

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-091

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 **Lesley and Jerry Burdon**
Appellant

And **Queenstown Lakes District Council**
Respondent

AMENDED Notice of Appeal

5 November ~~19 June~~ 2018

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To The Registrar
Environment Court
Christchurch

- 1 Lesley and Jerry Burdon (**Burdons**) appeal against part of the decision of Queenstown Lakes District Council on the proposed Queenstown Lakes District Plan (**PDP**).
- 2 The Burdons made a submission (#581) on the PDP.
- 3 The Burdons are not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 The Burdons 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 decision appealed relate to:
 - (a) Chapter 3 Strategic Direction;
 - (b) Chapter 6 Landscapes;
 - (c) Chapter 22 Rural Residential and Rural Lifestyle;
 - (d) Chapter 27 Subdivision;
 - (e) Planning map 8 – Wanaka Rural.
- 7 Reasons for appeal

Background

- 8 The Burdons own Lot 1 DP 396356, Lake Hawea (**Site**). The PDP zones the Site Rural General. This zoning is identified on Proposed Planning Map 8 – Wanaka Rural. The Burdons oppose the zoning of the Site PDP as set out in the original submission, as it does not:
 - (a) Achieve an efficient land use of the land;
 - (b) Provide for opportunities to maintain and enhance the environment through rezoning, for example through additional ecological and amenity benefits;
 - (c) Achieve the higher order provisions of the PDP, or the operative or proposed Regional Policy Statement (**RPS**);
 - (d) Achieve section 32 or Part 2 of the Act.

- 9 For these reasons, the Burdons seek a site specific zoning be included within Chapter 22 (**The Glen Dene Rural Lifestyle Zone**) which provides for limited further subdivision and development as well as a suite of site-specific objectives, policies, and rules, which recognise site-specific resource management issues and ensure a more effective long term management regime for the land.
- 10 General relief sought in respect of higher order provisions of the Plan are set out in **Appendix A**. A site specific landscape plan, which could be included as a Structure Plan within Chapter 22 / Chapter 27 for the proposed Glen Dene Rural Lifestyle Zone is included in this Appeal as **Appendix B**.

Chapter 3 Strategic Direction

- 11 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 the Burdons' interests are affected by Chapter 3.
- 12 Significant changes to content and structure of Chapter 3 have occurred between the notified PDP version and the decisions version. The Burdons therefore consider that its appeal on this chapter is significantly broad and not limited in scope to original policies and objectives listed.
- 13 The Burdons oppose those provisions of Chapter 3 which do not provide for appropriate diversification of land uses (particularly in the Rural Zones and in chapter 6 Landscapes) which do not provide sufficiently for the social, economic, and cultural wellbeing of people and communities.
- 14 The specific provisions of Chapter 3 and the relief sought by the Burdons are set out in **Appendix A** to this Appeal.

Chapter 6 Landscapes

- 15 The Burdons oppose those policies relating to the preference for farming as the means to protect landscape values as these are disproportionately weighted towards the protection of agriculture and fail to provide for those rural landscapes where pastoral farming does not occur such as in identified rural living zones. Farming is one method for using rural resources productively, but its long term sustainability is uncertain particularly in this district, and there are other uses of rural land that are compatible with the protection of landscape values.
- 16 The Burdons seek in particular to clarify that provisions of Chapter 6 are not applicable to the Rural Lifestyle and Rural Residential Zones of Chapter 22.
- 17 The specific provisions of Chapter 6 and the relief sought by the Burdons are set out in **Appendix A** to this Appeal.

Chapter 22 Rural Residential and Rural Lifestyle

- 18 Specific amendments are sought to the Rural Residential and Rural Lifestyle Zone to ensure an efficient and effective rural living development regime, consistent with the purpose of the Zone, as set out in **Appendix A** to this Appeal.

Chapter 27 Subdivision

- ~~19 Subdivision in the rural living zones has been amended through Stage 1 of the PDP to change from a controlled activity regime, to restricted discretionary. The Burdons oppose this change as it fundamentally undermines the ability for the Zone to achieve its purpose of rural living development to approved density standards. There is no adequate justification in the decision from Council to remove the controlled activity status, and consequentially significantly reduce certainty and landowners rights. The Council can adequately address and control any adverse effects on infrastructure, landscape, amenity values, and other adverse effects through an effective controlled activity regime.~~
- 20 Rural living zones are sought to be included in the list of recognised non-notified subdivision activities in Chapter 27, given the strategic importance of rural living to the District.
- 21 The specific provisions of Chapter 27 and the relief sought by the Burdons are set out in **Appendix A** to this Appeal.

