State Highway 6 roundabout, Ferry Hill Drive and the southern side of State Highway 6.	Zoning, the fall back zoning may be confirmed as MDR. In this instance the Appellant requires certainty as to the mechanisms and triggers for any future SH6 upgrade, and certainty as to the ability to develop while utilising the Ferry Hill Drive access. Although no specific alternative wording for relief on this policy has been sought at this stage, the Appellant generally seeks deletion of the policy, pending further refinements to its intent and effect in the course of any appeal hearings.	
Rule 8.5.3.1 Transport parking and access design	See above reasoning in respect of policy 8.2.8.8	Delete Rule 8.5.3.1 pending further amendments in the course of hearings to clarify its intention and effect.
Chapter 8, Rule 8.5.3 landscape Buffer to SH6	The landscaping rule is fairly prescriptive as to the scale and area of planting with the BMU one, but in relation to the MDR Zone some of the text from the equivalent BMU planting rule has been omitted. The MDR planting rule fails to specify the width of required planting and we suggest appealing to ensure the standard is not so widely framed and made similar to the BMU Zone rule requiring 4m of planting.	Amend Rule 8.5.3 to provide further clarity in respect of landscaping requirements

Provision (POP decision version)	Reason for appeal	Relief sought
Chapter 8, Rule 8.5.1	Given the 90m wide sleeve of BMU located along the State Highway, where building is enabled up to 12m and possibly up to 20m through a RD consent, this is inconsistent for building within the MDR Zone behind that to be restricted to 8m.	Amend Rule 8.5.1 to provide for a permitted maximum height limit of 12m in the Frankton North MDR Zone, and Restricted Discretionary height limit 12m – 20m.
Chapter 8, Rule 8.5.6	Recession planes provided for in this rule are overly prescriptive and onerous to meet. These will not allow for individualised design and site-specific planning requirements, to achieve the purpose of the Zone. These are sought to be amended to provide a more flexible design and planning regime by reducing the current recession requirements.	Amend Rule 8.5.6 to reduce or remove the recession plane requirements, allowing for site-specific design and amenity outcomes.
Alternative relief – HDR Zone site specific provisions as required	In the instance that the Site and the adjacent Frankton North land is rezoned to High Density Residential, Universal seeks a suite of consequential amendments, including to objectives, policies, and rules, which are required to give effect to site-specific planning issues of the Frankton North land. Such relief could include, but is not limited to, similar matters to those specifically provided for in respect of the range of MBU Frankton north provisions, currently contained in Chapter 16	Amend Chapter 9 HDR to provide a site specific suite of objectives, policies, and rules relevant to the Frankton North land, including but not limited to matters currently contained in Chapter 16.

Provision (PDP decision version)	Reason for appeal	Relief sought
Alternative Relief – MBU Zone site specific provisions as required	In the instance that the Site and the adjacent Frankton North land is rezoned to Mixed Business Use, Universal seeks a suite of consequential amendments, including to objectives, policies, and rules, which are required to give effect to site-specific planning issues of the Frankton North as a consequence of extending the zoning. Such relief could include, but is not limited to, similar matters to those specifically provided for currently in Chapter 16.	Amend Chapter 16 MBU to provide a site specific suite of objectives, policies, and rules relevant to the Frankton North land, including but not limited to matters currently contained in Chapter 16.
Alternative Relief – Chapter 27 subdivision site specific provisions as required	In the instance that the Site and the adjacent Frankton North land is rezoned to High Density or Mixed Business Use, Universal seeks a suite of consequential amendments, including to objectives, policies, and rules, which are required to give effect to site-specific planning issues of the Frankton North land. Such relief could include, but is not limited to, similar matters to those specifically provided for in respect of the range of MBU Frankton North provisions, currently contained in Chapter 16.	Amend Chapter 27 Subdivision to provide a site specific suite of objectives, policies, and rules relevant to the Frankton North land, including but not limited to matters currently contained in Chapter 16.

MDR Chapter 8 – general appeal matters

Provision (PDP decision version)	Reason for appeal	Relief sought
Objective 8.2.6, Rule 8.4.13, 8.4.16, 8.4.9	Objective 8.2.6 enables support for community activities in the MDR Zone, subject to addressing residential amenity values. This is not reflected in Rules 8.4.13 and 8.4.16 / 8.4.9 which result in a non-complying activity status for community activities and commercial activities over 100m ² , and discretionary activity status for commercial activity status under 100m ² . These rules are sought to be amended to better enable those activities and to achieve Obj 8.2.6	Amend Table 1 to provide for: <ul style="list-style-type: none"> Community activities as a controlled activity; Commercial activities over 100m² as a discretionary activity, and under 100m² as a controlled activity.
Chapter 3		
Strategic objective 3.2.1.3 The Frankton urban area functions as a commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin.	This objective should also recognise the important contribution of mixed business use and residential housing in the Frankton area	Amend Strategic Objective 3.2.1.3 to also recognise the mixed business use and residential contributions of Frankton
Strategic policy 3.3.6 Avoid additional commercial zoning that will undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine increasing integration between those areas and the	This objective does not recognise the projected shortfall of commercial zoned land in the District over the medium – long terms, and as required to be provided for through the NPS-Urban Development Capacity	Amend strategic policy 3.3.6 as follows: Avoid <u>Manage</u> additional commercial zoning that will <u>may</u> undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will <u>may</u> undermine increasing integration

Provision (PDP decision version)	Reason for appeal	Relief sought
industrial and residential areas of Frankton. (relevant to S.O. 3.2.1.3)		between those areas and the industrial and residential areas of Frankton, <u>while ensuring sufficient development capacity for commercial and residential land is provided for over the short, medium, and long term</u> (relevant to S.O. 3.2.1.3)

