

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**ENV-2021-CHCH-0000**

**UNDER THE**

Resource Management Act 1991 ("Act")

**IN THE MATTER OF**

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

**BETWEEN**

**MALAGHANS INVESTMENTS LIMITED**

**Appellant**

**AND**

**QUEENSTOWN LAKES DISTRICT COUNCIL**

**Respondent**

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**NOTICE OF APPEAL BY MALAGHANS INVESTMENTS LIMITED**

**18 MAY 2021**

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Counsel instructed:

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**TO:** The Registrar  
 Environment Court  
 PO Box 2069  
 20 Lichfield Street  
**CHRISTCHURCH**  
[\(Christine.McKee@justice.govt.nz\)](mailto:(Christine.McKee@justice.govt.nz))

**AND TO:** The Respondent  
[\(dpappeals@gldc.govt.nz\)](mailto:(dpappeals@gldc.govt.nz))

**(NOTE:** Service on submitters and further submitters is waived pursuant to the Environment Court's directions of 1 April 2020]

### **Notice of appeal**

1. Malaghans Investments Limited (“**appellant**”) appeals the following decision (“**Decision**”) made by the Queenstown Lakes District Council (“**QLDC**”):

Decisions on Chapter 46 Rural Visitor Zone and Related Variations to Chapters 25, 27, 31 and 36 of Stage 3b of the Queenstown Lakes District Proposed District Plan (“**PDP**”)

2. The appellant received notification of the Decision by email on 1 April 2021.
3. The appellant made a submission on the PDP on or around 18 November 2019, referenced as #31022. A further submission were made on or around 17 February 2020, referenced as #31052. This supported rezoning to RVZ of neighbouring land.
4. The appellant is not a trade competitor for the purposes of Section 308D of the Act.

### **Decision / part of Decision appealed against**

5. The Decision refused the request to rezone the appellant’s site (and the neighbouring site) to Rural Visitor Zone (“**RVZ**”).
6. The appeal relates to the Decision to:
  - (a) reject the rezoning of the appellant’s site (and the neighbouring site) to RVZ;
  - (b) depart substantively from the provisions of the RVZ as notified; and/or
  - (c) fail to adopt the specific refinements sought by the appellant in its submissions, as well as in its evidence before the QLDC hearing Panel (including as consequential relief, or relief necessary as a consequence of a change from the RVZ provisions as notified).
7. The appellant reserves its scope and/or jurisdiction to achieve amendments to the Decision relating to and/or otherwise responding to each of these matters.

## Reasons for the appeal

### *Background*

8. The RVZ provides for visitor industry activities that enable people to access and appreciate the District's landscapes, at a small scale and low intensity, and in a manner that recognises the particular values of those landscapes. By providing for visitor industry activities within the rural environment, including in remote locations, the Zone recognises the contribution visitor industry places, services and facilities make to the economic and recreational values of the District.
9. The appellant sought for its land at 1352 Skippers Road to be rezoned to RVZ, and also supported its neighbour's request for that same rezoning at 1354 Skippers Road (together referred to as the "**Site**"), shown below:



10. At [366] of the Decision is it noted that:

Ms Grace evaluated the Malaghans and Mills submissions in her EiC. She considered the site generally has the key characteristics for RVZ areas, being remote, relatively difficult to see from public places, and potentially with the capability to successfully absorb some development. She understood that accommodation options within Skippers are currently very limited and allowing RVZ in this area would provide greater access to this particular ONL landscape ...

11. With respect to natural hazards, the Decision further states at [367] that:

... By the time of her Reply statement, Ms Grace was satisfied there was no barrier to rezoning from a natural hazard risk point of view. Mr Robert Bond, the Council's geotechnical engineering consultant, had reviewed further geotechnical information provided by the submitter. On the basis of that information, he concluded landslide risk at the site was low and did not oppose the rezoning to RVZ.

12. In terms of landscape effects, the Decision records at [385] that:

There was broad agreement between Mr Milne and Mr Jones regarding the landscape assessment of site and surrounding environment, and the landscape effects of development under the proposed RVZ provisions. However, there remained a difference of opinion regarding the landscape sensitivity of the site.

13. Further, at [386]:

Mr Milne assessed the upper slopes along the eastern boundary of the site as having a “moderate-high” landscape sensitivity rating, predominantly due to the limited visibility of this part of the site from the road and the river ...

