

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-

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	Bridesdale Farm Developments Limited Appellant
And	Queenstown Lakes District Council Respondent

**Notice of Appeal – Bridesdale Farm Developments Limited – Stage 2 QLDC
Proposed District Plan**

[BFDL Appeal B- Zoning]

7 May 2019

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To The Registrar
Environment Court
Christchurch

Background

- 1 Bridesdale Farm Developments Limited (**BFDL**) appeals against part of the decision of Queenstown Lakes District Council (**QLDC**) on Stage 2 of the Proposed Queenstown Lakes District Plan (**PDP**).
- 2 BFDL made a submission (#655) on Stage 1 of the PDP which was deferred during the Stage 1 hearings and was carried over to be dealt with under Stage 2. BFDL then made a submission (#2391) on Stage 2 of the PDP. Both submissions were heard and determined during Stage 2.
- 3 BFDL is not a trade competitor for the purpose of section 308D Resource Management Act 1991 (**RMA**).
- 4 BFDL received notice of the decision on 21 March 2019.
- 5 The decision was made by QLDC.
- 6 The parts of the decision appealed (**Decision**) relate to:
 - (a) Planning Maps 13, 13d, 30 and 30a;
 - (b) Chapter 38 – Open Space and Recreation;
 - (c) Chapter 8 – Medium Density Residential.
- 7 Submission 655 raised two separate issues which BFDL is challenging through the PDP appeal process:
 - (a) The landscape classification of an area of land, specifically whether that land should be classified as Outstanding Natural Landscape (**ONL**) or Rural Character Landscape (**RCL**);
 - (b) The appropriate zoning of part of the area of land referred to in (a) above.
- 8 It is anticipated that the two issues identified in the previous paragraph will be dealt with at different times (and possibly by differently constituted divisions of the Court), with the landscape classification issue likely to be heard and determined prior to zoning issues. Therefore those two issues are being addressed through two different Notices of Appeal. This appeal addresses the zoning issue.

- 9 In actual fact there are two separate zoning issues. Through its Submission 2391 BFDL sought rezoning of part of the land subject to this appeal as Active Sport and Recreation (**AS&R**). Through its Submission 655 BFDL sought rezoning of another part of the land subject to this appeal as Medium Density Residential (**MDR**). This Notice of Appeal covers both rezoning requests, on the assumption that they will be dealt with at the same time in the same hearing, but addresses them separately as different considerations arise in respect of each submission.

PART A

First Zoning Issue – Active Sport and Recreation

- 10 The first part of this zoning appeal relates to an area of land located on the river flat adjoining the northern (true left) bank of the Kawarau River and the western (true right) bank of Hayes Creek, south of and below the residential areas known as Lake Hayes Estate and Bridesdale. The subject area is referred to as the '**Bridesdale River Flat**' in this Notice of Appeal. The appeal affects Planning Maps 13, 13d (larger scale), 30 and 30a (smaller scale). **Appendix A** contains a copy of part Planning Map 30a, on which is drawn a black circle which contains the Bridesdale River Flat hatched in black.

Reasons for appeal

- 11 The Bridesdale River Flat comprises two areas of land in different ownership/management (excluding a strip of Crown land which separates the Bridesdale River Flat from the Kawarau River to the south):
- (a) Approximately 16.8 ha owned by BFDL which is legally described as Lot 404 DP 505513 and which is zoned Rural in the PDP as notified, being the eastern part of the Bridesdale River Flat;
 - (b) Approximately 19.6 ha owned or managed by QLDC which is designated and/or zoned as recreation reserve and/or Informal Recreation in the PDP as notified, being the western part of the Bridesdale River Flat.
- 12 BFDL's Submission 2391 sought to rezone the entire Bridesdale River Flat (BFDL land plus Council land) as AS&R. **Appendix B** contains a copy of Submission 2391. Plan A in **Appendix A** identifies the land proposed to be rezoned AS&R.
- 13 **Appendix C** contains a copy of pages 68-73 of Report 19.6 which in turn contains Part 26.1 which details the Recommendation of the Hearing Panel to reject Submission 2391 which was accepted by QLDC in its Decision. The

Decision rejected BFDL's rezoning request and retained the relevant Rural and Informal Recreation zonings as notified.

