

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2018-CHCH-0000

UNDER THE

Resource Management Act 1991 ("**Act**")

IN THE MATTER OF

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

AND IN THE MATTER OF

an application under section 281 for waiver of the
time period for filing a notice of appeal

BETWEEN

KENNETH MUIR

Appellant

AND

QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

**NOTICE OF APPLICATION FOR WAIVER OF TIME TO FILE APPEAL
IN RESPECT OF A DECISION ON SUGAR LANE ZONING**

21 SEPTEMBER 2018

Counsel instructed:

JGH BARRISTER

J D K Gardner-Hopkins

Phone: 04 889 2776

james@jghbarrister.com

PO Box 25-160

WELLINGTON

TO: The Registrar
Environment Court
CHRISTCHURCH

AND TO: The Respondent

AND TO: The further submitters

TAKE NOTICE THAT the Kenneth Muir (“**Appellant**”) hereby applies under section 281 of the Act for a waiver in respect of *Kenneth Muir v Queenstown Lakes District Council* (ENV-2018-CHCH-0000[xx]) (“**Appeal**”).

The Appellant seeks a waiver of the time period for filing its Appeal as provided under Schedule 1, Clause 14(4), **UPON THE GROUNDS THAT:**

Explanation for the delay

1. The Appellant’s appeal relates to a limited area of land at Sugar Lane adjacent to the Frankton Marina. It seeks rezoning from Low Density Suburban Residential (“**LDSR**”) to Business Mixed Use (“**BMU**”) zoning or some other alternative commercial zoning (including a new zone). The Appellant owns much of the land to which the Appeal relates.
2. The Marina is currently being redeveloped.
3. The Appellant only recently (in August) became aware of the scale and extent of the redevelopment. He was concerned in that context that the continued zoning of Sugar Lane as LDSR would be even less appropriate in light of the Marina development, and that it was even more appropriate for BMU zoning to apply so that future uses could better complement and support the Marina development.
4. Had the Appellant understood the scale and extent of the Marina Development at the time that the appeals were due (mid-June), he would have appealed.
5. By the time the Appellant discovered the scale and extent of the Marina Development he assumed (in August) it was too late to appeal.
6. The Appellant recently took advice on the issue (on 17 September 2018) and understood that the Environment Court has discretion to waive time periods under the Act. He immediately instructed appropriate applications to be made.

No prejudice

7. As a limited site-specific issue, the appeal does not raise strategic issues, and would not be part of the Topic 1 or 2 appeal categories that have now been timetabled for hearing.
8. The appeal would most likely be categorised within Topic 16, “rezoning appeals”. This topic is relatively far down the “mediation” sequence, and no party (or prospective party) would be prejudiced if the appeal were to be allocated into Topic 16.

9. In addition, the only likely parties are the Council, and the Queenstown Airport, given that the Queenstown Airport was the only further submitter in opposition to the Appellant's original submissions. The Council will not be prejudiced (let alone unduly) by the granting of the waiver; nor will the Queenstown Airport. Its reverse sensitivity issues are likely to be capable of resolution through any zone specific provisions, as well.
10. Out of an abundance of caution, the Appellant additionally proposes to identify and provide to the Court a schedule of persons who might have an interest in the proceedings that is greater than the interest that the general public has, who can be directly notified of the Appeal (for example, any other landowners subject to the zoning). Together with listing on the Council's website, this will provide any party who wishes to seek to join the appeal an appropriate opportunity to do so.

Interests of sustainable management and justice

11. The LDSR zoning does not reflect the current uses, or complement the Marina Redevelopment that is underway. It is in the interest of achieving sustainable management that the most appropriate zoning is considered through the PDP appeals process, at the same time as other rezoning considerations.
12. It is in the interests of justice that the Appellant have the opportunity to put its case to the Environment Court, and receive a decision from it, with reasons (whatever the outcome), rather than await some future process the timing of which is entirely uncertain and likely to take a significant period of time to resolved.

AND ON THE FURTHER GROUNDS / IN RELIANCE ON:

13. The affidavits of Mr Giddens and Mr Muir sworn / affirmed in support of this application.
14. *C W Dunstan v Western Bay of Plenty District Council W80/2007.*

DATED 21 September 2018



J D K Gardner-Hopkins
Counsel for the Appellant

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

Documents for service on the Applicant may be sent to that address for service or may be emailed to james@jghbarrister.com. Service by email is preferred, with receipt confirmed by return email.