

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2021] NZEnvC 50

IN THE MATTER of the Resource Management Act 1991
AND an appeal pursuant to clause 14 of the
First Schedule of the Act
BETWEEN J BOYD, J F A & S J REDAI &
OTHERS
(ENV-2018-CHC-163)
Appellants
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner M C G Mabin

Hearing: In Chambers at Christchurch

Last case event: Joint memorandum of counsel dated 17 March 2021

Date of Decision: 16 April 2021

Date of Issue: 16 April 2021

SECOND INTERIM DECISION OF THE ENVIRONMENT COURT

**Topic 16 – Rezoning Appeals Group 1 – Upper Clutha
Application for directions under s293**

A: Under s293 of the Resource Management Act 1991, directions are made in
relation to the Boyd & ors application, as per **Annexure 1**.

Costs are reserved.



REASONS

Introduction

[1] This is a second interim decision relating to an appeal by Jackie Boyd, Jackie and Simon Redai and several others¹ ('Boyd') in the Queenstown District Plan review ('PDP'). Boyd seeks rezoning² of eight separate land parcels ('Land') between Cardrona Valley Road and the Cardrona River on the outskirts of Wānaka. The only s274 party is Mr I Percy.³

[2] The relevant background is traversed in the first interim decision⁴ and adopted here as appropriate. QLDC's decision retained the Rural General zoning on the Land but following court-facilitated mediation the parties agreed that the entirety of the Land is suitable for rezoning as Lower Density Suburban Residential ('LDSR'). To facilitate that outcome, the parties seek s293 directions.⁵

[3] In the first interim decision, we indicated our preliminary view that s293 directions for the proposed change to LDSR zoning are appropriate. However, we rejected the parties' proposal to notify two alternative sets of related provisions. Instead, the court indicated a preference for the notification of, and consultation on Boyd's proposed provisions (referred to as the 'Noise Insulation' approach).⁶

[4] Parties were directed to file any supplementary submissions on this issue⁷ but subsequently agreed with the court that it would be more appropriate to notify

¹ Alastair and Phillipa Gillespie, Juliet Hall, Denise and John Prince, Dean and Michelle Telfer, Polson Higgs Nominees Limited, Lee and Sandy Martin, Simon Jackson and Lorna Gillespie.

² From Rural General to Rural Residential or in the alternative, their further submission sought that the land be incorporated within an amended Urban Growth Boundary for Wānaka and rezoned LDSR.

³ Mr Percy is the owner of one of the land parcels in issue, part of which he operates as a vineyard. His concerns are founded on potential future reverse sensitivity effects in relation to the frost fan on his property.

⁴ [2020] NZEnvC 172 ('First Interim decision').

⁵ Joint memorandum of counsel dated 3 August 2020.

⁶ First Interim decision at [29].

⁷ Supplementary legal submissions for QLDC dated 10 December 2020; supplementary submissions on behalf of Boyd dated 18 December 2020.



just one set of provisions.⁸ The parties filed a joint memorandum dated 17 March 2021 setting out the agreed ‘package’ and seeking directions from the court to initiate the s293 process.

Consultation package and associated directions

[5] The parties have agreed that the following documents are to be included in the consultation package for notification:⁹

- (a) Appendix A: Summary document explaining the proposed rezoning and Urban Growth Boundary extension;
- (b) Appendix B: Section 32AA Report justifying the proposed rezoning and UGB extension;
- (c) Appendix C: Plan provisions for incorporation into Chapters 7, 27 and 36 of the PDP, including the proposed Riverbank Road Structure plan;
- (d) Appendix D: Plan map;
- (e) Appendix E: Infrastructure/servicing documents:
 - (i) HAL Orchard/Riverbank Road Development Impact Assessment, June 2019;
 - (ii) Watershed Infrastructure Summary, September 2019;
- (f) Appendix F: Noise Reports:
 - (i) Marshall Day Riverbank Road Wind Machine Reverse Sensitivity Analysis, September 2019;
 - (ii) Hegley Acoustic Peer Review, January 2020.