Chapter 4

~~Policy 4.2.2.12~~

~~Ensure that any transition to rural areas is contained within the relevant urban Growth boundary~~

~~This policy undermines the ability for land within UGBs to develop and achieve the purpose of Chapters 3 and 4. Protection of adjacent rural amenity values should not impact on the viability of residential and business zoned land within UGBs. There is no RMA reason not to provide for a 'hard' urban boundary.~~

~~Delete Policy 4.2.2.12~~

Chapter 27

Rule 27.5.7 all subdivision defaults to RDA activity status

Subdivision within urban zones is anticipated and should be enabled through chapter 27, subject to appropriate matters of reserved control. Requiring RDA subdivision rather than controlled will result in a disconnect between the rules

Amend Rule 27.5.7 to a default controlled activity status for all zones unless otherwise specified.

Zones to be included in a controlled activity status include;

1. Lower Density Suburban Residential Zone;

Provision (PDP decision version)	Reason for appeal	Relief sought
	applicable to the Zone and the purpose of the Zone.	2. Medium Density Residential Zone; 3. High Density Residential Zone; 4. Town Centre Zones; 5. Arrowtown Residential Historic Management Zone; 6. Large Lot Residential Zone; 7. Local Shopping Centre; 8. Business Mixed Use Zone; 9. Airport Zone – Queenstown. <u>10. Township Zones.</u> <u>11. Rural Residential.</u> <u>12. Rural Lifestyle.</u>
Frankton North – Structure Plan	The mechanisms for the creation of access to and within the BMUZ at Frankton are unclear and uncertain. It is considered that adherence to a Structure Plan would remedy such problems.	Insert a new rule within Chapter 27 (Subdivision), requiring that subdivision be undertaken in accordance with the Structure Plan for the Frankton North Business Mixed Use Zone.
Rule 27.10 Applications for all controlled and restricted discretionary activities shall not require the written approval of other persons	The protection of the State Highway is adequately achieved through separate policies which assure its efficient and safe functioning. The application of this policy could be broader for notification than just to NZTA.	Amend Rule 27.10 as follows: Applications for all controlled and restricted discretionary activities shall not require the written approval of other persons

Provision (PDP decision version)

Reason for appeal

Relief sought

and shall not be notified or limited notified except:

and shall not be notified or limited notified except:

a. where the site adjoins or has access onto a State Highway;

~~a. where the site adjoins or has access onto a State Highway;~~

Appendix B – Frankton North Land

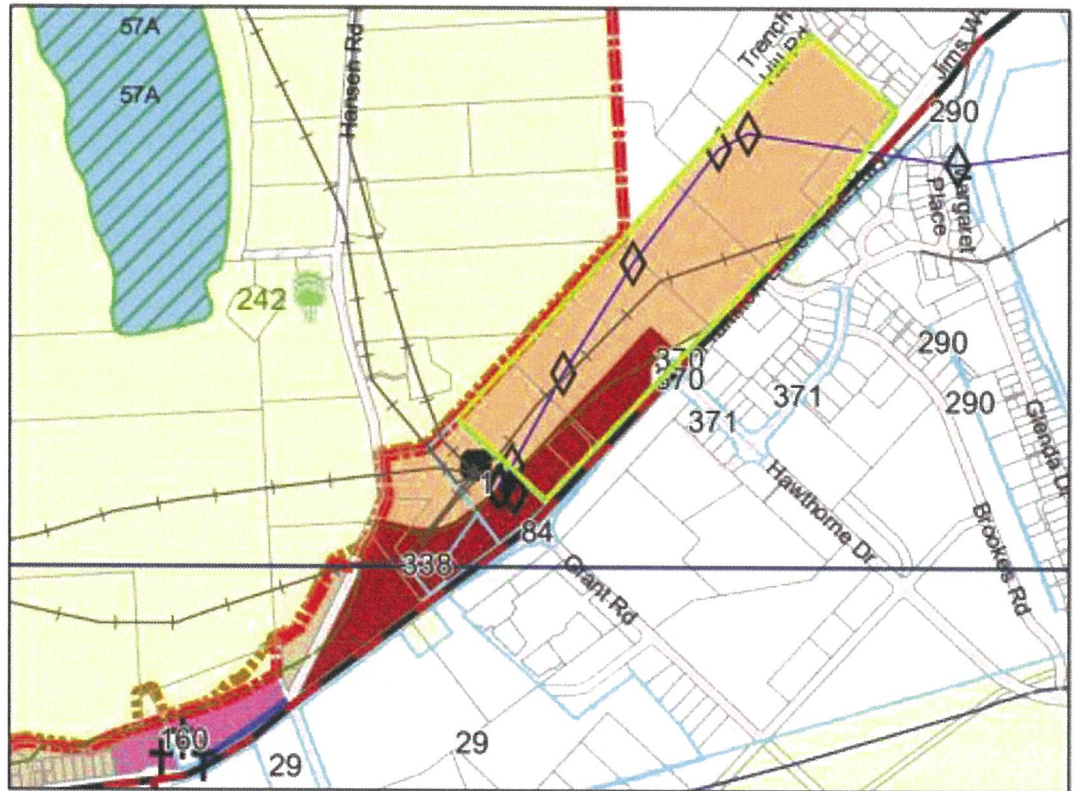


Figure 1: Decisions version of Planning Map 31 showing zoning of the sites (outlined green). Business Mixed Use zone is maroon, and Medium Density Residential zone is tan

Appendix C – Proposed Frankton north structure plan

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

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

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