

In the Environment Court of New Zealand  
Christchurch Registry

I Te Koti Taiao o Aotearoa  
Ōtautahi Rohe

**ENV-2018-CHC-084**

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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>FII Holdings Limited</b>
	Appellant
And	<b>Queenstown Lakes District Council</b>
	Respondent

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**AMENDED Notice of Appeal**

2 November 2018

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**Appellant's solicitors:**

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**anderson  
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**To** The Registrar  
Environment Court  
Christchurch

- 1 FII Holdings Limited (**FII**) appeals against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 FII made a submission (#847) and further submission (#1189) on the PDP.
- 3 FII is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 FII 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 decisions appealed relate to:
  - (a) Chapter 3 Strategic Direction;
  - (b) Chapter 4 Urban Development;
  - (c) Chapter 16 Mixed Business Use;
  - (d) Chapter 27 Subdivision;
  - (e) Planning Map 31a.
- 7 Reasons for appeal

#### **Frankton North Specific Issues**

- 8 FII owns land legally described as Sec 3 and 5 SO 502556, held in CFR 806429 (**Site**), adjacent to SH6 Frankton-Ladies Mile Highway. The Site was notified as Medium Density Residential Zoning (**MDR**) through the PDP, and has been retained as such in the Council's Decisions. FII submitted generally on the notified zoning of its Site and the surrounding land also included in the MDR zoning, and on submissions which sought alternative zonings (#717, #751, #177 #399).
- 9 A broad range of submissions were lodged to the PDP seeking alternative zoning outcomes for the Site and adjacent land, within the Urban Growth Boundary and zoned MBU / MDR to the north of SH6 (collectively referred to as **Frankton North**) as indicated coloured orange and red in **Appendix B**. Those submissions sought a range of outcomes from Rural Zone, to alternative zoning which provides for residential, light industry, service activities, trade based suppliers,

and storage, through any mixture of Low, Medium, or High Density Residential, Industrial, Mixed Business Use, or Local Shopping Centre Zones.

- 10 In the course of hearings on the Frankton North Land, FII worked constructively with adjacent landholder submitters to present a joint proposal to Council which involved a comprehensive site-specific set of provisions for Mixed Business Use Zoning, including a structure plan to establish vehicle access to and within the zone and specific subdivision rules. FII therefore has broad standing in respect of seeking or supporting notified and alternative zonings of its site and the Frankton North land.
- 11 The Council's Decision in part accepted this relief; however the FII Site has not been rezoned from MDR as originally notified. This Decision is contrary to the Submitter's expert evidence produced, seeking a specific Frankton North Mixed Business Use Zone. The Council's Decision is considered to be an inefficient and ineffective use of the Site as it does not provide for mixed commercial activities, for which there is a current and projected shortfall of zoning across the District.
- 12 Among other concerns, the Council's Decision referred to a concern for rezoning the Frankton North land Mixed Business Use as undermining the viability and functioning of the Frankton Commercial areas. Mechanisms to address these concerns can be included in any subsequent rezoning of the Frankton North land, such as by including limitations on ground floor areas so as to reduce impacts on other large format retail in Frankton, if that is considered necessary or appropriate.
- 13 The Council's PDP Decision fails to adequately provide for the higher order provisions of the PDP, the operative and proposed RPS, Part 2 of the Act, and therefore is not the most effective and efficient zoning having regard to the requisite section 32 assessment.
- 14 Without derogating from the generality of the issues identified above, FII now seeks the following outcomes in the PDP:
  - (a) Rezoning of the Site and surrounding Frankton North land to enable further residential density and / or mixed commercial and activities, through a rezoning to Mixed Business Use, or other zoning which would achieve similar outcomes;
  - (b) Consequential amendments to the provisions of the above zone chapters to provide a site-specific regime for the Site and the Frankton North land, including by way of structure plan and associated subdivision rules; and

- (c) Consequential amendments to any strategic and higher order provisions of the PDP so as to support and give effect to the ultimate Frankton North zoning; and
- 15 The particulars of this relief sought by FII are further set out in Appendices **A B, and C** to this Appeal.
- 16 The rezoning relief as set out in this Appeal is considered to provide for a more efficient and effective development regime for the Frankton North land, which will positively contribute to the District's projected shortfall in commercial zoned land and current housing affordability and supply issues. This relief better achieves:
- (a) The higher order provisions of the PDP, proposed and operative Regional Policy Statements;
  - (b) Section 32 of the Act;
  - (c) Part 2 of the Act.

