

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-

Under the Resource Management Act 1991 (**RMA**)

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 **Waterfall Park Developments Limited**
Appellant

And **Queenstown Lakes District Council**
Respondent

**Notice of Appeal – Waterfall Park Developments Limited – Stage 2 QLDC
Proposed District Plan**

7 May 2019

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To The Registrar
Environment Court
Christchurch

Background

- 1 Waterfall Park Developments Limited (**WPDL**) appeals against part of the decision of Queenstown Lakes District Council (**QLDC**) on Stage 2 of the proposed Queenstown Lakes District Plan (**PDP**).
- 2 WPDL inherited, as successor under Section 2A of the Resource Management Act 1991 (**RMA**), a submission (#430) to the PDP Stage 1 lodged by Ayrburn Farm Estate Limited. WPDL made a submission (#2388) on Stage 2 of the PDP.
- 3 WPDL is not a trade competitor for the purpose of section 308D RMA.
- 4 WPDL received notice of the decision on 21 March 2019.
- 5 The decision was made by QLDC.
- 6 The parts of the decision appealed (**Decision**) relate to:
 - (a) Planning Maps 13, 13d, 26 and 27;
 - (b) Proposed Chapter 47 – Proposed new "Ayrburn Zone";
 - (c) Chapter 24 – Wakatipu Basin;
 - (d) Chapter 27 – Subdivision;
 - (e) Chapter 42 – Waterfall Park Zone;
 - (f) Chapter 6 – Landscape.
- 7 Submission 2388 stated that the submission added to, but did not replace, Submission 430 (except that Figures 1-4 of Submission 430 were withdrawn). WPDL maintains that position, just in case some reference to Submission 430 may be necessary for jurisdictional purposes. However it is almost certain that that is not the case, and that Submission 2388 provides the necessary jurisdictional basis for all of the relief sought by WPDL. To minimise unnecessary paperwork, only a copy of Submission 2388 will be annexed to this Notice of Appeal.
- 8 Submission 2388, at paragraph 2.2, stated that the Submission related to:

- (a) The land described in paragraph 10 below, which was referred to as 'Site A';
 - (b) Two other pieces of land referred to as 'Site B';
 - (c) The land in the general vicinity of Site A.
- 9 This appeal relates primarily to Site A described in (a) above, to the land described in (c) above for the purpose of one minor point, but not to the land described as Site B in (b) above. WDPL requested that Site B be rezoned as part of the Waterfall Park Zone (**WPZ**). That relief was granted, and there were no submissions opposing that relief. WDPL does not challenge the Decision to the extent that it accepted that requested relief.

Reasons for appeal

- 10 WDPL owns an area of land totalling 45.75 ha located at 343 Arrowtown-Lake Hayes Road legally described as Pt Lot 3 DP 5737 and Lot 1 DP 18109 (referred to as **Ayrburn Farm** in this Notice of Appeal). Ayrburn Farm is located in the centre of the Wakatipu Basin, bounded by the Millbrook and the WPZ to the north, the Arrowtown-Lake Hayes Road to the east, the Lake Hayes Rural Residential Zone to the south, and an unformed legal road to the west. **Appendix A** contains part Planning Map 26 on which the land owned by WDPL subject to this appeal is hatched in black.
- 11 In the PDP Stage 2 as notified, Ayrburn Farm was mostly zoned Wakatipu Basin Lifestyle Precinct (**WBLP**) with two small areas zoned Wakatipu Basin Rural Amenity Zone (**WBRAZ**). In its Submission 2388 WDPL sought:
- (a) As a first preference, that Ayrburn Farm be rezoned to have its own bespoke zone enabling primarily urban residential development in certain parts of the proposed Ayrburn Zone, subject to various environmental protection methods applicable to other parts of the Ayrburn Zone;
 - (b) As an alternative relief to effectively achieve the first preference outcome described above, that the adjoining WPZ be extended to include Ayrburn Farm (including any necessary consequential amendments to the WPZ plan provisions and Structure Plan);
 - (c) As relief associated with (a) or (b) above, the insertion into the relevant Planning Maps of an Urban Growth Boundary (**UGB**) containing all, or any combination of, the land within the notified Arrowtown UGB, the Millbrook Zone, the WPZ (as extended if extended) and the Ayrburn Zone.

