

**BEFORE THE ENVIRONMENT COURT**

**ENV-2018-CHC-**

**IN THE MATTER** of the Resource  
Management Act 1991  
("Act")

**AND**

**IN THE MATTER** of an appeal pursuant to  
Clause 14(1) to Schedule 1  
of the Act

**BETWEEN** **X-RAY TRUST  
LIMITED & AVENUE  
TRUST**

**Appellant**

**AND** **QUEENSTOWN  
LAKES DISTRICT  
COUNCIL**

**Respondent**

---

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST  
DECISION ON PROPOSED PLAN UNDER CL 14(1) SCHEDULE**

**1**

**Dated 7 May 2019**

---

**MACALISTER TODD PHILLIPS**

Barristers, Solicitors, Notaries

3<sup>rd</sup> Floor, 11-17 Church Street

Queenstown 9300

P O Box 653, DX ZP95001, Queenstown 9348

Telephone: (03) 441 0125 Fax: (03) 442 8116

Solicitor Acting: J E Macdonald

## NOTICE OF APPEAL

**To:** The Registrar  
Environment Court  
Christchurch

**1. Name and address of appellant:**

X-Ray Trust Limited & Avenue Trust  
c/o Macalister Todd Phillips  
Level 3, 11-17 Church Street  
Queenstown 9300  
Attn: Jayne Macdonald

2. The Appellant appeals the decision (“Decision”) of the Queenstown Lakes District Council (“Respondent”) on a variation to the Queenstown Lakes Proposed District Plan – namely the introduction of Chapter 24 and Wakatipu Basin Planning Maps (“the Variation”).
3. The Appellant is a person who made a submission on the Variation. The Appellant’s submission (#2619) sought inter alia that a portion of the Appellant’s land on the valley floor adjacent to Speargrass Flat Road be zoned Wakatipu Basin Lifestyle Precinct subject to a structure plan<sup>1</sup> (“Arrowburn Zone”).  
  
 (“Submission”).
4. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

---

<sup>1</sup> Arrowburn Structure Plan, reproduced at Fig 5 of the Decision, page 7.

5. Notice of the decision was received on or about 21 March 2019.
6. The Appellant appeals against the Decision rejecting its Arrowburn Zone Proposal.

**7. The reasons for the appeal are as follows:**

- 7.1 The Respondent erred in the consideration and relevance of consent notices registered on the Records of Title (“RT”) to the Appellant’s land.<sup>2</sup> While the consent notices are part of the consent history, they can be amended pursuant to s127 of the Act.
- 7.2 The Respondent erred in its decision regarding the ability to serve the Arrowburn Zone by way of a reticulated waste water scheme. The Appellant called evidence<sup>3</sup> that the Arrowburn Zone could be serviced by connection to the Respondent’s reticulated scheme.<sup>4</sup> This evidence was not disputed by the Respondent’s experts.
- 7.3 The Arrowburn Zone proposal is consistent with the Proposed Plan’s strategic objectives and policies, and those in Chapter 24, Wakatipu Basin.
- 7.4 The Council erred in its findings with respect to the appropriateness of the Arrowburn Zone from a landscape perspective. The Arrowburn Structure Plan provides sufficient setbacks and buffers and other controls that remedy and mitigate potential adverse effects.
- 7.5 The Decision fails to have regard to the level and character of Rural Residential development in the vicinity, and the contribution the Arrowburn Zone Proposal can make to the maintenance and enhancement of that character.

---

<sup>2</sup> Although beyond an initial mention of them at [26], they do not feature further in the reasoning for rejecting the Appellant’s Arrowburn Zone Proposal.

<sup>3</sup> There is a waste water main located in Speargrass Flat Road which is likely to have capacity to service the development.

<sup>4</sup> From its engineer, Mr A Steel

7.6 The Decision records concerns about the “effectiveness” of a cluster style development, yet there was no evidence to support that concern.

**8. The Appellant seeks the following relief from the Court:**

8.1 That the relief sought in the submission with respect to the Arrowburn Zone Proposal be granted.

**9. Additional Relief**

In addition to the specific relief set out above, the Appellant seeks the following relief:

- (a) such further or other relief as may be just or necessary to address matters raised in the Submission and this appeal; and
- (b) Costs.



X-Ray Trust Limited & Avenue Trust as Appellant by its solicitor and duly authorised agent JAYNE ELIZABETH MACDONALD

Date: 7 May 2019

C/- Macalister Todd Phillips, Level 3, 11-17 Church Street, PO Box 653,  
Queenstown 9348

Telephone: 03 441 0127

Fax/email: 03 442 8116/jmacdonald@mactodd.co.nz

The following documents are attached to this notice:

- (a) a copy of the submission (with a copy of the submission opposed by the further submission);
- (b) a copy of the relevant part of the decision;
- (c) any other documents necessary for an adequate understanding of the appeal;
- (d) a list of names and addresses of persons to be served with a copy of this notice.

### **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 further submission on the matter of this appeal.

To become a party to the appeal, you must –

- (a) 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
- (b) 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 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form).

#### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission or the part of the decision appealed. These documents may be obtained, on request, from the appellant.

*Advice*

If you have any questions about this notice, contact the Environment Court at Christchurch.

Environment Court  
Christchurch Registry  
282 Durham Street  
Central City  
Christchurch

Postal address:

PO Box 2069

DX: WX11113

Christchurch

Telephone and fax numbers:

Telephone: (03) 365 0905

Fax: (03) 365 1740

**Names and addresses of persons to be served with a copy of the Notice  
of Appeal**

Queenstown Lakes District Council  
10 Gorge Road  
Queenstown  
E: [dpappeals@qldc.govt.nz](mailto:dpappeals@qldc.govt.nz)

McGuinness PA Limited  
C/-PO Box 95  
Queenstown  
E: [ben.farrell@jea.co.nz](mailto:ben.farrell@jea.co.nz)

M & R Donaldson  
C/-PO Box 1467  
E: [office@brownandcompany.co.nz](mailto:office@brownandcompany.co.nz)