Grounds of Appeal

- 14 The grounds of appeal are that:
- (a) The QLDC failed in its Section 32 analysis to justify why private land could not be zoned for Open Space and Recreation (**OS&R**) purposes;
 - (b) There are no provisions in Chapter 38 which preclude the zoning of private land, with the exception of one statement in the 'Purpose' for OS&R zones;
 - (c) The QLDC's Parks and Open Space Strategy 2017 does not preclude the zoning of private land for OS&R purposes;
 - (d) QLDC has simply zoned its existing reserve network as OS&R and has failed to address future recreational land needs and demands as required by relevant objectives and policies in the OS&R zone;
 - (e) In order for QLDC to meet its aspirations for open space linkages throughout the District, it is inevitable that this will need to include private land;
 - (f) The Decision reaches a conclusion that the retention of Rural zoning over the BFDL land is (at least) difficult to defend;
 - (g) The Decision reaches a conclusion that the notified split zoning (Rural for the BFDL land and Informal Recreation for the Council land) is illogical under the circumstances and cannot reasonably be defended;
 - (h) The Decision raised a number of specific concerns about applying AS&R zoning to the BFDL land but did not consider how those concerns could be met by making appropriate amendments to the OS&R Zone plan provisions;
 - (i) The Decision effectively came to the conclusion that the case presented by BFDL for some form of recreational zoning of the BFDL land is a more appropriate outcome than the Rural zoning contended for by QLDC, but then held that it did not have scope to rezone the land as requested by BFDL without explaining why the Hearing Panel considered that it did not have the requisite scope;
 - (j) Take into account all considerations relevant to the determination of the appropriate zoning of an area of land through the PDP process, the

appropriate zoning outcome for the BFDL land is some form of recreational zoning under the OS&R Zone;

- (k) If there is any need for a 'bespoke' recreational zoning for the BFDL land, that outcome can be achieved through this PDP process by making appropriate amendments to the OS&R Zone plan provisions applicable just to the BFDL land if necessary;
- (l) The appropriate outcome for the BFDL land is either AS&R zoning or Informal Recreation zoning, possibly subject to specific plan provisions applicable just to the BFDL land;
- (m) The Decision rejects BFDL's request that the Council land be rezoned from Informal Recreation to AS&R without providing any reasons for that Decision.
- (n) The AS&R zoning requested by BFDL to apply to the Council land is more appropriate than the Informal Recreation zoning as it provides greater flexibility for future recreational activities on that land, and if there are any potential adverse effects these can be taken into account through the appropriate planning process;
- (o) If the relief referred to in the previous paragraph raises any specific concerns, such concerns can be dealt with by amending the relevant plan provisions to provide Council with a greater extent of discretion over whether or not to grant consent to a particular activity.
- (p) The Decision does not accord with sound resource management practice and will not appropriately achieve the purpose and principles of the RMA.

Relief Sought

15 BFDL seeks that:

- (a) The BFDL Lot 404 DP505513 and the Council reserves (Lot 321 DP379403, Lot 400 DP445230 and Lot 205 DP505513) be rezoned Active Sport and Recreation;
- (b) In the alternative to (a) above, the BFDL Lot 404 DP505513 be rezoned Informal Recreation;
- (c) In the case of (a) or (b) above, that appropriate amendments are made to the Chapter 38 plan provisions to address any specific concerns which would arise if either of those two alternative reliefs were granted;

- (d) Consequential upon (a) or (b) above that any statements or references in Chapter 38, which state or imply that Chapter 38 only applies to Council owned or managed reserves, are deleted from Chapter 38.

Further and consequential relief sought

- 16 BFDL seeks such alternative, consequential, or additional relief to that set out in this appeal as may be appropriate or necessary to give effect to the matters raised generally in this appeal and BFDL's Submission 2391.

Attachments – Part A

- 17 The following documents are attached to this notice:
 - (a) **Appendix A** – A copy of part Planning Map 30a identifying (hatched in black) the land subject to Part A of this appeal;
 - (b) **Appendix B** - A copy of the Appellant's Submission 2391;
 - (c) **Appendix C** - A copy of the relevant part of the Decision.

PART B

Second Zoning Issue – Medium Density Residential

Reasons for appeal

- 18 North of the Bridesdale River Flat (which is subject to Part A of this appeal) is the Bridesdale Medium Density Residential (**MDR**) zone located on a series of terraces above the Bridesdale River Flat. Between the Bridesdale River Flat and the MDR zone is a small area of land owned by BFDL containing 1.114 ha legally described as Lot 406 DP 505513, which was zoned Rural in the PDP as notified. BFDL seeks to rezone part of Lot 406 containing approximately 0.6 ha (**Proposed MDR Land**) to MDR zoning. The Proposed MDR Land is located on a sloping terrace escarpment which is sandwiched between the Bridesdale River Flat below and the MDR Zone on the terrace above. **Appendix D** contains a copy of part of Planning Map 30a, on which is drawn a black circle which contains the Proposed MDR Land hatched in black.
- 19 BFDL's Submission 655 sought to rezone the Proposed MDR Land from Rural to MDR. **Appendix E** contains a copy of Submission 655. **Appendix F** contains Plan F which identifies the Proposed MDR Land hatched in red.
- 20 **Appendix G** contains a copy of pages 18-27 and 30 of Report 18.11 which in turn contains Part 4 which includes the recommendation of the Hearing Panel to reject this aspect of Submission 655 which was accepted by QLDC in its

Decision. The Decision rejected BFDL's rezoning request and retained the notified Rural zoning.