- (d) As a second preference, the retention of the WBLP zoning as notified, the rezoning of the balance Ayrburn Farm WBRAZ areas to WBLP, and the enabling of 4,000m² minimum average lot size for rural lifestyle subdivision within that WBLP zoning and southwards to Speargrass Flat Road;
 - (e) As an alternative relief to the second preference outcome described above (and in the event that the WBLP is rejected overall and the PDP reverts to using the legacy Rural Residential Zone in the Wakatipu Basin) to extend the existing Lake Hayes Rural Residential zone northwards to include Ayrburn Farm, and to enable 4,000m² minimum average lot size for rural lifestyle subdivision within that extended Rural Residential zoning north of Speargrass Flat Road;
 - (f) Under the alternative reliefs described in (d) and (e) above, to amend the zoning of land adjacent to Ayrburn Farm if considered necessary or appropriate to achieve an overall zoning pattern which avoids anomalies;
 - (g) Otherwise to amend the relevant plan provisions to achieve one or other of the outcomes sought through Submission 2388.
- 12 At the hearing of Submission 2388, WPDL presented a bespoke set of proposed Ayrburn Zone planning provisions, including a Structure Plan identifying a range of activity controls in different areas. **Appendix C** contains a copy of the bespoke Ayrburn Zone planning provisions presented as evidence at the hearing (which amended the proposed Ayrburn Zone plan provisions contained in Annexure B to Submission 2388 to address various minor drafting issues and to include additional environmental protection methods).
- 13 The Decision rejected the relief requested by WPDL in Submission 2388 (both alternative zoning options), accepted the relief requested in another submission, and rezoned all of Ayrburn Farm as WBRAZ. **Appendices D and E** respectively contain:
- (a) **[Appendix D]** A copy of pages 60 – 65 of Report 18.2 which in turn contains Part 2.8 which details Recommendations of the relevant Hearing Panel in relation to Lake Hayes water quality issues which were accepted by QLDC in its Decision;
 - (b) **[Appendix E]** A copy of pages 1 – 14 of Report 18.5 which in turn contains Parts 1 and 3 which detail the Recommendations of the relevant Hearing Panel in respect of Submission 2388 which were accepted by QLDC in its Decision.

Grounds of Appeal

- 14 All of the requested alternative reliefs, as detailed above, effectively sought an outcome enabling the development of appropriate parts of Ayrburn Farm for primarily residential purposes at a greater or lesser density (depending which relief was granted). The grounds of appeal detailed below are relevant, all or in part, to all of the alternative reliefs requested.
- 15 The grounds of appeal are that the Decision:

Part 2.8 Lake Hayes Water Quality Issues

- (a) Relied on inaccurate factual information provided in respect of (alleged) earthworks activities on Ayrburn Farm, and (in part) as a consequence reached an inaccurate and unsubstantiated determination that there was evidence that the earthworks provisions of the Operative District Plan were not working effectively to control earthworks effects on water quality in the Lake Hayes catchment;
- (b) Inappropriately relied on one-sided presentations relating to the effects on water quality in the Lake Hayes catchment which were not adequately supported by evidence;
- (c) Reached an inappropriate conclusion that no land within the Lake Hayes catchment should be up-zoned (a term which apparently included retention of notified WBLP zoning) unless the development is served by a reticulated wastewater treatment scheme;
- (d) Reached conclusions beyond the jurisdiction of the Hearing Panel in relation to water quality issues which fall within the jurisdiction of the Otago Regional Council;

Parts 3.2 – 3.10 Ayrburn Farm

- (e) Inappropriately relied on non-objective and non-expert landscape evidence ahead of objective, independent landscape evidence, without providing any explanation for doing so;
- (f) Appropriately recognised the validity and relevance of "no further subdivision" covenants but then failed to take that factor into account when considering the appropriateness of the proposed Ayrburn Zone;
- (g) Failed to take into account the issue of defensible and indefensible zone boundaries, in relation to potential spread of development consequential upon indefensible zone boundaries, when considering the appropriateness of the proposed Ayrburn Zone;

