

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ**

Decision No. [2025] NZEnvC 119

IN THE MATTER

of the Resource Management Act 1991

AND

an appeal under clause 14 of the First
Schedule of the Act

BETWEEN

M J BERESFORD, R T BUNKER &
L M ROUSE

(ENV-2018-CHC-69)

Appellants

AND

QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan
Environment Judge S M Tepania
Environment Commissioner J T Baines

Hearing: On the papers

Last case event: 22 January 2025

Date of Decision: 9 April 2025

Date of Issue: 9 April 2025

INTERIM DECISION OF THE ENVIRONMENT COURT
Section 293 directions



REASONS

Introduction

[1] This decision follows the court’s second interim decision on the appeal in the review of the Queenstown Lakes District Plan (‘PDP’), specifically addressing the appropriate zoning of a site in Hāwea/Wānaka Sticky Forest known locally as “Sticky Forest” (‘Site’) for which s293 directions are made.

Background

[2] The first and second interim decisions traverse the relevant background. In short, the appellants modified their relief prior to the hearing, agreeing to maintain Rural zoning over 32 ha of the Site, including 25 ha within the Dublin Bay Outstanding Natural Landscape (‘ONL’) and a 7 ha strip along the Site’s western boundary. The appellants sought rezoning of the remaining 19 ha to Large Lot Residential (‘LLR’) and Lower Density Suburban Residential (‘LDSR’), and alignment of the PDP urban growth boundary with the new residential zones. The court concluded this modified relief, subject to some refinements, was the most appropriate zoning outcome and directed QLDC to finalise the updated PDP provisions.¹

[3] The second decision confirmed that rezoning 19 ha to LLR and LDSR was appropriate, while 32 ha would remain Rural. The court found extending LLR zoning over a 7 ha strip logical and asked the appellants to confirm their position. The appellants agreed, and both parties saw no issue with adding 20 lots. The court directed the appellants to provide technical assessments and report back with proposed s293 directions. Additionally, the court agreed to revisit a policy on indigenous vegetation planting and required updates to the PDP provisions.²

¹ *Beresford v Queenstown Lakes District Council* [2024] NZEnvC 182.

² *Beresford v Queenstown Lakes District Council* [2024] NZEnvC 298.

The s293 proposal

[4] The appellants' memorandum³ explains that they have conducted technical assessments on the s293 proposal, focusing on transport, infrastructure, and planning.⁴ These assessments were based on an indicative subdivision layout for the Site, suggesting that extending the Large Lot Residential (A) zone could allow for up to 35 additional lots. The technical assessments indicate there are no significant road safety issues or servicing constraints for the proposed development. Suitable infrastructure, including roads, water supply, wastewater, and stormwater management, can be feasibly implemented to support up to 35 additional lots.⁵

[5] Further, the memorandum records, in reliance on the technical assessments, that Mr Jonathan Clease has prepared a planning assessment in accordance with s32AA RMA. He considers rezoning of the Remnant Area is the most appropriate way to:

- (a) achieve the objectives of the PDP and the RMA;
- (b) protect the Dublin Bay ONL;
- (c) provide an acceptable interface with adjacent reserve land;
- (d) increase housing availability and choice; and
- (e) enhance economic and social wellbeing.

³ Dated 22 January 2025.

⁴ At [2.2].

⁵ At [2.3]-[2.4].

[6] Mr Clease concludes the proposed amendments will ensure that the effects of activities within the Remnant Area are adequately addressed, no changes to the Hāwea/Wānaka Sticky Forest Structure Plan are needed, and public comment on the s293 proposal is appropriate.⁶

[7] The memorandum further records that the appellants have consulted with QLDC regarding the summary document explaining the s293 process attached to its memorandum, along with the directions sought to be issued by the court.⁷ The memorandum records that counsel for QLDC has no further comment to make on the technical assessments, the summary document or the proposed directions, and does not seek an opportunity to file any memorandum of counsel before the court makes its directions to notify the s293 proposal.⁸

[8] Having read and considered the memorandum of counsel, the proposed changes to the PDP,⁹ the technical assessments¹⁰ and the s293 proposal summary and directions set out in Annexures 1 to 2,¹¹ we are satisfied that all matters are in order for the purposes of the s293 directions.

Directions

[9] QLDC is directed to notify Annexures 1 to 2 within **10 working days** of the date of this decision in the manner described by Annexure 2.

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

⁶ At [2.6].

⁷ At [2.7]-[2.8].

⁸ At [2.9].

⁹ Memorandum of counsel, App A.

¹⁰ Memorandum of counsel, App B.

¹¹ Memorandum of counsel, App C-D.

Costs

[11] The memorandum records that the appellants are considering seeking costs against Kirimoko No. 3 Limited Partnership, and possibly QLDC. However, they consider it appropriate that any costs process be initiated following the completion of the s293 proposal to avoid overlapping deadlines. We agree. Therefore, costs are reserved.