14. And at [387]:

Mr Jones did not agree with this assessment. He considered these areas have a “high” landscape sensitivity due to their steep gradient and potential visual prominence. Mr Jones considered any future development along these upper slopes has the potential to result in adverse effects on the ONL and should be considered as a non-complying activity.

15. The Structure Plan shows the area of lower sensitivity (yellow), moderate-high sensitivity (blue) and high sensitivity (purple). Ms Grace recommended excluding an area to the east to address Mr Jones’ landscape concern, shown below:



16. At [394], the Decision noted:

Had we recommended a Skippers RVZ be accepted, we would have recommended showing the upper slopes as being of high landscape sensitivity [shaded purple, in reference to the Structure Plan above].

17. In respect of the rejection of the rezoning, the Decision found at [392] that:

... we accept the evidence of Ms Grace that a permissive RVZ framework of permitted and controlled visitor-related development is not appropriate at this site for traffic safety reasons. On this matter alone, we do not recommend acceptance of the RVZ rezoning for this site.”

*Appeal – specific reasons*

18. The Hearing Panel erred procedurally and/or substantively, as it:
  - (a) refused to hear from the appellant's traffic expert at the hearing but invited the Council to admit new evidence in relation to traffic as part of the Council's reply. The Hearing Panel therefore denied itself the opportunity to ask questions of the appellant's traffic expert (who was available at the hearing), or for the expert to address the matters raised as part of the Council's reply;
  - (b) relied on the Council's traffic evidence which had not been tested in any way, and was inappropriately focussed on road maintenance issues for the QLDC as the roading authority, rather than on the issues as contextually linked to the zone provisions, and which used irrelevant hazard and maintenance issues such as flooding on the Kinloch Road;
  - (c) relied on an inadequate assessment from the Council's traffic engineer who in particular failed to consider the permitted traffic effects arising from activities on site in the current rural zone for each site, such as the existing residential units, permitted status of associated residential flats, and the permitted activity status for commercial recreation activities;
  - (d) erroneously relied on the Council's traffic engineers statement that the appellant's traffic engineer underestimated the number of visitors able to stay at the site, when no analysis or substance to that claim was provided by the Council's traffic engineer in light of the provisions of the zone. The Council's traffic engineer also assumed that all visitors would be driving themselves and also driving at night. He also failed to consider that alternative transport options are available and that the appellant is also able to put in place transport via third party providers who already use the road;
  - (e) failed to consider the policy and rule framework in making its decision on traffic effects, and in particular that private vehicle access is not the only method of transportation directed for activities in the RVZ. Cycling and walking are viable options to the Skippers RVZ and are part of the visitor industry experience (the site is only 10km from the Coronet Skifield Access Road intersection). In addition, the rule framework provides for up to 15 helicopter return movements (arrivals and departures) in a given week as a permitted activity. On this matter, the appellant's traffic expert correctly noted:
 

... the plan provisions also include allowances for air and/or water travel. I understand that the site is capable of supporting helicopter landing/take off and that the zone provisions permit up to 15 return movements per week. It is possible that the site may be accessible from other transport modes, including jet boat, other than vehicular travel. This means that Skippers Road may not be the primary transport route for visitors to the site.
  - (f) failed to consider a range of methods to manage the effects of transport to and from the site by way of matters of control or

discretion to manage the issue such as travel management plans and restrictions at certain times of the year on private vehicle passenger movements;

- (g) erroneously provided no policy support under objective 46.2.1 (f), which refers to vehicle access and water-based transport only, with respect to Rule 46.4.5 relating to informal airports (permitted activity). Air transportation is an important mode of transport and for a frequently used and viable option for visitor industry activities in remote locations. The appellant seeks this objective is amended and recognition in Policy 46.2.2.6 for "air-based transport" as an alternative to vehicle and water access to provide the policy basis for the proposed rule in respect of informal airports;
- (h) amended the notified objectives, policies and rules to a significant extent from the notified version, which will create an inefficient implementation regime, requiring the assessment of matters satisfied as part of the rezoning process (i.e. hazards, reverse sensitivity/compatibility with rural activities, landscape effects), contrary to the original intention of the zone and its provisions; and
- (i) erred in failing to rezone the Site to RVZ and in failing to adopt the changes to the provisions requested by the appellant that would have addressed the appellant's submissions, evidence and/or otherwise have given effect to the outcomes sought by the appellant.

