



Resource Management Law Association of New Zealand Inc.

RMLA (QUEENSTOWN/CENTRAL OTAGO BRANCH) NEWSLETTER November 2013

Welcome to the quarterly newsletter from the Queenstown-Lakes Branch of the Resource Management Law Association.

The purpose of the newsletter is to inform our local members of the latest resource management news from our part of the region, including Environment Court cases, plan changes and reviews, local issues that may be of interest, and upcoming events planned by the RMLA and associated organisations.

If you or your group is planning on holding any newsworthy events or seminars, please get in touch so we can get the word out there.

In this edition, we have news on the RMLA/NZPI Christmas Function, contact numbers and organised meetings with Council staff, the upcoming Advocacy Workshop, a summary of the approved Corbridge Estate resource consent application, and District Plan updates. We also have a summary of the recent High Court case; *Queenstown Airport Corporation v QLDC (2013)*, where it was determined the appeal has been allowed in part and referred back to the Environment Court for re-consideration.

We also have an update on the Queenstown Lakes District Council Plan Review.

With thanks,
Brett Giddens

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News

RMLA/NZPI Christmas Drinks

Date: Thursday 28th November 2013

Venue: Barmuda, Searle Lane, Queenstown

Time: 5.30-7.30pm

You are cordially invited to the RMLA/NZPI (Central Otago/Queenstown) Xmas drinks. It is expected that members of the Environment Court will attend as they will be in Queenstown this week also. Provides you with an opportunity to catch up with your contemporaries and share a drink before Christmas. More details to come.

RMLA meetings with Council planning staff

Your Committee is currently organizing a process for quarterly meetings with Council planning staff to enable the sharing of information and discussion of any pending issues. Further information will follow in the next newsletter.

Advocacy workshop 14 November in Queenstown

The Environment Court is holding a workshop on advocacy skills on 14 November starting at 2pm sharp. This will be held at the Memorial Hall in Queenstown. The workshop will cover skills such as ethical duties and role of counsel, case assessment and client advice, drafting pleadings and constructing the evidential case, court conferences and timetabling, agreed statements of fact, mediation, preparation and presentation of legal submissions and courtroom conduct. The workshop presenters are Acting Principal Environment Judge Newhook, Royden Somerville QC and Matt Casey QC. Register on line at www.rmla.org.nz/events or contact Karol Helmink: karol.helmink@xtra.co.nz.

Corbridge Estate Approved in Wanaka

In July 2013 the Queenstown Lakes District Council issued a resource consent for Corbridge Estates Partnership Limited to develop a high end rural estate canvassing 322.02 ha of rural land located to the east of the Wanaka Township. The estate consists of 35 residential lots each with a residential building platform surrounding a collectively owned farming lot. A communal hub containing communal work and social buildings, visitor accommodation (for the family and guests of the residents only) a boat shed, jetties and two communal storage barns will sit at the centre of the farming block for the use of the owners of the residential lots. The communal hub will be set on the side of a manmade lake (which was previously consented in terms of earth works for an irrigation dam in 2010). Only electrical powered boats will be permitted to use the lake. The estate has been designed to minimise loss to the farming productivity of the land upon which it sits.

Before granting the resource consent the Council assessed the potential effects of the estate on the environment as well as its compliance with the Queenstown Lakes District, District Plan and the Resource Management Act 1991 (RMA). The Council found that the only real adverse effect of the proposal will be the cumulative effect of development on the landscape caused by the inclusion of the first thirteen allotments, which are to sit along the ridge of the south side of the Clutha River. However, the Council found that this effect will be offset by the positive aspects of the development.

The estate offers a substantial degree of environmental compensation and protection through: the retention of the property as a working farm, the protection of existing shelterbelts, substantial planting, provision and maintenance of walking and cycling tracks and a covenant to protect the land from any further subdivision or development. The applicant also offered a condition that the buildings on lots 1 to 13 would not be visible when viewed from between two distinct points on the northern bank of Clutha the river. The Council further found that the plan for the estate complies with the criteria of the District Plan and promotes the purpose of sustainable management contained in the RMA.

There were thirteen submissions in opposition to the development including a submission from the Upper Clutha Environmental Society Inc, who primarily contested the establishment of the first thirteen lots. Despite these submissions the Council found that the positive effects of the development, its compliance the District Plan and its promotion of sustainable development warranted resource consent to be granted.

Court Cases of Note

QUEENSTOWN AIRPORT CORPORATION V QUEENSTOWN LAKES DISTRICT COUNCIL [2013] NZHC 2347

Queenstown Airport Corporation (“QAC”) and Remarkables Park limited (“RPL”) appealed a decision of the Environment Court (“EC”) in Re: Queenstown Airport Corp Ltd [2012] NZEnvC 206 which was an interim decision on a notice of requirement (“NOR”) by QAC seeking to extend its existing airport designation over land owned by RPL (“Lot 6”) to enable further airport development including the provision of a taxiway parallel to the runway. There were four principal issues.

The first issue was whether the EC could under S149U(4)(b) cancel only part of the requirement (which would have catered for larger aircraft). The High Court (“HC”) concluded that the difference between part cancellation rather than modification was semantic and if it was an error on the part of the EC to refer to “cancellation” rather than modification it was not material.

