

**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

**BETWEEN**

**KENNETH MUIR**

**Appellant**

**AND**

**QUEENSTOWN LAKES DISTRICT COUNCIL**

**Respondent**

---

**NOTICE OF APPEAL BY KENNETH MUIR  
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](mailto:james@jghbarrister.com)

PO Box 25-160

**WELLINGTON**

**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@glde.govt.nz](mailto:dpappeals@glde.govt.nz))

**AND TO:** Further submitters required to be served:  
 Queenstown Airport Corporation Limited  
 ([kirsty.osullivan@mitchellpartnerships.co.nz](mailto:kirsty.osullivan@mitchellpartnerships.co.nz);  
[rebecca.wolt@laneneave.co.nz](mailto:rebecca.wolt@laneneave.co.nz); [sophie.reese@laneneave.co.nz](mailto:sophie.reese@laneneave.co.nz)); and  
 Z-Energy Limited ([mLaurenson@burtonconsultants.co.nz](mailto:mLaurenson@burtonconsultants.co.nz))

### **Notice of appeal**

1. Kenneth Muir (“**appellant**”) appeals parts of the following decision (“**Decision**”):

Decisions on the submissions and further submissions to Stage 1 of the Queenstown Lakes District Proposed District Plan (“**PDP**”).

2. The appellant made a submission on the PDP on or around 22 October 2015. No further submissions were made.
3. The appellant sought in its submission to “change the Sugar Lane area from Low Density Residential to Business Mixed Use Zoning”, stating:

As a [sic] owner of properties in the Frankton Marina, Sugar Lane area I wish to support the Business Mixed Use Zone proposal. This is the ideal zoning to allow the SugarLane area to become a vibrant development in support of the new Marina.

### **No prohibited trade competition purposes**

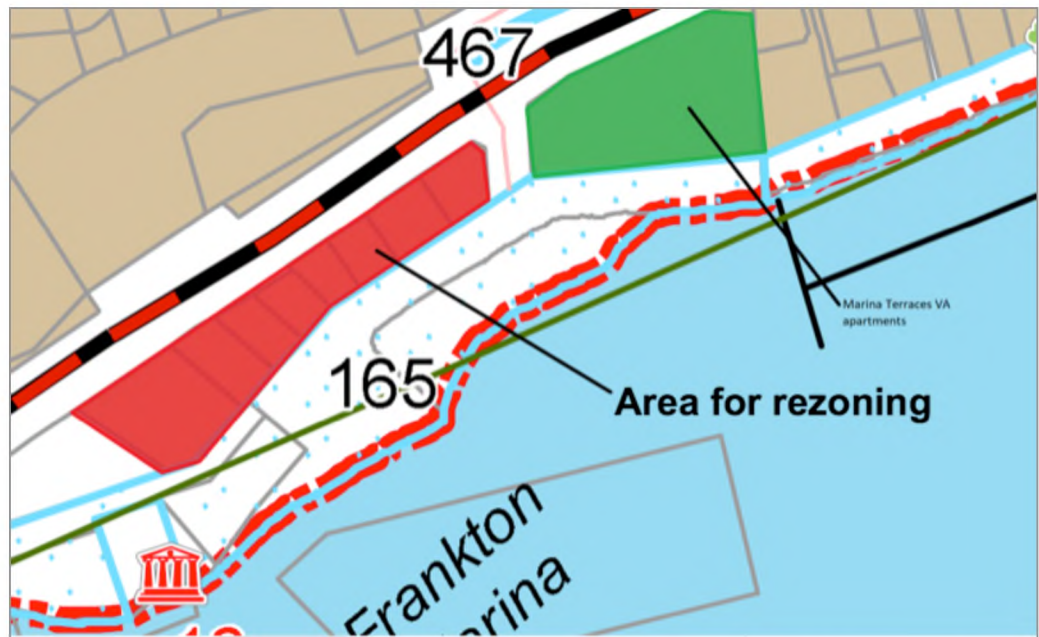
4. The appellant is not a trade competitor for the purposes of Section 308D of the Act.

### **Decision**

5. The Decision was made by the Queenstown Lakes District Council (“**Council**”) on 7 May 2018.
6. The appellant received notice of the Decision on or around 7 May 2018.

### **Scope of appeal**

7. The appellant only appeals the Decision to the extent that it relates to the zoning of the Sugar Lane area as identified on the following plan as “Area for rezoning” (“**Sugar Lane decision**”), and in particular its zoning as Lower Density Suburban Residential (“**LDSR**”) zoning instead of Business Mixed Use (“**BMU**”) zoning:



8. It is also noted that the submission of Don Lawrence/DS EE Properties Ltd (16) sought that Sugar Lane be rezoned from LDR to a commercial zoning.

