

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2018-CHC-0000

UNDER THE

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

IN THE MATTER OF

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

BETWEEN

**KAWARAU JET SERVICES HOLDINGS
LIMITED**

Appellant

AND

QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL BY KAWARAU JET SERVICES HOLDINGS LIMITED
AGAINST A DECISION ON A PROPOSED PLAN**


19 JUNE 2017

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TO: The Registrar
 Environment Court
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CHRISTCHURCH
 (Christine.McKee@justice.govt.nz)

AND TO: The Respondent
 (dpappeals@glde.govt.nz)

AND TO: Submitters who made further submissions on the KJet' submission and the other original submissions on which KJet relies

Notice of appeal

1. Kawarau Jet Services Holdings Limited ("**KJet**") 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. KJet made a submission on the PDP on 23 October 2015, and a further submission on 18 December 2015.

No prohibited trade competition purposes

3. KJet was first established in 1960 and has been operating a commercial jet boating business for over 50 years, running boats on Lake Wakatipu and the Kawarau and Lower Shotover Rivers.
4. The KJet is not a trade competitor for the purposes of Section 308D of the Act. In particular, KJet's appeal is not brought for any of the following purposes:
 - (a) protecting itself from trade competition; and/or
 - (b) preventing or deterring a trade competitor from engaging in trade competition.

Decision

5. The Decision was made by the Queenstown Lakes District Council ("**Council**") on 7 May 2018.
6. The KJet received notice of the Decision on 7 May 2018.

Submissions / further submissions

7. KJet in its submissions generally sought modifications to the PDP to:
 - (a) achieve greater recognition in the District Plan of commercial motorised activities on the surface of the District's waterways;
 - (b) better promote the sustainable use and development of the District's waterway resource so as to enable people and communities to provide for their economic, cultural and social wellbeing; and

- (c) enhance the safety for all users of the waterways.

Additional background / context

8. KJet, as indicated above at paragraph [3], has a long history of operating commercial jet boat services on Lake Wakatipu and the Kawarau and Lower Shotover Rivers. It grew its business, in part, by acquiring other jet boat companies, and their consents to operate.
9. More recently, it has sought to obtain its own “fresh” consent applications (rather than acquiring existing businesses/consents), including applications to authorise the following activities:
- (a) *To operate an additional 4 boats on the Lower Shotover River.* However, this application was withdrawn, as the Council’s requirements for an independent safety study were cost-prohibitive. Establishing the “carrying capacity” of the Lower Shotover for commercial jet boat use should not be the responsibility of an individual operator through a consent application. That is something that the Council should take the lead on, in the interests of providing certainty to all stakeholders. The Council could have undertaken this through the PDP, but it chose not to.
- (b) *To operate an additional 3 boats on the Kawarau River to the Arrow Confluence.* This application was recently granted, and will assist KJet in servicing the C&I (conventions and incentives) market. Despite an apparently supportive policy and rule regime, and no more than minor effect, the application still needed to be notified.¹ Despite public notification and direct service on a large number of people, only 5 submissions were filed. Most were then withdrawn and ultimately no submitter attended the hearing. The cost to KJet of that process was still significant.
- (c) *To operate 12 boats on the Kawarau River beyond the Arrow Confluence to the Bungy Bridge.* This would provide a new product to the market that would allow passengers to jet boat to the bungy bridge, bungy jump, and then return; or, if arriving at the bungy bridge by some other means, to return to town by jet boat; or some other combination. This application is on hold pending a final decision by KJet on how to proceed in light of the 2018 Navigational Safety Bylaw. The Bylaw currently prohibits powered vessels from operating beyond the Arrow Confluence, and only allows exemptions to be granted for up to 14 days. This is commercially unworkable, and inconsistent with the Operative Plan and PDP, neither of which prohibit powered vessels beyond the Arrow Confluence (but they do prohibit powered vessels in other areas of water). KJet is awaiting further information from the Council in respect of how it adopted the 2018 Bylaw before resolving how to proceed.
10. KJet also has other proposals in the pipeline that will require resource consent if they are to proceed. That includes a potential scheduled public ferry service activity.