- (h) Reached an adverse conclusion in relating to the potential effect of the Ayrburn Zone on the water quality in Lake Hayes without taking into account the facts firstly that either of the requested Ayrburn Farm rezoning options could rely on an existing reticulated wastewater network as a result of that network being immediately available and secondly the Council confirmation (for the purposes of the hearing) that the Council reticulated wastewater system has capacity to service the proposed Ayrburn Zone (being the more intensive of the two proposed zoning options);
- (i) Inappropriately discounted the evidence of Dr Goldsmith in relation to nutrient discharge to water when the only reasonable conclusion from the evidence presented was that either Ayrburn Farm rezoning option was preferable to retention of Ayrburn Farm as a stock farming rural property (in respect of the issue of nutrient discharge to water);
- (j) Failed to comment on, or record appropriate consideration of, WPDL's proposed protection of Open Space areas for landscape amenity purposes;
- (k) Accorded inappropriate weight to the views from a public trail without taking into account the extent to which those views are precluded from being taken into account due to the PDP definition of "public place";
- (l) When addressing the UGB issues, did not properly consider and afford weight to unchallenged evidence to the effect that the Millbrook Zone and the WPZ are not 'Resort Zones' as defined and in fact constitute urban development zones;
- (m) Following on the previous point, failed to make a determination in relation to a potential UGB (requested by WPDL) encompassing the land within the Arrowtown UGB and/or the Millbrook Zone and the WPZ – and the Ayrburn Zone or extended WPZ – as being the logical, appropriate, and arguably necessary, response to the PDP policy provisions relevant to determination of UGBs and relevant to enabling and controlling the spread of urban development;
- (n) Referred to certain specific aspects of the proposed Ayrburn Zone provisions as reasons for rejecting Submission 2388 without giving any consideration as to whether those allegedly unsatisfactory aspects could be addressed by amended plan provisions applicable to the proposed Ayrburn Zone;
- (o) Expressed concern about, and placed reliance upon, alleged adverse potential hazard considerations when the unchallenged evidence

presented at the hearing confirmed that no such hazard issues would arise;

- (p) Amended Schedule 24.8 for Landscape Character Unit 8 in a manner unsupported by evidence presented at the hearing and facts on the ground;
- (q) Failed to recognise the ability of Ayrburn Farm to absorb appropriately located development;
- (r) Failed to accord appropriate weight to the efficient development of natural and physical resources in an area under very considerable development pressure;
- (s) Was not in accordance with the sound resource management practice and failed to appropriately give effect to the purpose and principles of the RMA.

Relief sought

- 16 WPDL seeks cancellation of the Decision and one of (or, where appropriate, a combination of), the reliefs detailed below.

First preference – Ayrburn Zone or equivalent

- 17 WPDL requests that Ayrburn Farm be rezoned as a bespoke Ayrburn Zone, as proposed by Submission 2388, as specified in the detailed plan provisions contained in Appendix C, subject to paragraphs 18 and 19 below).
- 18 Because Submission 2388 was rejected, the Hearing Panel gave no detailed attention to the proposed Ayrburn Zone plan provisions. There may be issues of concern arising in respect of the proposed Ayrburn Zone which could be addressed by amendment to those Ayrburn Zone plan provisions. WPDL seeks such alternative or additional relief as would be necessary to accommodate appropriate amendments to the proposed Ayrburn Zone plan provisions.
- 19 WPDL seeks a variation of the boundary between the WPZ and the proposed Ayrburn Zone so that the 'V/R' area shown on the Ayrburn Zone Structure Plan in Appendix C is part of the WPZ rather than being part of the Ayrburn Zone, together with any necessary consequential amendments that are necessary to achieve that zone boundary adjustment. This zone boundary adjustment is desirable from WPDL's point of view, but is not critical to this relief sought.
- 20 As an alternative first preference relief, in the event that there is any difficulty or concern about creating a new bespoke Ayrburn Zone, WPDL seeks that the WPZ be extended to include all of Ayrburn Farm on the basis that:

- (a) The WPZ Structure Plan is amended to include the Structure Plan in Appendix C as applicable to the Ayrburn Farm extension of the WPZ;
- (b) The WPZ plan provisions are otherwise amended, as necessary, to accommodate this WPZ extension (including all relevant aspects of the plan provisions in **Appendix C**).