### **Chapter 3 Strategic Direction**

- 17 Chapter 3 provides for the overarching strategic direction for resource management in the Queenstown Lakes District. The nature of Chapter 3 applying as higher order provisions to all other provisions of the PDP means that FII interests are affected by Chapter 3.
- 18 Significant changes to the content and structure of Chapter 3 have occurred between the notified PDP version and the decisions version. FII therefore considers that its appeal on this chapter is significantly broad and not limited in scope to original policies and objectives listed.
- 19 FII opposes those provisions of Chapter 3 which do not provide for efficient and effective urban development, and which do not provide sufficiently for the social, economic, and cultural wellbeing of people and communities.
- 20 The specific provisions of Chapter 3 and the relief sought by FII are set out in **Appendix A** to this Appeal.

### **Chapter 4 Urban Development**

- 21 Chapter 4 provides for 'hard' urban edges by ensuring a transition to adjacent rural zones is provided for within a UGB. This is opposed on the basis that land zoned for development within a UGB should be used for that purpose and not unnecessarily constrained.

- 22 The specific provisions of Chapter 4 and the relief sought by FII are set out in **Appendix A** to this Appeal.

### **Chapter 27 Subdivision**

- 23 FII is in particular concerned with the removal of a controlled activity subdivision status for residential and business zoned land. Controlled activity status is critical to the successful development and completion of subdivision within developable zones (including Mixed Business Use, Township, Special, and residential). These are zones which are anticipated for further subdivision and development, and therefore subdivision should be enabled to achieve the purpose as land use change is expected. These are zones in which the anticipated level of effects for the Zone have been considered and accepted at a local and District Wide level.
- 24 The specific provisions of Chapter 27 and the relief sought by FII are set out in **Appendix A** to this Appeal.

### **Further and consequential relief sought**

- 25 FII seeks alternative, consequential, or additional relief to that set out in this appeal necessary to give effect to the matters raised generally in this appeal and FII's PDP submission and further submission.

### **Attachments**

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

**Appendix A** – Relief sought

**Appendix B** – Location of Frankton North Land

**Appendix C** – Proposed Frankton North Structure Plan

**Appendix D** - A copy of the Appellant's submission and further submission;

**Appendix E** - A copy of the relevant parts of the decision; and

**Appendix F** - A list of names and addresses of persons to be served with this notice.

Dated this 2<sup>nd</sup> day of November 2018



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Maree Baker-Galloway/Rosie Hill  
Counsel for the Appellant

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

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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.

Provision (PDP decision version)	Reason for appeal	Relief sought
<b>Planning Map 31a and Frankton North specific issues</b>		
Planning Map 31a	The current Zoning of the Site and the adjacent Frankton North land is an inefficient and ineffective zoning regime, taking into account current and projected shortfalls in commercial zoned land and housing affordability and supply issues in the District.	<p>Rezone the Site and the adjacent Frankton North land coloured orange and dark red, as indicated in Appendix B to either of the following zones (or a combination thereof);</p> <ul style="list-style-type: none"> <li>• Mixed Business Use;</li> <li>• Or other similar zoning to achieve the above outcomes</li> </ul> <p>Provide for site-specific provisions for the rezoned Frankton North Land.</p>
Chapter 27 – Rules 27.2., 27.7.1 and Chapter 16, Structure Plan	The access rules for the Frankton North land are unclear and are not facilitated by the agreed Structure Plan as presented in the hearing and included in this appeal as Appendix C.	<p>Amend Chapter 27 and Chapter 16 to provide for the Frankton North Structure Plan (included as Appendix C) and associated provisions, as necessary, including:</p> <p><u>16..x.xx Structure Plan</u></p> <ul style="list-style-type: none"> <li>• <u>Internal road access shall be provided in accordance with the Structure Plan in Rule 16.7 as follows:</u></li> <li>• <u>Road access into the zone from State Highway 6 shall be via the fourth (northern) leg of the Hawthorn Drive/State Highway 6 roundabout (Designation #370), unless otherwise approved by the NZ Transport Agency;</u></li> </ul>