¹ KJet requested notification in the end, to avoid delays in the processing of its consent application and a lengthy debate with the Council. Its approach appears to be that anything “contentious” on the water (or at least anything involving KJet) should be notified.

11. In other words, KJet has a significant interest in the PDP setting clear guidance through objectives, policies and rules to provide it, and the wider public, with some certainty as to likely outcomes. That would assist KJet, and potential submitters, considerably in subsequent consent processes. In that regard, it is disappointing, for example, that the Council did not seek to clarify the capacity of waterways such as the Lower Shotover River for additional commercial jet boat use through the PDP process. Instead, there remains considerable uncertainty and potential for long, protracted, consent processes, if anyone were to have the wherewithal to seek consents for additional boats in those waters in the future.

Scope of KJet' appeal / summary of key issues and reasons

12. KJet appeals the following matters:
- (a) Policy 3.3.21 and/or the inclusion of an additional Policy enabling Commercial Recreational activities on the lakes and rivers of the District.
 - (b) The failure to include strategic objectives and policies relating to the significant socioeconomic benefits of tourism activities for the district.
 - (c) Policy 21.2.12.9 relating to the management of effects from commercial jet boat use.
 - (d) Policy 21.2.12.10 which relates to commercial boating and safety issues.
 - (e) Rule 21.5.43 or a specific rule for commercial ferry operations.

Policy 3.3.21 and/or additional Policy

13. KJet sought inclusion of a new policy stating:
- Provide for a range of appropriate Recreational and Commercial Recreational activities in the rural areas and on the lakes and rivers of the District.
14. The Decision included Policy 3.3.21:
- Recognise that commercial recreation and tourism related activities seeking to locate within the Rural Zone may be appropriate where these activities enhance the appreciation of landscapes, and on the basis they would protect, maintain or enhance landscape quality, character and visual amenity values.
15. This Policy is too restrictive, including because:
- (a) It is only to “recognise” that commercial tourism activities “may be appropriate”. This is significantly weaker than “providing for” such activities, which was the language KJet has sought.
 - (b) The Policy also requires the relevant activities to “enhance the appreciation of landscapes”. This could be read so as to require the activity to develop the landscape in some positive way. For some, seeing jetboats in the landscape could be perceived as an adverse effect on the landscape and contrary to this aspect of the policy.

- (c) The Policy also requires the “landscape quality, character and visual amenity values” to be protected, maintained or enhanced. This is also a high hurdle as it does not allow for some adverse effects, even if only minor or temporary. Again, for some, seeing jetboats in the landscape could be perceived as an adverse effect on the landscape and contrary to this aspect of the policy
16. KJet seeks the substitution of the policy it originally sought, or a specific policy included for activities on the lakes and rivers of the District. Such activities are usually only temporary, and deserving of a separate, more specific, policy. It may even be appropriate to have a specific policy addressing jet boats, and other water users. KJet, for example, often faces significant opposition from the rafting and kayaking community. They have no more “right” to use of the water than powered vessels, although their approach seems to suggest otherwise. Greater policy direction in the PDP as to how these competing interests can and should be managed would be appropriate.
17. In addition, the policies should include some specific distinction between the waterways that are close to main population centres and are therefore frequently used by commercial and recreational users, and those that are more remote and used less frequently.

Objectives and policies relating to the significant socioeconomic benefits of tourism activities

18. KJet supported in its further submission the submissions of Real Journeys that sought (among other things):
- (a) A new strategic objective as follows:
- To recognise and provide for the significant socioeconomic benefits of tourism activities across the District.
- (b) A new strategic policy as follows:
- To provide for the significant socioeconomic benefits of tourism activities across the district by:
- (i) Maintaining and enhancing the districts natural character
 - (ii) Protecting existing transport routes and access to key visitor attractions from incompatible uses and development of land and water
 - (iii) Protecting existing buildings , structures and informal airports that support tourism activities from incompatible land use or development
 - (iv) Enabling the use and development of natural and physical resources for tourism activity where adverse effects are avoided, remedied, or mitigated
 - (v) Providing for the use and development of natural and physical resources for tourism activity where residual adverse effects can be appropriately offset or compensated
 - (vi) Providing for activities and development which support tourism activities.