Urban Growth Boundary

- 21 If either of the above reliefs are granted, WPDL seeks that a UGB be inserted into the relevant Planning Maps containing the land within the Arrowtown UGB and/or the Millbrook Zone and the WPZ and the Ayrburn Zone or extended WPZ – or any combination of those areas.

Second preference – rural lifestyle zoning

- 22 WPDL requests the rezoning of all of Ayrburn Farm as WBLP, subject to:
- (a) A minimum average lot size of 4000m²;
 - (b) Retention of appropriate Open Space areas subject to appropriate controls on buildings and vegetation.
- 23 In the alternative, in the event that the WBLP is removed completely from the PDP in favour of retention of the legacy Rural Residential Zone, that the Lake Hayes Rural Residential Zone be extended northwards to include all of Ayrburn Farm, subject to:
- (a) A minimum average lot size of 4000m² applicable to all of the WBLP zoned land north of Speargrass Flat Road;
 - (b) Retention of appropriate Open Space areas subject to appropriate controls on buildings and vegetation.

Additional relief if required

- 24 Referring to Plan A in Appendix A, adjoining the eastern end of the northern boundary of Ayrburn Farm is a small area of light blue coloured WBRAZ zoned land which is bounded to the west by the WPZ, to the north by the Millbrook Zone and to the east by the Arrowtown-Lake Hayes Road. If it is considered appropriate to extend the WBLP zoning to include that land, in order to avoid an anomalous area of WBRAZ zoning (and bearing in mind the existing rural living character of that land) WPDL seeks that relief.

Further and consequential relief sought

Chapter 24 – Wakatipu Basin

- 25 WPDL requests that Rule 24.5.1.4 be amended as follows (underlining identifies words to be inserted):

"Any site in the Wakatipu Basin Rural Amenity Zone located wholly outside the Precinct in respect of which the Computer Freehold Register for the site, or resource consent authorising the creation of the site, was issued before 21 March 2019 and with an area less than 80 ha, a maximum of one residential unit per site."

- 26 The reason for the relief requested in the previous paragraph is that, if there is to be a savings provision for an existing Computer Freehold Register, the savings provision should apply from the date the right to create the Computer Freehold Register was created.
- 27 As a minor drafting point it is noted that the term 'Computer Freehold Register' has now been replaced by the term 'Record of Title' in the relevant legislation. It may be considered appropriate to make that amendment to Rule 24.5.1.4 (and any other rule in the PDP which includes the term 'Computer Freehold Register').

Chapter 27 – Subdivision

- 28 WPDL seeks consequential amendments to Chapter 27 – Subdivision as detailed in Part 4.3 of Submission 2388, and as detailed in **Appendix C**, for the reasons detailed in Part 4.3 of Submission 2388.

Chapter 42 – Waterfall Park Zone

- 29 WPDL seeks any necessary or appropriate consequential amendments to the WPZ arising from any relief requested in this appeal.

Chapter 6 – Part 6.4

- 30 WPDL requests amendment to Chapter 6 – Part 6.4 as detailed in Part 8.2 of Submission 2388, for the reasons detailed in Part 8.2 of Submission 2388.

Alternative Relief

- 31 WPDL seeks alternative, consequential, or additional relief to that set out in this appeal as may be appropriate or necessary to give effect to the matters raised in this appeal and in WPDL's Submission 2388 (and #430 if necessary).

Attachments

32 The following documents are attached to this notice:

- (a) **Appendix A** – A copy of part planning Map 26 which identifies (hatched black) the land subject to this appeal;
- (b) **Appendix B** - A copy of the Appellant's Submission 2388;
- (c) **Appendix C** – Proposed Ayrburn Zone plan provisions;
- (d) **Appendix D** – A copy of the relevant part of the Decision relating to Lake Hayes water quality issues;
- (e) **Appendix E** – A copy of the relevant part of the Decision relating to Ayrburn Farm;
- (f) **Appendix F** - A list of names and addresses of persons to be served with this notice.

Dated this 7th day of May 2019



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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.