

BEFORE THE QUEENSTOWN LAKES
DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act
1991

AND in the matter of the Queenstown Lakes
Proposed District Plan

AND in the matter of Hearing Stream 13 --
Queenstown Mapping

LEGAL SUBMISSIONS FOR KAREN AND MURRAY SCOTT (#447)

Dated this 29th day of August 2017

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MAY IT PLEASE THE COMMISSIONERS

Introduction

- [1] These legal submissions are presented on behalf of Karen and Murray Scott (Submitter #447) (“Submitters”) in respect of Hearing Stream 13, Queenstown Mapping of the Queenstown Lakes District Council Proposed District Plan (“PDP”).
- [2] The Submitters are the owners of Loch Linnhe Station, a high country pastoral leasehold property comprising some 3765 hectares.

Overview

- [3] These submissions address the following matters:
- [a] An overview of the relief sought;
 - [b] Scope – amended FBA’s
 - [c] Consideration of the areas of remaining disagreement between the Submitters and Council officers/consultants;
 - [d] Farm Base Areas (“FBAs”), and the alternative relief – Rural Visitor Zone.

Overview of relief sought

- [4] The Submitters wish to make provision for two FBAs on Loch Linnhe, a development concept that had its origins in Plan Change 13 to the Mackenzie District Plan. FBAs will provide for homesteads, staff accommodation and farm buildings as controlled activities. In the alternative, Rural Visitor (“RV”) zoning is sought over the two FBAs.

- [5] Evidence in this Hearing Stream will be provided by Carey Vivian (planning) and Ben Espie (landscape) and has already been filed on behalf of the Submitters.

Extent of FBAs and Scope

- [6] The two FBAs are referred to as the “northern” and “southern” areas.

Northern Area

- [7] The area has been revised to exclude the area of indigenous vegetation of concern to Mr Davis, and the rocky outcrops of concern to Dr Read. Mr Espie will provide a revised plan with his summary statement. The footprint of the FBA is within that originally sought by the submission and is thus squarely within scope.

Southern Area

- [8] As notified the extent of the Southern FBA was “square-ish” in shape. As a result of Dr Read’s initial assessment, it was “pulled back” off the steeper land, and its boundary extended to the south.
- [9] An issue arises as to whether the change in shape is within scope, given that the relief sought now includes land that was not originally included in the FBA footprint.
- [10] Mr Espie addresses the concern about “spread” of development across this lengthened area, from a merits based perspective, in response to Dr Read’s concern about development being scattered rather than clustered.
- [11] The law on scope with respect to amended relief is reasonably well settled. I agree with the legal principles regarding scope set out in Ms Scott’s opening submissions for this hearing stream¹.

¹ Appendix 5, Opening Submissions dated 21 July 2017.
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[12] Applying those principles, I submit the following:

Is the amended relief within the ambit of what was fairly and reasonably raised in the submission?

[a] While the extent of the area of land proposed for the FBA has changed in shape, as can be seen from the comparison plan attached to my submissions the total area of the FBA is proximate to that the subject of the submission. This the overall size of the FBA remains same or similar as sought in the submission.

[b] The extent of the FBA has been removed off the more visible (from State Highway 6) sloping land, with reduction in potential visual effects. An equivalent area to that occupying the slopes had been identified to the south comprising flatter improved home paddocks on the same fan landform as the existing homestead cluster. Again the total size of the FBA is under both scenarios is a relevant consideration, as is the restriction of development to those parts of the property with better capacity to absorb development.

[c] The FBA areas as sought in the submissions did not include controls with respect to individual building footprints or total footprint over each FBA. Controls in respect of these matters are now proposed², together with a requirement for new buildings to establish in close proximity to existing development or as a second tight cluster of built form. The changes proposed result in a reduction of built form from that which could have been developed under the notified submission.

² 500m² and 4700m² respectively, note existing built form is 1850m².
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Procedural fairness, including rights of public participation

[d] The issue for consideration here is whether any member of the public would have made a submission, had the extended length of the FBA been in contemplation. In this regard, the submissions made above are relevant. While the area of the FBA has changed shape, it has been removed from the more sensitive parts of the land, and takes in land already modified – in terms of improved home paddocks, and better suited to absorb development. Furthermore, the development controls now proposed will result in a reduced scale/size of development than originally sought.

[13] The change in shape of the FBA is in my submission within jurisdiction, given that more visually sensitive land has been removed from the FBA, coupled with the fact of more restrictive development controls.

[14] Mr Espie's summary statement contains a comparative effects analysis between the extent of the two locations and concludes the effects would be the same or similar (possibly reduced) from public viewing points.