19. These were not included in the Decision.
20. It is appropriate, if not necessary, for tourism activities to be enabled through a strong policy framework, including in the strategic chapter. Otherwise, the benefits to the district of tourism will be put at risk because of the strong policy framework in respect of other considerations, which risk overriding the consideration of tourism benefits.

Policy 21.2.12.9 - management of effects from commercial jet boat use

21. KJet had supported, in a further submission, the submission of Queenstown Park Limited that Policy 21.2.12.9 be amended to recognise that management techniques can be used to appropriately manage effects from commercial jet boat use.
22. The Decision provided for Policy 21.2.12.9 as follows:

Take into account the potential adverse effects on nature conservation values from the boat wake of commercial boating activities, having specific regard to the intensity and nature of commercial jet boat activities and the potential for turbidity and erosion.

23. It is appropriate for the policy to specifically recognise that management techniques can be used to manage effects from commercial jet boat use. As it stands, the policy focuses on the adverse effects rather than the ability to manage (and mitigate) those effects.

Policy 21.2.12.10

24. Policy 21.2.12.10 in the Decision states:

Ensure that the nature, scale and number of commercial boating operators and/or commercial boats on waterbodies do not exceed levels such that the safety of passengers and other users of the water body cannot be assured.

25. KJet had supported, in a further submission, the submission of Real Journeys Limited seeking the following amendment to that Policy:

Protect historical and well established commercial boating operations from incompatible activities and manage new commercial operations to Ensure that the nature, scale and number of commercial boating operators and/or commercial boats on waterbodies do not exceed levels where the safety of passengers and other users of the water body cannot be assured.

26. Such an amendment is appropriate for recognizing the cost and other investment in existing commercial boating operations. It is also potentially appropriate to recognise a need to manage other activities to prevent safety risks to jet boat activities – as drafted, the policy implies that other activities can develop in a way or at a rate without regard to their potential effects on jet boat operations.

Rule 21.5.43 or a specific rule for commercial ferry operations

27. KJet had supported, in a further submission, the submission of Queenstown Wharves GP Limited that Rule 21.5.43 provide for commercial ferry operations for public transport as a controlled activity. This was on the basis that the matters of control include the effects of the activity on the safety of all users of the waterways.

28. The Decision did not provide for commercial ferry operations for public transport as a controlled activity in Rule 21.5.43 (or elsewhere).
29. The Decision did, however, include Policy 21.2.12.8:
- Encourage development and use of water based public ferry systems including necessary infrastructure and marinas, in a way that avoids adverse effects on the environment as far as possible, or where avoidance is not practicable, remedies and mitigates such adverse effects.
30. The policy is generally supported, but it is not always possible to remedy or mitigate all effects. There will always be noise effects associated with a public ferry service, but those effects (and others) need to be weighed against the benefits. The policy should recognise this perhaps through seeking to reduce effects that cannot be avoided to the extent practicable.
31. Providing for water based public ferry systems as restricted discretionary activities would be appropriate and would implement Policy 21.2.12.8.

General reasons for the appeal

32. In addition to the reasons given above, as part of the scope of the appeal and summary of key issues / reasons, the general reasons for this appeal are that the Decision fails to provide a planning framework that most appropriately provides for commercial jet boating activities, including commercial ferry services, and to that extent the Decision:
- (a) fails to promote sustainable management of resources and will not achieve the section 5 purpose of the Act.
 - (b) fails to give effect to:
 - (i) the objectives and policies of the Regional Policy Statement;
 - (ii) the relevant district wide and strategic objectives and policies; and

in the alternative, to the extent that any objectives and policies of those instruments could be interpreted as requiring that the relief sought by KJet be declined in order to give effect to those provisions, those provisions are invalid, incomplete and/or uncertain;
 - (c) 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; and
 - (d) fails to meet the requirements of section 32.

