

**BEFORE COMMISSIONERS APPOINTED BY
QUEENSTOWN LAKES DISTRICT COUNCIL**

IN THE MATTER of Resource Management Act 1991
AND
IN THE MATTER of submission of **Hearing Stream 12**
Jeremy Bell Investments Limited
OS820

**MEMORANDUM OF COUNSEL
FOR JEREMY BELL INVESTMENTS LIMITED**

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May it please the Commissioners:

Legal Principles

1. The legal principles relating to plan changes are well-settled.¹ The issue is whether Rural or Rural-Lifestyle zoning is more appropriate for the JBIL land.
2. The Council's view is that Rural zone is the most appropriate zone for this land. It says the Rural provisions gives the Council more control over the development of the zone. No doubt it does do that, but that is not the relevant test.
3. JBIL's view is that as the environment can absorb the proposed development so long as it can be carefully managed, and so the most appropriate zoning for the land is that which enables that development to be realised: *Guthrie v Dunedin City Council*². The *Guthrie* decision set out the appropriate approach to be taken when the core objectives and policies were settled (or at least not challenged by the submission) and the decision to be made was which of the two competing zone options was the most appropriate to achieve the purpose of the Act. The Court cited with approval the following statement from an earlier decision of the High Court in *Green & McCahill Properties v Auckland Regional Council* (18 August 1997, Salmon J, High Court Auckland 4/97):

"Nothing in this decision should be taken to question the provisions of the Proposed Regional Policy Statement or the urban growth strategy of the Proposed District Plan – they are not challenged by this appeal. Nor should this decision be taken as an indication that the boundary between residential zoning in Pukekohe and the rural zoning surrounding it is generally vulnerable. The only issue we have considered is whether the subject block should be rezoned residential instead of rural. This does not raise questions of high principle, but a practical approach to the detail of the residential – rural interface."

4. The same approach applies here to a slightly different problem: is the proposed location one suitable for rural living? If it is, then the zoning should be Rural Lifestyle as sought, if it is not, then it should be zoned for rural living.³
5. In *Guthrie*, the Court set out the scope of its jurisdiction. It reminded the parties that the scope was not limited to a binary outcome, namely that which was notified by the Council and that which was sought by the submitter. Those merely frame the extreme ends of the available scope. The Court's jurisdiction includes every step between those extremes (refer pars 17 onwards). Having identified the scope for a decision, the Court said:

¹ They are set out in *Eldamos Investments Ltd v Gisborne District Council* W047/2005 and *Long Bay-Okura Great Park Society Inv v North Shore City Council* A78/08.

² C174/2001

³ Policy 3.2.5.4.2 Provide for rural living opportunities in appropriate locations.
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“Accordingly, the appropriate zone is that which has the most liberal provisions while avoiding, remedying, or mitigating adverse effects.”

6. This tells us that the option that exerts the most control over land use is likely to be the least appropriate, not the most appropriate. The option chosen should be that which achieves the relevant objectives, but is the most liberal provision (or least restriction) for the use of land.
7. The Rural Lifestyle Zone purpose statement says:
 - a. *The Rural Lifestyle zone provides for rural living opportunities, having a development density of one residential unit per hectare with an overall density of one residential unit per two hectares across a subdivision. Building platforms are identified at the time of subdivision to manage the sprawl of buildings, manage adverse effects on landscape values and to manage other identified constraints such as natural hazards and servicing. The potential adverse effects of buildings are controlled by height, colour and lighting standards.*
8. Objective 22.2.1 is supported by a suite of policies directed at the maintenance of the very values that concerned the Council officers in their reports. If it were not appropriate to zone land Rural Lifestyle in circumstances where landscape values needed to be carefully managed, then policies 22.2.1.1 to 22.2.1.7 would be superfluous.
9. Unsurprisingly, that suite of policies is supported by Rule 22.4.3.3, which makes the identification of building platforms a fully discretionary activity, with a suite of building control standards in Table 2.
10. It is submitted that once you are satisfied that the proposed site is an appropriate one for rural living, then your next consideration is whether there is anything missing from the Rural Lifestyle provisions that would be an essential control on development to achieve the Plan’s higher order landscape objectives. If you are satisfied that the necessary controls are available, then there is legal no basis to maintain Rural zoning



Counsel for Jeremy Bell Investments Limited