

In the Environment Court of New Zealand  
Christchurch Registry

I Te Koti Taiao o Aotearoa  
Ōtautahi Rohe

**ENV-2018-CHC-**

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Under	the Resource Management Act 1991 ( <b>RMA</b> )
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	<b>MacFarlane Investments Limited</b>
	Appellant
And	<b>Queenstown Lakes District Council</b>
	Respondent

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**Notice of Appeal**

19 June 2018

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**Appellant's solicitors:**

Maree Baker-Galloway | Rosie Hill  
Anderson Lloyd  
Level 2, 13 Camp Street, Queenstown 9300  
PO Box 201, Queenstown 9348  
DX Box ZP95010 Queenstown  
p + 64 3 450 0700 | f + 64 3 450 0799  
maree.baker-galloway@al.nz | rosie.hill@al.nz

**anderson  
lloyd.**

**To** The Registrar  
Environment Court  
Christchurch

- 1 MacFarlane Investments Limited (**MacFarlane**) appeals against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 MacFarlane made a further submission (#1274) on the PDP.
- 3 MacFarlane is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 MacFarlane 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 12 Queenstown Town Centre Zone;
  - (b) Height Precinct Map (Figure 2, Chapter 12);
  - (c) Further submissions 82, 206, 398, 417, and 383.
- 7 Reasons for appeal

### **Background**

- 8 MacFarlane's concerns are limited to part of the northern half of the block bounded by Man Street, Hay Street, Shotover Street and Brecon Street (**Man Street Block**), namely the 'Language School' site located at 10 Man Street, 14 Brecon Street, and 10 Brecon Street (**LS Site**) as identified in the Council's Decision.
- 9 MacFarlane owns / has interests in approx. 3,900sqm of land within the Isle Street East (**ISE**) sub zone bounded by Man Street on its southern boundary and Brecon Street on its western boundary located on the opposite (northern) side of Man Street from the Sofitel Hotel. That land is potentially affected by the Council's decisions on Chapter 12 relating to heights of the Man Street Block, and as depicted in the Chapter 12 Height Precinct Map. MacFarlane's primary concern is a broader one of appropriate urban design outcomes in this area. The ultimate urban design decided upon by the Council will have direct consequences for the development of the land within the ISE sub zone.
- 10 MacFarlane has accumulated this property over a period of 30 years and was previously involved in the planning debates which established the current

operative height limits on the Sofitel Hotel site and the (current) Queenstown Town Centre Transition Zone. At the time those height limits were set they established an appropriate relationship between height limits in this general area, taking into account the particular characteristics and topography of the parcels of land involved. MacFarlane acknowledges that those previously established height limits will change, notwithstanding that the Sofitel height is fixed in time. What MacFarlane seeks to ensure is that, overall, appropriate height relationships are maintained and good urban design outcomes are achieved.

- 11 Based upon jurisdiction for relief stemming from 'collective scope'<sup>1</sup> The following submissions are of importance to the potential outcomes for height limits sought in this appeal:
- (a) Original Submission 417 by John Boyle which requests that the maximum building heights enabled in the Man Street Block be no greater than those enabled in the Operative District Plan (**ODP**);
  - (b) Original Submission 398 by Man Street Properties Limited (**MSPL**) which requests a complex mixture of height limits within the Man Street Block based upon 'flat plane' RL or masl levels rather than height limits based upon height above original ground level.

### **Man Street Block and Language School Site – Height Issues**

- 12 Chapter 12 as decided by Council provides for differential heights of the Man Street Block, including viewshafts, as depicted in the Height Precinct Map of Chapter 12. This increases height limits of the LS Site from that which was originally notified in the PDP and which currently exists under the ODP.
- 13 This decision was despite the acknowledgement in the decision reports that this *'shows the potential for a building on 10 Man Street to loom over any building on the adjoining 14 Brecon Street'*. MacFarlane considers this to be a serious error in the decision making and which will result in poor urban design and amenity outcomes.
- 14 MacFarlane raised scope issues in the course of the hearing relevant to the Council's recommendations to increase height limits on the LS Site and the Man Street Block. The Council's discussion relies on the general submission from Mr Cowie (#20) which purports to generally support increased height limits across the PDP. This submission is not sufficiently particularised to enable other

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<sup>1</sup> *Simons Hill Station Limited v Royal Forest and Bird protection Society of New Zealand Inc* [2014] NZHC 1362; *Environmental Defence Society Incorporated v Otorohanga District Council* [2014] NZEnvC 70 para [12].

submitters to be aware of potential implications for site specific height increases. The jurisdiction for the Decision is therefore challenged.