Relief sought

33. KJet seeks:
- (a) Without limiting the below relief stated, appropriate relief to address the issues KJet has raised above.

- (b) Amend Policy 3.3.21 to address the concerns identified above, and/or include a new policy in Chapter 3 as follows (or words to like effect):

Provide for a range of appropriate Recreational and Commercial Recreational activities in the rural areas and on the lakes and rivers of the District.

- (c) Include a policy (or make appropriate amendments) to provide a distinction between the waterways that are close to main population centres and are therefore frequently used by commercial and recreational users, and those that are more remote and used less frequently.

- (d) Include a new strategic objective as follows (or words to like effect):

To recognise and provide for the significant socioeconomic benefits of tourism activities across the District.

- (e) Include a new strategic policy as follows (or words to like effect):

To provide for the significant socioeconomic benefits of tourism activities across the district by:

- (i) Maintaining and enhancing the districts natural character
- (ii) Protecting existing transport routes and access to key visitor attractions from incompatible uses and development of land and water
- (iii) Protecting existing buildings , structures and informal airports that support tourism activities from incompatible land use or development
- (iv) Enabling the use and development of natural and physical resources for tourism activity where adverse effects are avoided, remedied, or mitigated
- (v) Providing for the use and development of natural and physical resources for tourism activity where residual adverse effects can be appropriately offset or compensated
- (vi) Providing for activities and development which support tourism activities.

- (f) Amend Policy 21.2.12.9 to recognise that management techniques can be used to appropriately manage effects from commercial jet boat use.

- (g) Amend Policy 21.2.12.10 as follows:

Protect historical and well established commercial boating operations from incompatible activities and manage new commercial operations to Ensure that the nature, scale and number of commercial boating operators and/or commercial boats on waterbodies do not exceed levels where the safety of passengers and other users of the water body cannot be assured.

- (h) In addition to Policy 21.2.12.10, or as a further amendment to it, recognise the need to manage other activities to prevent safety risks to jet boat activities.
- (i) Provide in Rule 21.5.43 for water based public ferry systems as restricted discretionary activities, with one of the matters reserved for discretion being the effects of the activity on the safety of all users of the waterways.
- (j) Amend Policy 21.2.12.8 to reflect that it is not always possible to remedy or mitigate effects, so there must be an element of practicability; and that effects should be considered against the positive effects of a public ferry system.
- (k) Any other similar, consequential, or other relief as is necessary to address the issues raised in the KJet's appeal or otherwise raised in the KJet' original submission or the submissions it supported or opposed (as relevant).
- (l) Costs.

Alternative dispute resolution

34. KJet agrees to participate in mediation or other alternative dispute resolution of the proceeding.

Attachments

35. The following documents are attached to this notice.
- (a) a copy of KJet's submission and further submissions;
 - (b) a copy of the relevant parts of the Decision;
 - (c) a list of names and addresses of persons to be served with a copy of this notice, being every person who made a further submission on the KJet' submission and the original submissions of others on which KJet relies on in this appeal.

DATED 19 June 2018



J D K Gardner-Hopkins

Counsel for KJet

KJet's address for service is 89 The Terrace, Wellington 6011.

Documents for service on KJet may be left at that address for service or may be:

- (a) posted to Kensington Swan, PO Box 10 246, Wellington 6143; or

- (b) left at a document exchange for direction to c/o Kensington Swan, SP26517, Wellington; or
- (c) emailed to nicky.mcindoe@kensingtonswan.com, copied to james@jghbarrister.com.

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 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.

If you are a trade competitor of a party to the proceedings, your right to be a party to the proceedings in the court may be limited (see [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 requirements (see [form 38](#)).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.