#### The Decision

9. The Council's Decision adopted the recommendation of its Commissioners, as contained in Report 17-15.
10. Significantly, the recommendation report stated (emphasis added):

[159] ... We consider however that intersection upgrades would improve traffic management **therefore we do not see traffic issues as determinative of zoning.**

[160] ... both of the Council's planning witnesses considered that the notified LDRZ did not reflect existing and consented activities in and around Frankton Marina. We examined the current zones available within the PDP and concluded that none was suitable as a means of enabling the existing mix of activities at Sugar Lane to continue operating without recourse to frequent applications for resource consents.

[161] Mr Muir sought BMU zoning however this would be contrary to the overall zoning strategy which provides for BMUZ near existing town centres (Queenstown and Wanaka). **We accept that the mix of activities enabled by the BMUZ is a feature in its favour,** however the zone enables an intensity of development that is not appropriate in this location. In our view, **if the Council's goal is to enable the growth and development of mixed uses in the Sugar Lane area, a new zone is required.**

[162] Mr Muir identified an opportunity to allow Sugar Lane to become a vibrant development in support of a new marina. **Ms Evans appeared to agree with him insofar as she considered some form of marine based commercial zone, or a structure plan or outline development that considers the further development of the Sugar Lane area as a whole would be beneficial.** Z Energy supported Ms Evans in this regard and urged the Council to pursue rezoning in the near future. **We**

**agree that Sugar Lane could be redeveloped for a wide range of activities to support a new marina** (assuming it proceeds) and we consider that a planning study is an essential first step should this be the Council's goal. We find that none of the available PDP zones is suitable for this purpose.

[163] We are compelled by circumstances and the lack of suitable alternative zonings to recommend that LDR zoning be retained for the reasons set out above. As it happens, retention of LDR zoning also satisfies the further submissions lodged by QAC.

### **General reasons for the appeal**

11. The general reasons for this appeal are that the Sugar Lane decision:
- (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 section 5 purpose of the Act;
  - (b) fails to promote the efficient use and development of the appeal site, a matter to have particular regard to under section 7(b) of the Act;
  - (c) fails to recognise the existing uses and likely future uses of the Sugar Lane site;
  - (d) fails to provide a zoning that will complement and support the development of the marina as consented and being / to be developed;
  - (e) 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;
  - (f) fails to meet the requirements of section 32;
  - (g) fails to recognise the (minimal) effects on the environment of rezoning the appeal site to BMU;
  - (h) fails to achieve or implement the relevant district-wide objectives and policies of the PDP; and
  - (i) is procedurally unfair, as the reality in declining the rezoning sought is to defer the application of an appropriate zone to the Sugar Lane site for many years (taking into account the length of time that a council-initiated study will take to be advanced, followed by a notified plan change process, potentially with appeals).
12. In contrast, granting the appeal will:
- (a) promote the sustainable management of resources, including the enabling of people and communities to provide for their social and economic well-being, and will achieve the section 5 purpose of the Act;

- (b) promote the efficient use and development of the Sugar Lane site, a matter to have particular regard to under section 7(b) of the Act;
- (c) recognise the existing uses and likely future uses of the Sugar Lane site;
- (d) provide a zoning that will complement and support the development of the marina as consented and being / to be developed;
- (e) 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;
- (f) meet the requirements of section 32;
- (g) recognise the (minimal) effects on the environment of rezoning the appeal site BMU;
- (h) achieve or implement the relevant district-wide objectives and policies of the PDP; and
- (j) is procedurally fair, as it will enable an appropriate zoning to be adopted in a reasonable timeframe through the appeals process.

#### **Relief sought**

13. The appellant seeks:
- (a) Rezoning of the Sugar Lane area from LRSR to BMU zoning.
  - (b) In the alternative, apply a modified BMU or other commercial zoning (including a specific zoning) to Sugar Lane.
  - (c) Any other similar, consequential, or other relief as is necessary to address the issues raised in the appellant's appeal or otherwise raised in the appellant's original submission.
  - (d) Costs.

#### **Alternative dispute resolution**


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

#### **Attachments**

15. The following documents are attached to this notice.
- (a) a copy of the original submitters' submissions; and
  - (b) a copy of the relevant parts of the Decision.

[the further submitters required to be served with a copy of this notice are listed at the front of this notice.]

**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@ighbarrister.com](mailto:james@ighbarrister.com). Service by email is preferred, with receipt confirmed by return email.