Section 32 Analysis

- 22 Key resource management issues relevant to this zoning are whether the proposed rezoning is consistent with the identification of the land as ONL, whether those parts of the site with less ability to absorb change are protected from inappropriate development, whether zoning can give great protection to ecological values. In summary, those identified issues are met in respect of this rezoning through:
- (a) Enabling rural living development in appropriate locations whilst specific provisions are included in the plan to ensure any adverse effects on landscape values and amenity values of the Outstanding Natural Landscape are avoided, remedied or mitigated
 - (b) The protection of vast areas of the site considered the most sensitive to change from a landscape perspective from development. The area in which development may occur is limited to five specified areas (including the existing house).
 - (c) Encouraging the protection and regeneration of indigenous vegetation throughout the site enhancing natural character. The proposed zone

change is considered to be the most appropriate option to address the identified resource management issue when considered against the alternatives. The proposal is consistent with the purpose of the Act and aligns with existing and proposed Regional Policy Statement and the provisions of the Proposed District Plan. The effects on the environment as a result of the zone change are addressed under the cost and benefit analysis above and are assessed as minor.

General Relief

23 The Burdons seek the relief attached, or seek alternative, consequential, or necessary additional relief to that set out in this appeal and to give effect to the matters raised generally in this appeal and the Burdons' PDP submission.

Attachments

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

- (a) **Appendix A** – relief sought;
- (b) **Appendix B** – Proposed rezoning plan Glen Dene Rural Lifestyle Zone;
- (c) **Appendix C** - A copy of the Appellant's submission;
- (d) **Appendix D**- A copy of the relevant parts of the decision; and
- (e) **Appendix E** - A list of names and addresses of persons to be served with this notice.

Dated this ~~19th~~ 5th day of ~~June~~ November 2018



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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
Chapter 3 Strategic Direction		
3.2.5	It is unclear whether provision 3.2.5 is a heading or an objective	Clarify or delete provision 3.2.5
<p>Strategic objective 3.2.5.1</p> <p>The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration.</p>	<p>The threshold for protection provided for in this section goes beyond the section 6(b) legislative standard of protecting landscapes from inappropriate development. This departure is not justified or efficient.</p>	<p>Amend Strategic objective 3.2.5.1 as follows:</p> <p>The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse <u>inappropriate</u> effects of subdivision, use and development that are more than minor and/or not temporary in duration.</p>
<p>Strategic policy 3.3.20</p> <p>Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with significant nature conservation values or degrade the existing character of rural landscapes. (relevant to S.O. 3.2.1.7, 3.2.5.1 and 3.2.5.2)</p>	<p>The protection and primacy afforded to farming is not justified where there are significant landholdings which do not economically farm, and which could better provide for landscape, ecological, and access benefits if farming is not preferred</p>	<p>Delete policy 3.3.20</p>
<p>Strategic policy 3.3.23</p>	<p>It is unclear what annotations on planning maps this policy relates to as it is not specific to building restriction areas or</p>	<p>Delete policy 3.3.23 or otherwise clarify what it applies to.</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
<p>Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas. (relevant to S.O. 3.2.1.8 and 3.2.5.2)</p>	<p>other features. Avoidance of residential development is a blunt instrument where such unknowns exist about the application of this policy</p>	
<p>Strategic 3.3.24 Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character. (relevant to S.O. 3.2.1.8, 3.2.5.1 and 3.2.5.2)</p>	<p>By its nature, those areas identified for rural living development will change the nature and character of previously undeveloped land. This policy undermines the purpose of rural living zones</p>	<p>Delete policy 3.3.24 or otherwise amend to exclude rural living zones</p>
<p>Strategic policy 3.3.30</p> <p>Avoid adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor and or not temporary in duration. (relevant to S.O.3.2.5.1)</p>	<p>The threshold for protection provided for in this section goes beyond the section 6(b) legislative standard of protecting landscapes from inappropriate development. This departure is not justified or efficient.</p>	<p>Amend Strategic policy 3.3.30 as follows:</p> <p>Avoid <u>remedy or mitigate inappropriate</u> adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor and or not temporary in duration. (relevant to S.O.3.2.5.1)</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
Chapter 6 Landscapes		
<p>Policy 6.3.12</p> <p>Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site the subject of application. (3.2.1.1, 3.2.5.1, 3.3.21, 3.3.30).</p>	<p>The threshold for protection provided for in this section goes beyond the section 6(b) legislative standard of protecting landscapes from inappropriate development. This departure is not justified or efficient.</p>	<p>Amend Policy 6.3.12 as follows</p> <p>Recognise that subdivision and development is <u>may be</u> inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from <u>highly visible</u> beyond the boundary of the site the subject of application. (3.2.1.1, 3.2.5.1, 3.3.21, 3.3.30).</p>
<p>Policy 6.3.14</p> <p>Recognise that large parts of the District's Outstanding Natural Landscapes include working farms and accept that viable farming involves activities that may modify the landscape, providing the quality and character of the Outstanding Natural Landscape is not adversely affected. (3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1, 3.3.20, 3.3.30)</p>	<p>The protection and primacy afforded to farming is not justified where there are significant landholdings which do not economically farm, and which could better provide for landscape, ecological, and access benefits if farming is not preferred</p>	<p>Delete policy 6.3.14</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
Chapter 22 Rural Residential and Rural Lifestyle		
<p>New objective and policy suite 22.2.xx– Glen Dee Rural Lifestyle Zone</p>	<p>Insert new site specific objectives and policies relevant to the Glen Dene Rural Lifestyle Zone and which provide for a more comprehensive development regime than the PDP Rural Zone.</p>	<p>Insert new Objective and policies as follows</p> <p>22.2.xx– The Glen Dene Rural Lifestyle Zone</p> <p>Rural living development is enabled in a way that protects and maintains the outstanding natural landscape and visual amenity values as experienced from Makarora – Lake Hawea Road, the Lake Hawea Township and Lake Hawea.</p> <p>22.2.xx.x Policies</p> <p>22.2.xx.x The subdivision design, identification of building platforms and associated mitigation measures shall ensure that built form and associated activities within the zone are inconspicuous when viewed from Makarora – Lake Hawea Road, the Lake Hawea Township and Lake Hawea. Measures to achieve this include:</p> <ul style="list-style-type: none"> a) Prohibiting development over the sensitive areas of the zone via building restriction areas; b) Appropriately locating building platforms within the zone so they are minor components within the