Grounds of appeal

21 The grounds of appeal are that:

- (a) The paragraph of the Decision which encapsulates the Recommendation of the Hearing Panel in respect of this part of BFDL's Submission 655 is paragraph 104 on page 26 which reads:

"104 Based on our findings relating to the ONL boundaries in this area, we do not consider it appropriate to extend the urban growth boundary beyond the boundary of the ONL to encompass the entire site shown in Figure 12, above. Nor do we find it appropriate to include the escarpment and the flood plain on Bridesdale Farm within the Medium Density Residential zone."

- (b) It is evident from the paragraph quoted above that this part of the Decision is based upon consideration of a wider area of land, including the relevant part of the Bridesdale River Flat. The Decision does not focus on the case presented for this aspect of Submission 655 which is a specific area of land containing only about 0.6 ha.
- (c) The Decision is based upon a broad finding that the Bridesdale River Flat is part of the ONL, and does not focus on or consider the potential effect of development of the small 0.6 ha area of land on the values of that wider ONL.
- (d) On the evidence presented, QLDC could and should reasonably have concluded that MDR residential development could be accommodated on the Proposed MDR Land with nil or insignificant adverse effect on the wider ONL.
- (e) Taking into account the existence of road access and all other infrastructure already being in place, the rezoning of the Proposed MDR Land as MDR would constitute an efficient use of natural and physical resources in an area under severe development pressure and demand.
- (f) The Decision does not accord with sound resource management practice and will not appropriately achieve the purpose and principles of the RMA.

Relief sought

22 BFDL seeks that:

- (a) The Proposed MDR Land (hatched red on Plan F in **Appendix F**) be rezoned from Rural to MDR;
- (b) Consequential upon (a) above, that the Urban Growth Boundary (**UGB**) be amended to include the Proposed MDR Land within the UGB;
- (c) Consequential upon (a) and (b) above, if considered necessary, the relief detailed in the following paragraphs 23 and 24.

23 If both the relief requested in Part A of this appeal and the relief requested in Part B of this appeal are granted, that will leave two small, somewhat anomalous, areas of land owned by BFDL still zoned Rural, being:

- (a) The area containing the 'Garden Allotments', being the small yellow rectangle located between the area hatched black on Plan A in **Appendix A** and the area hatched black on Plan D in **Appendix D**;
- (b) The eastern part of BFDL's Lot 404 (immediately to the east of the area hatched black on Plan D in **Appendix D**) containing approximately 0.5 ha.

24 BFDL's Submission 655 requested that all of Lots 404 and 406 DP505513 be rezoned as MDR. Accordingly there is jurisdictional scope to rezone the two small areas referred to in the previous paragraph if considered appropriate. If that were the case, the following limitations could be applied by way of plan provisions in Chapter 8 and/or on the relevant Planning Maps:

- (a) Restricting the use of the Garden Allotment area to the gardening activity (including garden sheds) consented for that land;
- (b) Placing a Building Restriction Area over the eastern part of Lot 404 preventing any buildings from being erected in that area;
- (c) Such alternative or amended provisions considered necessary or appropriate to achieve the outcomes intended by this paragraph.

Further and consequential relief sought

25 BFDL seeks such alternative, consequential, or additional relief to that set out in this appeal as may be appropriate or necessary to give effect to the matters raised generally in this appeal and BFDL's Submission 655.

Attachments – Part B

26 The following documents are attached to this notice:

- (a) **Appendix D** – A copy of part Planning Map 30a identifying (hatched in black) the area of land subject to Part B of this appeal;
- (b) **Appendix E** - A copy of the Appellant's Submission 655;
- (c) **Appendix F** – A plan identifying the Proposed MDR Land hatched red;
- (d) **Appendix G** - A copy of the relevant part of the Decision;
- (e) **Appendix H** - A list of names and addresses of persons to be served with this notice.

Dated this 7th day of May 2019



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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.