- 15 As set out below, MacFarlane proposes an alternative height regime which will result in a stepped height limit in relation to buildings above Man Street and will impose a horizontal 334 masl height limit on the LS Site. This application of a flat height plane, rather than slopping heights in relation to original ground level, will provide a logical outcome for controlling height along Man Street for the following reasons:
- (a) Due to the variable ground level, a height limit relating to ground level can be difficult to apply and will not promote good design in respect of built form;
  - (b) The logic of applying RLs to control building height as a method in the district plan has been successfully applied to the Sofitel Hotel site. The established height of the Sofitel Hotel above Man Street provides a logical benchmark for determining an appropriate approach to height limits above Man Street;
  - (c) The simpler the rules can be to interpret and apply the more certainty they will provide. This will result in more efficient plan administration and development processes;
  - (d) The horizontal height plane regime provides a reasonable level of certainty to landowners and members of the public about the anticipated height limits for development along Man Street which might be approved without public input.
- 16 The PDP should not facilitate development on the LS Site which is disproportionate to the height of the Sofitel Hotel.
- 17 A 14m high building at 10 Man Street will appear disproportionately higher and 'thinner' in relation to its adjacent buildings (the Sofitel and the Carpark) and pedestrian areas (Brecon Street steps) and the proposed Man Street Carpark view shaft. However, the steep natural topography (a steep escarpment) provides an opportunity for a relatively substantial amount of building mass to be provided in the airspace below 334masl (as achieved by the Sofitel Hotel).
- 18 A 14m high building at 10 Man Street may be impractical to construct without development of adjoining land. This is because of the relatively small size of the site and practical constraints such as the southern and eastern boundaries being founded on reasonably large and old retaining walls. A 334 masl height limit on the LS Site is more practical for the landowner.

19 MacFarlane seeks the following relief:

- (a) Deletion of the PDP Decision on height limits relating to the Man Street Block and LS Site, and replacement with the height limit regime proposed by MacFarlane in the course of the hearing:

**Table 1 Recommended (rounded) Height Limits for 10 Man, 10-14 Brecon Street & MSC<sup>1</sup>**

Location	Area Ref	RL (Man Street)	Step	Height Limit (RL)
<i>Sofitel (eastern end)</i>	<i>P6</i>	<i>326<sub>mast</sub></i>	<i>6m</i>	<i>332<sub>mast</sub></i>
<b>Brecon Street</b>	Street	326 <sub>mast</sub>	0m	n/a
<b>10 Man &amp; 10-14 Brecon</b>	G  (amended from P1)	326 <sub>mast</sub>	8m	334 <sub>mast</sub>
<b>View shaft</b>	C	327 <sub>mast</sub>	0m	327 <sub>mast</sub>
<b>MSC* East</b>	A	328 <sub>mast</sub>	8m	336 <sub>mast</sub>
<b>View shaft</b>	D	330 <sub>mast</sub>	0m	330 <sub>mast</sub>
<b>MSC West</b>	B	330 <sub>mast</sub>	8m	338 <sub>mast</sub>

- (b) Or, in the alternative to the above site-specific relief; delete the PDP Decision on height limits relating to the Man Street Block and LS Site, and replace with the Operative District Plan height limits.

**Further and consequential relief sought**

20 MacFarlane opposes any further provisions and seeks alternative, consequential, or additional relief to that set out in this appeal necessary or appropriate to give effect to the matters raised generally in this appeal and MacFarlane's PDP submissions.

## Attachments

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

- (a) **Appendix A** - A copy of the Appellant's further submission;
- (b) **Appendix B** - A copy of the relevant parts of the decision; and
- (c) **Appendix C** - A list of names and addresses of persons to be served with this notice.

Dated this 19<sup>th</sup> day of June 2018



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Maree Baker-Galloway/Rosie Hill  
Counsel for the Appellant

### **Address for service of the Appellants**

Anderson Lloyd

Level 2, 13 Camp Street

PO Box 201

Queenstown 9300

Phone: 03 450 0700 Fax: 03 450 0799

Email: maree.baker-galloway@al.nz | rosie.hill@al.nz

Contact persons: Maree Baker-Galloway | Rosie Hill

### **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.