Provision (PDP decision version)	Reason for appeal	Relief sought
		<p>landscape vistas of the Zone, including restrictions on future building bulk and recessive colour tones;</p> <p>c) The identification of residential curtilage areas;</p> <p>d) Using native vegetation to assist visual screening of development;</p> <p>22.2.xx.x maintain and enhance indigenous vegetation and ecosystems within building restriction area. This shall include appropriate on-going controls to manage and remove pest and weed species.</p>
<p>New rules- Table x Glen Dene Rural Lifestyle Zone</p>	<p>Insert new site specific rules relevant to the Glen Dene Rural Lifestyle Zone and which provide for a more comprehensive development regime than the PDP Rural Zone.</p>	<p>Insert the following new rules into chapter 22:</p> <p>Rule 22.x.x The maximum number of residential building platforms permitted within The Glen Dene Rural Lifestyle Zone is five (including one building platform encompassing the existing residential dwelling). Noncompliance with this rule to be a non-complying activity.</p> <p>Rule 22.x.x The maximum height of all buildings within 'The Glen Dene' Rural Lifestyle Zone shall be 5m. Noncompliance with this rule to be a non-complying activity.</p> <p>Rule 22.x.x At the time a resource consent is lodged for</p>

Provision (PDP decision version)	Reason for appeal	Relief sought
		<p>building platform and / or future dwelling within the Glen Dene Rural Lifestyle Zone, a vegetation management plan for the building restriction area within that property shall be submitted to Council for approval. This shall include:</p> <ul style="list-style-type: none"> a) The identification of areas of native vegetation to be retained, expanded, and enhanced; b) A vegetation maintenance regime; and c) Mechanisms to eliminate pests and weeds <p>Noncompliance with this rule to be a no-complying activity.</p> <p>Rule 22.2.x The maximum number of new vehicle crossings onto the State Highway within the Glen Dene Rural Lifestyle Zone is one. Noncompliance with this rule to be a non-complying activity.</p>
Chapter 22 structure plan	Insert a new Glen Dene Structure Plan which reflects the landscape plan included as Appendix B	Amend Chapter 22 to provide for a Glen Dene Structure Plan
Alternative relief – Chapter 22	In the instance that the Site is not rezoned to Glen Dene Rural Lifestyle Zone, the Burdons seek further and consequential amendments to Chapter 22 which better enable rural living and development for the Site.	Amend Chapter 22 to provide for a more efficient and effective development regime for rural living in respect of the Site in this instance it is not rezoned Glen Dene Rural Lifestyle Zone.

Provision (PDP decision version)	Reason for appeal	Relief sought
Chapter 27 subdivision		
New objective and policy suite – Glen Dene Rural Lifestyle Zone 27.3.x	Specific objectives and policies are sought in respect of the Glen Dene Rural Lifestyle Zone, consequential to the proposed rezoning as set out in this Appeal.	Insert new objectives and policies (27.3.x) which recognise and provide for the Glen Dene Rural Lifestyle Zone.
Rule 27.5.8 All subdivision activities in the District's Rural Residential and Rural Lifestyle Zones	The default activity status for rural living subdivision is opposed on the basis there is no justification to remove the existing controlled activity regime. Matters of control should be reserved to those which are necessary to achieve the Chapter 22 overall purpose and objectives which are to enable rural living opportunities and maintain and enhance amenity landscape values	Amend Rule 27.5.8 to provide a default controlled activity status and refine the listed matters of control to just those necessary to achieve the Chapter 22 purpose and objectives.
Chapter 27 structure plan	Insert a new Glen Dene Structure Plan which reflects the landscape plan included as Appendix B	Amend Chapter 27 to provide for a Glen Dene Structure Plan
Planning Map 8 Rural Wanaka		
Planning Maps	The current Rural Zoning of the Site does not provide for the most efficient and effective land management regime.	Amend Planning Maps to identify the proposed Glen Dene Rural Lifestyle Zone, as indicated in Appendix B.

Appendix B – Proposed Glen Dene Rural Lifestyle Zone

Appendix C - A copy of the Appellant's submission;

Appendix D - A copy of the relevant parts of the decision; and

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