Provision (PDP decision version)	Reason for appeal	Relief sought
		<p><u>Subject to compliance with a. above, Required Primary Road Access shall be provided as shown on the Structure Plan except that the exact location of such roading may vary by up to 50 metres.</u></p> <p>Consequentially amend Rule 16.2.3.8 and 16.2.3.9 and Chapter 27</p>
Alternative Relief – MBU Zone site specific provisions as required	In the instance that the Site and the adjacent Frankton North land is rezoned to Mixed Business Use, FII seeks a suite of consequential amendments, including to objectives, policies, and rules, which are required to give effect to site-specific planning issues of the Frankton North land as a consequence of extending the zoning. Such relief could include, but is not limited to, similar matters to those specifically provided for currently in Chapter 16.	Amend Chapter 16 MBU to provide a site specific suite of objectives, policies, and rules relevant to the Frankton North land, including but not limited to matters currently contained in Chapter 16.
Alternative Relief – Chapter 27 subdivision site specific provisions as required	In the instance that the Site and the adjacent Frankton North land is rezoned to Mixed Business Use, FII seeks a suite of consequential amendments, including to objectives, policies, and rules, which are required to give effect to site-specific planning issues of the Frankton North land. Such relief could include, but is not limited to, similar matters to those	Amend Chapter 27 Subdivision to provide a site specific suite of objectives, policies, and rules relevant to the Frankton North land, including but not limited to matters currently contained in Chapter 16.