The second issue involved a limitation on the designation imposed by the EC based on an assumption by all parties at the time of the hearing that a separation distance of 93 metres was required between the runway and the proposed taxiway. Subsequently it was discovered that 93 metres was in fact a minimum distance and that the Court Aviation Authority might require up to as much as 168 metres, depending upon its interpretation of the appropriate standard. The HC decided that to impose the 93 metre limit might preclude an essential component of the designated activity and because the EC (through no fault of its own) had not assessed the effects of such a restriction, its decision on this point was flawed.

The third issue involved RPL’s assertion that the EC had erred when it held that the term “reasonably necessary”, under S171 meant something less than “essential”. The EC had adopted what was referred to as the orthodox threshold test for “reasonably necessary” as falling somewhere between expedient or desirable on the one hand and essential on the other. The HC found no error in this approach.

The fourth issue involved an assertion by RPL, that the imposition of the designation was unfair and that it had a legitimate expectation that Lot 6 would not be designated for airport purposes or that all other alternatives to using its land would be properly explored. The HC held that the EC had erred in not addressing the issue of whether fairness was a relevant consideration under the

evaluation required by S171 and found that “legitimate expectation” could have application under the RMA and needed to be taken into account.

The appeal has been allowed in part and referred back to the EC for re-consideration.

District Plan Reviews

Feedback

QLDC is inviting comment on the strategic direction of its District Plan. Six high level goals have been developed by the Council, underpinning the development of the Plan going forward. Council planners are testing the assumptions in the new strategic direction through informal discussions with the community. Further information about the goals of Council and the consultation process can be found on the Council’s website or by contacting Marc Bretherton, General Manager Planning & Development, tel. 03 441 0499.

Northlake – Wanaka – PC45

The site of this private plan change is located on the north side of Aubrey Road, Wanaka with Outlet Road running through the site. The purpose of the zone is to provide for a range of housing choices and lot sizes ranging from predominately low to medium density residential activities, and larger residential lots on the southern and northern edges, plus a neighbourhood commercial component. The plan change was accepted to be notified by the Council. The plan change was notified for public submission on 31 July 2013 and submissions closed on 30 August 2013. In total, 124 submissions were received. Further submission closed on 9 October, eight further submissions were received. A hearing date has been set for the week commencing 10 February 2014, a hearings panel is still to be confirmed.

Henley Downs – PC44

The private plan change request seeks to re-zone approximately 520 hectares of the northern-most (currently undeveloped) part of the ‘Resort Zone’ at Jacks Point as a new ‘Henley Downs Zone’. The private plan change was 'accepted' for processing by the Strategy Committee at its meeting on 19 March 2013, and submissions closed on 30 April 2013. In total, 25 submissions were received. Further submissions closed on 29 May 2013, eight further submissions were received. A hearings panel has been appointed, consisting of Councillor Gilmore, sitting as a commissioner, alongside two independent commissioners with specialist skills in planning (David Whitney - Chair) and urban design (Ian Munro). A hearing date of the week commencing 25 November 2013 has been set. The planner's report has been completed that recommends changes to the proposed Plan Change.

Ballantyne Road Industrial and Residential Extension – PC46

This private plan change seeks to rezone land from Rural General to Industrial B and Low Density Residential off Ballantyne Road in Wanaka. The site comprises approximately 19 hectares of land to the south and west of the existing Ballantyne Road industrial area, Wanaka. The plan change was accepted to be notified. The plan change is currently on hold at the applicants request awaiting further information. Once this has been provided the plan change will be notified.

Alpha Views Visitor Accommodation Subzone - PC47

The site is located at 190/192 Wanaka-Luggate Highway and is a 7.3 ha parcel of land zoned Rural General. The private plan change seeks to allow for visitor accommodation activities to be developed on the land as a controlled activity the plan change was accepted to be notified and was on 9 October and submission close on 7 November.

Plan Change 19 – Frankton Flats B

The parties continue to work towards giving effect to the interim decision of the Environment Court. Three weeks of expert caucusing on higher order provisions are coming to a close, with expert's statements to follow the conclusion of caucusing. The Court had allocated hearing time in the first quarter of 2013 (starting in the week of 3 February) to hear and determine any outstanding matters the experts are unable to agree upon so far as the higher order provisions are concerned.

QLDC contact persons and details

Following the reorganisation of Council staff in early 2013, new appointments have been made and staff titles and contact details have changed. We set out below the current information we have from Council on staff positions, to assist you in making contact with the right person(s):

NAMES	TITLE	PHONE NUMBER	EMAIL ADDRESS
Adam Feeley	Chief Executive	021 333 539	adam.feeley@qldc.govt.nz
Hannah White	Executive Assistant to Chief Executive	03 450 1770	hannah.white@qldc.govt.nz
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Scott Carran	General Manager, Legal and Regulatory	03 441 0499	scott.carran@qldc.govt.nz
Denis Mander	Manager Transport Policy and Stakeholder	0274 912 143	denis.mander@qldc.govt.nz
Melanie Heather	Environmental Consent Manager	03 450 1719	melanie.heather@qldc.govt.nz
Blair Devlin	Manager Resource Consents	03 441 0499	blair.devlin@qldc.govt.nz
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Richard Kemp	Planner Wanaka	03 441 0499	richard.kemp@qldc.govt.nz
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Karen Page	Senior Planner (Policy) Queenstown	03 441 0499	karen.page@qldc.govt.nz
Ruth Joiner	District Plan Administrator Queenstown	03 441 0499	ruth.joiner@qldc.govt.nz