[6] A proof copy of Public Notice, summarising the proposed rezoning and providing key information to parties on the s293 process, including how they can become involved, was also attached to the memorandum.



Joint memorandum of counsel dated 18 February 2021 at [4] and [5].
 Joint memorandum of counsel dated 17 March 2021 at [4], Appendices A-F.

[7] In proposing s293 directions, QLDC has taken a lead from other s293 directions in the context of Topic 2 of the PDP. The parties have also taken into account the court's comments¹⁰ in relation to allowing any person with an interest greater than the general public to join the appeal.¹¹

[8] We are satisfied with the proposed directions and the associated documentation to be included in the consultation package. Accordingly, we will make the directions as sought.

Directions

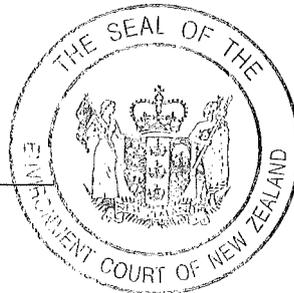
[9] Directions under s293 are made in Annexure 1.

[10] Leave is reserved to seek further (or other) directions.

For the court:



J J M Hassan
Environment Judge



¹⁰ First Interim decision at [30].

¹¹ Joint memorandum of counsel dated 17 March 2021 at [6] and [7].

Annexure 1 – s293 directions

Under s293, RMA, to enable consideration of a change to a Lower Density Suburban Residential Zone and an amended Urban Growth Boundary ('UGB') at Orchard and Riverbank Roads, it is directed:

Notification

- a. Within 10 working days [of the date of this decision], QLDC must:
- (i) serve written notice on owners of all properties that are subject to the rezoning, and all properties that are located directly next to the rezoned land (as shown in the attached map) by way of letter to all registered ratepayers of those properties;
 - (ii) publicly notify the proposed rezoning and change in UGB, by way of written notice on Council's website and in the local newspaper;
 - (iii) state in both notices that:
 - a. any person may provide to QLDC written comments and any supporting expert evidence (see (b) below) on the change by a date specified in the notice (not less than 20 working days after publication of the notice), which will be taken into account in the Council's report (see (d) below) but that;
 - b. any person who wants to formally join the Boyd, Redai & Ors appeal as a section 274 party (see (c) below), which would give them the ability to be involved in any Environment Court hearing on the proposed change (if necessary) and future appeal rights, needs to have an interest greater than the interest of the general public;
 - (iv) provide a summary description of the proposed rezoning and UGB change with the public notices; and
 - (v) direct people in the public notices to Council's website where the 'consultation package' will be available.

Rights to make written comments

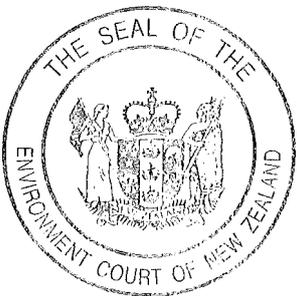
- b. By the date specified in the notices in (a)(i) and (a)(ii) (not less than 20 working days after the date of written notice), any person may provide to Council:
- (i) written comments on the proposed rezoning and UGB change; and
 - (ii) any supporting expert evidence.

Formally joining the Boyd, Redai & Ors appeal as a section 274 party

- c. By the date specified in the notices in (a)(i) and (a)(ii) (not less than 20 working days after the date of written notice), any person who has an interest greater than the general public, may formally join the Boyd, Redai & Ors appeal by lodging with the Environment Court, and serving on the Council, a section 274 notice. If they wish to make written comment, they must also do that under (b) above.

Council report

- d. Within 20 working days after the date on which written comments are to be provided in accordance with (b), Council must file with the Court a report which:
- (i) summarises the written comments and any expert evidence received (if any), and which also provides a link to all written comments and expert evidence received (should the Court wish to review that documentation);
 - (ii) makes recommendations for the Court's consideration.



Court's determination

- e. Once the Court has received the report from Council as directed in (d), this will be considered and the Court will then either, determine the rezoning and UGB alteration, or issue further directions.