*General reasons for the appeal*

19. The general reasons for this appeal are that the Decision to not rezone the Skippers site to RVZ as sought by the appellant:
  - (a) fails to promote sustainable management of resources, including the enabling of people and communities to provide for their social and economic well-being, and will not achieve the purpose of the Act under section 5, and those matters under Part 2 including failing to promote the efficient use and development of the land under section 7(b);
  - (b) fails to achieve or implement the relevant district-wide objectives and policies of the PDP that supported that zoning;
  - (c) fails to achieve or implement the relevant objectives and policies of the zone in question; and/ or otherwise to support and/or is otherwise inconsistent with achieving the land use outcomes anticipated by the relevant zoning;
  - (d) fails to achieve the functions of the Council under section 31 of integrated management of the effects of the use and development of land and physical resources;
  - (e) fails to meet the requirements of section 32; and
  - (f) is procedurally unfair and inefficient.

20. In contrast, granting the appeal will generally, and particularly in respect of the Site will achieve all of the matters/ outcomes or otherwise address the issues identified above in paragraph [19] immediately above.

#### **Relief sought**

21. The appellant seeks the following primary relief:
- (a) rezoning of the site to RVZ, including amending the planning maps to identify the Skippers Rural Visitor Zone and areas of low, moderate, high landscape sensitivity, and the identification of an escarpment feature for the purposes of a building setback;
  - (b) providing location specific rules to the Skippers Rural Visitor Zone to manage the effects of rural visitor activities and to provide for development within areas of lower landscape sensitivity, including but not limited to:
    - (i) construction of buildings within the area of low landscape sensitivity to be a controlled activity;
    - (ii) setback of buildings from escarpment features, instead of a building setback from Zone or site boundary;
    - (iii) enabling a building height up to 8m in the area of low landscape sensitivity; and
    - (iv) a rule permitting the existing residential units and the associated activity.
  - (c) inclusion of a structure plan and objectives, policies and rules to Chapter 27 Subdivision and Development to effectively manage any future subdivision
22. The appellant also seeks the following secondary relief:
- (a) as a consequence of the rezoning to RVZ, removal of the existing overlays from the site;
  - (b) return to the notified objectives and policies, or an amendment that better achieves the purpose of the RVZ, better implements the strategic objectives and policies, and directs a more efficient and effective set of rules and their administration;
  - (c) amendment to the objectives and policies to enable provision of air transport servicing the RVZ (which provides the policy basis that the rule for informal airports is to implement);
  - (d) reinstate the notified status of building within lower landscape sensitivity areas as a controlled activity irrespective of cumulative ground floor area;
  - (e) the deletion, amendment or other refinement or the provisions to address the concerns raised by the appellant (including alternative ways of achieving some outcomes sought);

(f) any other additional or consequential relief to the PDP, including but not limited to, the maps, issues, objectives, policies, rules, controls, discretions, assessment criteria and explanations to fully address the concerns raised by the appellant in its submissions, its evidence before the Hearing Panel, and as stated in this notice of appeal; and

(g) costs.

**Alternative dispute resolution**

23. The appellant agrees to participate in mediation or other alternative dispute resolution of the proceeding.

**Attachments**

24. The following documents are attached to this notice.

- (a) a copy of the appellant's original submission;  
(b) a copy of the appellant's further submission; and  
(c) a copy of the Decision.

[The Environment Court has waived the requirement to serve submitters and further submitters, and so no list of submitters to be served is required to be filed with this notice. It has also waived the "advice to recipients" requirement, and so that advice is omitted from the notice to the appeal.]

**DATED** 18 May 2021



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J D K Gardner-Hopkins  
**Counsel for the appellant**

The appellant's address for service is C/- James Gardner-Hopkins, Barrister, PO Box 25-160, Wellington 6011.

Documents for service on the appellant may be sent to that address for service or may be emailed to [james@jghbarrister.com](mailto:james@jghbarrister.com). Service by email is preferred, with receipt confirmed by return email.

**Attachment 1 - the appellant's submission**

**Attachment 2 - the appellant's further submission**

**Attachment 3 - the Decision**