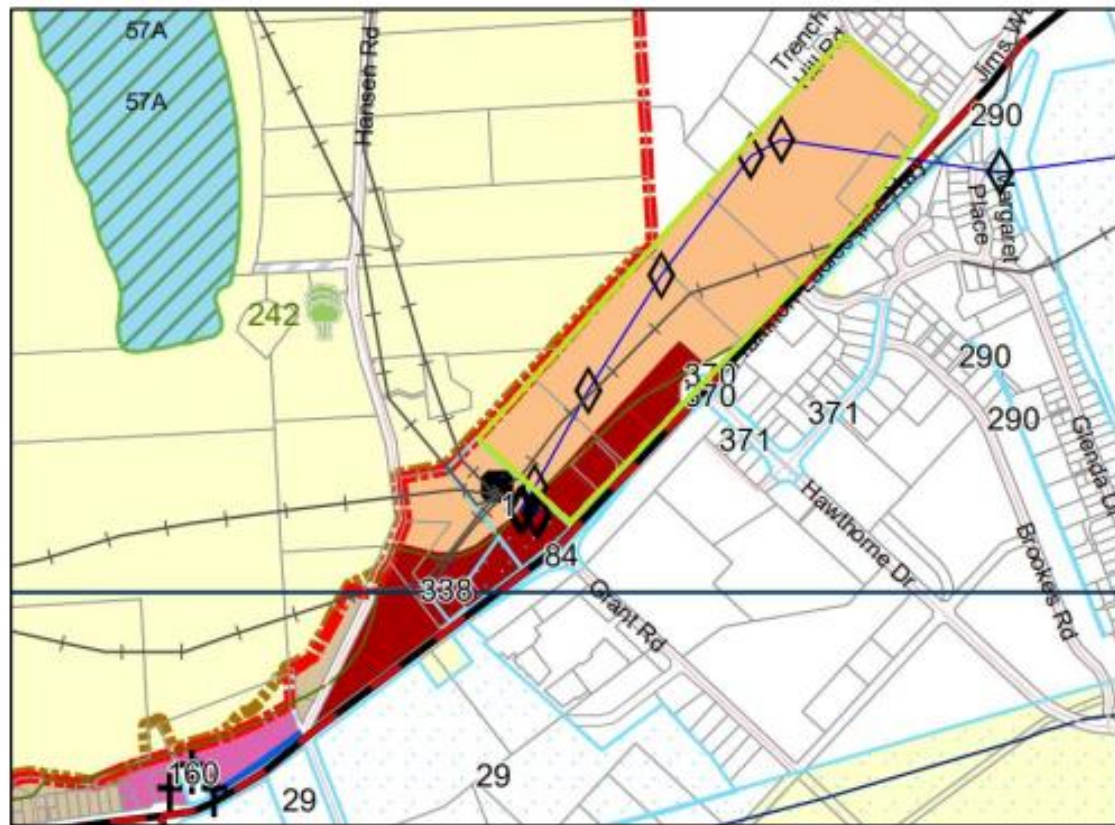


Provision (PDP decision version)	Reason for appeal	Relief sought
	specifically provided for in respect of the range of MBU Frankton North provisions, currently contained in Chapter 16.	
<b>Chapter 3</b>		
<p>Strategic objective 3.2.1.3</p> <p>The Frankton urban area functions as a commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin.</p>	<p>This objective should also recognise the important contribution of mixed business use and residential housing in the Frankton area</p>	<p>Amend Strategic Objective 3.2.1.3 to also recognise the mixed business use and residential contributions of Frankton</p>
<p>Strategic policy 3.3.6</p> <p>Avoid additional commercial zoning that will undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine increasing integration between those areas and the industrial and residential areas of Frankton. (relevant to S.O. 3.2.1.3)</p>	<p>This objective does not recognise the projected shortfall of commercial zoned land in the District over the medium – long terms, and as required to be provided for through the NPS-Urban Development Capacity</p>	<p>Amend strategic policy 3.3.6 as follows:</p> <p><del>Avoid-Manage</del> additional commercial zoning that <del>will</del> <u>may</u> undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which <u>may</u> <del>will</del> undermine increasing integration between those areas and the industrial and residential areas of Frankton, <u>while ensuring sufficient development capacity for commercial and residential land is provided for over the short, medium, and long term.</u> (relevant to S.O. 3.2.1.3)</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
<b>Chapter 4</b>		
<p>Policy 4.2.2.12</p> <p>Ensure that any transition to rural areas is contained within the relevant urban Growth boundary</p>	<p>This policy undermines the ability for land within UGBs to develop and achieve the purpose of Chapters 3 and 4. Protection of adjacent rural amenity values should not impact on the viability of residential and business zoned land within UGBs. There is no RMA reason not to provide for a hard urban boundary.</p>	<p>Delete Policy 4.2.2.12</p>
<b>Chapter 27</b>		
<p>Rule 27.5.7 all subdivision defaults to RDA activity status</p>	<p>Subdivision within urban zones is anticipated and should be enabled through chapter 27, subject to appropriate matters of reserved control. Requiring RDA subdivision rather than controlled will result in a disconnect between the rules applicable to the Zone and the purpose of the Zone.</p>	<p>Amend Rule 27.5.7 to a default controlled activity status for all zones unless otherwise specified.</p> <p>Zones to be included in a controlled activity status include;</p> <ol style="list-style-type: none"> <li>1. Lower Density Suburban Residential Zone;</li> <li>2. Medium Density Residential Zone;</li> <li>3. High Density Residential Zone;</li> <li>4. Town Centre Zones;</li> <li>5. Arrowtown Residential Historic Management Zone;</li> <li>6. Large Lot Residential Zone;</li> <li>7. Local Shopping Centre;</li> <li>8. Business Mixed Use Zone;</li> </ol>

Provision (PDP decision version)	Reason for appeal	Relief sought
		9. Airport Zone – Queenstown.
Frankton North – Structure Plan	The mechanisms for the creation of access to and within the BMUZ at Frankton are unclear and uncertain. I'll consider that adherence to a Structure Plan would remedy such problems.	Insert a new rule within Chapter 27 (Subdivision), requiring that subdivision be undertaken in accordance with the Structure Plan for the Frankton North Business Mixed Use Zone.
<p><del>Rule 27.10</del></p> <p><del>Applications for all controlled and restricted discretionary activities shall not require the written approval of other persons and shall not be notified or limited notified except:</del></p> <p><del>a. where the site adjoins or has access onto a State Highway;</del></p>	<p><del>The protection of the State Highway is adequately achieved through separate policies which assure its efficient and safe functioning. The application of this policy could be broader for notification than just to NZTA.</del></p>	<p><del>Amend Rule 27.10 as follows:</del></p> <p><del>Applications for all controlled and restricted discretionary activities shall not require the written approval of other persons and shall not be notified or limited notified except:</del></p> <p><del>a. where the site adjoins or has access onto a State Highway;</del></p>

Appendix B – Frankton North Land



**Figure 1:** Decisions version of Planning Map 31 showing zoning of the sites (outlined green). Business Mixed Use zone is maroon, and Medium Density Residential zone is tan

**Appendix C – Proposed Frankton North Structure Plan**

**Appendix D** - A copy of the Appellant's submission and further submissions;

**Appendix E** - A copy of the relevant parts of the decision; and

**Appendix F** - A list of names and addresses of persons to be served with this notice.