

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER OF Queenstown Lakes Proposed
District Plan – Upper Clutha
Mapping

**LEGAL SUBMISSIONS ON BEHALF OF L AND J BURDON
(Submission #581)**

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MAY IT PLEASE THE COMMISSIONERS

INTRODUCTION

1. These submissions are made on behalf of Lesley and Jerry Burdon (“Burdons”) who made a submission on the Queenstown Lakes Proposed District Plan.
2. The Burdons own a 38ha block of land legally described as Lot 1 DP 396356 on State Highway 6 (Makarora-Lake Hawea Road) Lake Hawea (“the Land”). The Land is currently zoned Rural General and the Burdons’ submissions sought a rezoning of the Land to Rural Lifestyle. The Land is within a Outstanding Natural Landscape (“ONL”). The proposed rezoning is supported by independent planning and landscape experts.
3. Mr Burdon has lived on the Land his whole life while Mrs Burdon has lived in the district for 54 years. They have seen the damage caused to the Land by the rising and lowering of Lake Hawea for hydro electricity purposes and the construction of State Highway 6.

SCOPE OF SUBMISSIONS

4. For the Commissioner’s ease of reference I note that my submissions are set out under the following headings:
 - (a) Evidence;
 - (b) Submission;
 - (c) Statutory considerations; and
 - (d) Conclusion.

EVIDENCE

5. Evidence from the following witnesses has been provided to the panel:

- (a) Mr Ian Greaves, a resource management consultant, provided evidence on the principal planning issues that have been raised in the section 42A report and expert evidence; as well as an overview of the submission and the proposed planning provisions.
- (b) Ms Michelle Snodgrass; a landscape architect. provided an assessment of the landscape, natural character and visual effects of the proposed zone change; and
- (c) Mr Jerry and Mrs Lesley Burdon, the landowners, provided evidence about the history and current use of the Land and their aspirations.

6. Those witnesses are here today to answer any questions.

SUBMISSION

- 7. The Burdons currently have the option of applying for a resource consent to subdivide the Land. There is, of course, no certainty, in relation to whether a consent will be granted to enable this to happen. In order to get more certainty they have decided to apply for a zone change as part of the district plan review process. They will not get absolute certainty with a rezoning either. A resource consent will be required to subdivide the Land. However, they feel more comfortable knowing that the Land has been included in a zone that best reflects the status and nature of Land and also better provides for their future aspirations. They are of the view that a Rural zone is no longer appropriate for the Land because it can no longer be efficiently or effectively farmed independently.
- 8. The submissions lodged by the Burdons was extensive and included a section 32 report, landscape assessment, servicing feasibility report, geotechnical report and correspondence from the New Zealand Transport Agency.
- 9. Before they lodged their submission their sought expert advice and were advised that the Land had capacity to absorb controlled rural living

opportunities. This is confirmed in the evidence of Mr Greaves and Ms Snodgrass.¹

10. The submission seeks a specific zone for the Land – The Dene Rural Lifestyle Zone. Mr Greaves has drafted a specific objective, policies and rules that ensure future development protects the ONL and provides for and enhances native ecosystems.

STATUTORY CONSIDERATIONS

11. In making a decision on the Burdon's submission, the panel must keep in mind section 32 of the Act. In *Monk v Queenstown Lakes District Council*² the Court held as follows in respect of section 32:

[47] That is a generic assessment of the amended plan change, but of course each provision will need to be assessed individually (to the extent necessary) under section 32. That means that one of the primary matters for the court to consider on a substantive hearing of the appeal on PC39 would be to compare:

- (a) the status quo (i.e. a Rural General Zoning) of the Arrowtown South land with;
- (b) the PC39 proposal; or
- (c) the submissions on PC39; or
- (d) something in between (a), (b) and (c)

in the light of the relevant tests under the RMA for preparation of plan changes. In particular, as set out in *High Country Rosehip Orchards Limited v Mackenzie District Council*, that requires:

[...]

8. ... Each proposed objective in [the] ... plan ... change ... is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act;
9. The policies ... to implement the objectives, and the rules (if any) ... to implement the policies.
10. [Examination of] Each proposed policy or method (including each rule), ... having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan:

¹ Greaves para 10. Snodgrass para 11.

² [2013] NZEnvC 156.

- (a) taking into account:
 - (i) the benefits and costs of the proposed policies and methods (including rules); And
 - (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods; ...
- [...]

The ultimate issue for the substantive hearing would be which of the options (a) to (d) above better achieves, in respect to each objective, policy and rule, the purpose of the RMA when examined under those statutory tests.

12. As to the correct approach to be taken to section 32, the High Court has stated³:

Section 32

[44] Section 32 requires that, before adopting any proposed changes to policies, the Board must evaluate and examine whether, having regard to the efficiency and effectiveness, the changes are the most appropriate way of achieving the objectives of the Freshwater Plan. In making that evaluation the Board had to take into account the benefits and costs of the proposed policies (ie “benefits and costs of any kind, whether monetary or non-monetary”); and the “risk of acting or not acting, if there is uncertain, or insufficient information” about the subject matter of the proposed policies.

13. The Council undertook an evaluation under section 32 of the Act prior to notifying the Proposed Plan and reported on that evaluation. Mr Greaves also undertook a section 32 evaluation which specifically relates to the Land. Section 32(3) provides that the evaluation must examine:

- (a) the extent to which objective is the most appropriate way to achieve the purpose of the Act; and

³ *Rational Transport Society Inc v NZTA* CIV-2011-485-002259

- (b) whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objective.
14. What needs to be determined, in respect of development of the Land, is which is the most appropriate way to achieve the purpose of the Act. There can, of course, be more than one appropriate way and it is the panel that must select the most appropriate. In *Colonial Vineyard*⁴ the Court acknowledged that:
- 'most appropriate' in section 32 suggests a choice between at least two options (or, grammatically, three). In other words, comparison with something does appear to be mandatory.
15. The choice that needs to be made by the panel is between Rural zoning with rural activity on the Land, or a Rural Lifestyle zoning which allows for limited development opportunities.
16. It is submitted that in respect of the Land, the most appropriate way to achieve the purpose of the Act is to rezone it, with appropriate limitations and restrictions. The rezoning enables a more efficient and effective use of the Land than if the Land were to remain in a Rural zone.
17. The Burdon's planning witnesses, Mr Greaves, concludes that the rezoning and the new provisions is the preferred outcome for achieving the purpose and principles of the Act and the requirements of section 32.
18. The carefully considered view of Mr Greaves should be accorded significant weight given:
- (a) His evaluation was specific to the Land and not general in nature;
- (b) His measured and holistic approach to the likely effects of limited development on the Land;

⁴ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [64].

- (c) His reliance on an independent landscape expert; and
- (d) His sensible acceptance that the purpose of the Act is able to be achieved by the rezoning with scope for development which respects the surrounding landscape.

CONCLUSION

- 19. The basis for re-zoning the Land to Rural Lifestyle is established in Mr Greaves' section 32 evaluation. The rezoning and related provisions were developed in direct response to amenity and landscape issues that are able to be appropriately resolved.
- 20. The purpose and principles of the Act will be met by the revised re-zoning proposal.

David Jackson

7 June 2017