Remaining areas of disagreement between the Submitters and Council's Planner

[15] Council's landscape and planning experts oppose the proposed rezoning of the two FBAs on the following grounds:

Landscape – Dr Read

[a] While additional matters of control are positive – 6m height limit, built developments controls, there remains a lack of control over external appearance of buildings and maximum building footprint size, suggest a maximum of 500 m². *This*

concern is addressed by Mr Vivian and Mr Espie in their summary statements with additional proposed rules/controls.

- [b] Concerns with extent of northernmost FBA moving towards marginal strip, and visibility. *This is addressed by Mr Espie. The northern FBA footprint has been amended to address this concern.*
- [c] Southern area – positive that area has been removed from the steeper slopes, but concern at the almost doubling in length. Would lead to development over 700m, and be visible outside site. Recommend area should be reduced to extent of submission (southern boundary), or reconfigure to within proximity of existing development. *This matter is addressed by Mr Espie and discussed in his summary statement.*

Planning – Mr Buxton

- [a] Additional framework with little guidance as to application. *Discussed below.*
- [b] The risk of incorporating something “new”. *Discussed below.*
- [c] Lack of controls – size and scale. *Refer new rules/controls proposed as above.*
- [d] Lack of natural hazards assessment. *Mr Vivian maintains the view that the appropriate time to consider these issues is at the time of development/subdivision. Existing development occurs on these fans.*

[16] Council's, transport, ecology³ and infrastructure experts do not oppose the identification of the two FBAs

FBAs and alternative Zoning options

[17] Mr Vivian outlines the genesis of FBA's in his evidence. In short, the submitters evidence is that FBA's are an appropriate mechanism to enable development within large farm holdings such as Loch Linnhe.

[18] While Mr Buxton agrees the FBA concept has merit, he takes issue with the lack of policy support/direction for FBAs as a new concept within the Queenstown Lakes District Plan.

[19] Mr Vivian addresses this in his evidence from paragraph 5.1. Mr Vivian was involved in the Mackenzie plan change process for FBA's and has a deep understanding of the process that led to their "enactment".

[20] While the concept of FBAs arose in the context of planning instrument formulated in another district, that in itself is not a reason to reject its appropriateness for inclusion in the PDP.

[21] It is submitted that the rationale behind the FBAs has as much application in the Queenstown Lakes District as in the Mackenzie District. Both comprise significant tracts of ONL landscape, with stringent rules for development within. That non-complying status might apply in the Mackenzie District for development outside FBA's, rather than the Discretionary regime in the PDP, is not of itself determinative. Development under a discretionary regime in the ONL while not having to meet the gateway tests in Section 104D is not an easy task.

³ Noting Mr Davis' amendment to the Wye Creek site has been adopted – the area of regenerating indigenous vegetation is excluded as are the rock outcrops.
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[22] Mr Vivian applies the FBA approach to the QLDC PDP regime noting as follows⁴:

- [a] The PDP policy framework does not support the addition of residential, staff accommodation or visitor accommodation buildings;
- [b] Enabling diversification within large landholdings can help achieve improved environmental quality through the ability to generate alternative sources of income;
- [c] This was the rationale for the development of FBAs in the Mackenzie Basin ONL.

[23] Mr Vivian provides a comprehensive analysis of the FBA approach in part 5 of his evidence. He addresses Mr Buxton's reluctance to try "something new". I submit Mr Vivian's evidence should be preferred, particularly against an evidential basis that development under an FBA regime is "landscape appropriate". While supportive of the concept as having merit, Mr Buxton does not undertake any cost-benefit analysis in coming to his recommendation that the more restrictive ONL provisions should remain applicable to the proposed FBA's on Loch Linnhe.

Rural Visitor Zone

[24] There is not debate that for the Rural Visitor zone provisions to have any application to land in Stage 1 of the PDP, the operative zone (or an iteration of it) will need to be imported into the PD in order that it can apply independently of any operative plan provisions, and in respect of which, there is no certainty as to survival or content.

[25] Mr Vivian has suggested amendments that could be incorporated into any "new" Rural Visitor zone, with specific reference to a Rural

⁴ At paragraph 4.3 of his evidence
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Visitor zoning over the two Loch Linnhe FBA's. His evidence is that the Rural Visitor zone is an alternative zoning (although not the first choice) that can sit under the higher order/strategic provisions of the PDP as a "new" zone.

Jayne Elizabeth Macdonald
Counsel for Submitters



SUBMISSION 447 – SOUTHERN PROPOSED FARM BASE AREA / RURAL VISITOR ZONE.

A COMPRISON OF THE RELIEF SOUGHT BY THE ORIGINAL SUBMISSION AND THE RELIEF THAT IS NOW SOUGHT.

The yellow outline shows the Farm Base Area / Rural Visitor Zone that was sought by the original submission. The white outline shows the Farm Base Area / Rural Visitor Zone that is now sought.