For the court



J J M Hassan
Environment Judge



ANNEXURE 1

S293 PROPOSAL SUMMARY

Section 293 Proposal – *Beresford, Bunker & Rouse v Queenstown Lakes District Council* [2024] NZEnvC 182

Summary of alterations proposed to the mapping and provisions applying to the 'Remnant Area' part of Sticky Forest, Wānaka under the Proposed Queenstown Lakes District Plan

1 BACKGROUND

- 1.1 This document has been prepared by the Appellant and provides a summary of proposed alterations to the Proposed Queenstown Lakes District Plan (**Plan**) under section 293 of the Resource Management Act 1991 (**RMA**) as a result of directions of the Environment Court on 31 July 2024 in its first decision on *Beresford, Bunker & Rouse v Queenstown Lakes District Council* [2024] NZEnvC 182 (the **Appeal**) and on 25 November 2024 in its second decision on *Beresford, Bunker & Rouse v Queenstown Lakes District Council* [2024] NZEnvC 298.
- 1.2 The proposed alterations relate to part of a site on an elevated ridge to the north of Wānaka township, known as 'Hāwea / Wānaka Sticky Forest', comprising approximately 50ha. The site is legally described as Section 2 Sec 5 Block XIV Lower Wanaka SD (OT18C/473) (the **Site**).
- 1.3 The Appeal sought:
- (a) a combination of Lower Density Suburban Residential and Large Lot Residential – A zoning over the majority of the southern half of the Site; and
 - (b) the retention of the notified Rural zoning over:
 - (i) the 7ha western extent of the southern half of the Site (the **Remnant Area**); and
 - (ii) the northern half of the Site which is part of an Outstanding Natural Landscape (**ONL**).
- 1.4 With the exception of the Remnant Area, the Environment Court, in its First Decision, confirmed that those zones were the most appropriate outcome for the Site. In that decision, the Court also held that:
- (a) the Appellants' modified relief would:
 - (i) protect the values of the ONL;
 - (ii) have no other material landscape effects, including on landscape character; and
 - (iii) recognise and provide for the matters in ss6(b) and (e), and duly address sections 7(a), (c) and (f) and 8 of the RMA so as to assist to achieve the related intentions of the Plan;
 - (b) the landscape character for the part of the Site that is outside of the Dublin Bay ONL is predominantly of a residential suburb and the urban setting of the Site allows for its development;

- (c) the Plan does not intend that the landscape character of the Site outside the Dublin Bay ONL be maintained or that its visual amenity values be maintained or enhanced;
- (d) maintaining the Rural zoning over the Remnant Area does not serve the [Plan's] intention for Rural zoned land and is an anomaly; and
- (e) extending the Large Lot Residential – A zoning over the Remnant Area is logical and reasonably confined, and repositioning the Urban Growth Boundary (**UGB**) is similarly confined and essentially consequential on the Large Lot Residential zoning of the Remnant Area.

1.5 The Court therefore confirmed that it was appropriate, through a section 293 process, to consider rezoning the Remnant Area to Large Lot Residential - A and the consequential repositioning of the UGB to encompass that Remnant Area.

2 THE PROPOSED ALTERATIONS

2.1 The proposed alterations to the Plan as a result of this process comprise:

- (a) rezoning the 7ha Remnant Area from Rural zone to Large Lot Residential – A zone;
- (b) relocating the UGB to follow the boundary between the northern half of the Site (zoned Rural and forming part of an ONL) and the urban zoned part of the Site to the south;
- (c) removing the Rural Character Landscape (**RCL**) notation from the Remnant Area;
- (d) amending Policy 27.3.28.2 of the Plan to ensure that subdivision, development and planting on the Remnant Area integrates with and complements the existing planting/landscaping and development enabled on the Council reserve to the west of the Hāwea / Wānaka Sticky Forest Structure Plan area;
- (e) amending Rule 11.5.11 of the Plan to require the application of the recession plane standard to site boundaries within the Remnant Area fronting the Council reserve; and
- (f) introducing a new Rule 11.5.11A into the Plan which includes specific requirements for fencing on sites within the Remnant Area that is on or within 4m of the boundary with the adjoining Council reserve.

(together the **s293 Proposal**).

2.2 A map of the Site with the zoning proposed by the s293 Proposal is included at **Attachment 1**.

2.3 The Appellants confirm that, following the undertaking of assessments with respect to that Proposal:

- (a) No changes are required to the Structure Plan for the Site that is included in the Plan.
- (b) Any effects will be appropriately managed by the provisions of the Plan, as proposed to be amended by the s293 Proposal.
- (c) The Site is suitable to accommodate the rezoning of the Remnant Area.

3 SECTION 293 PROCESS AND NEXT STEPS

- 3.1 Section 293 of the RMA allows the Environment Court to, following a hearing on an appeal, direct a local authority to prepare changes to a proposed plan. The s293 Proposal would amend the Plan's planning maps insofar as they relate to the Remnant Area part of the Site, and would make changes to three provisions, and other consequential changes described in paragraph [2.1] above.
- 3.2 In this case, the Environment Court has directed that a section 293 process be used in relation to those changes.
- 3.3 This document has been prepared to accompany a notice on the Council's website and in the local newspapers, which advises of the proposed rezoning, the amendment to the UGB, changes to the provisions, and the associated directions issued by the Court.
- 3.4 The directions provide for persons to make written comments on the proposed alteration, by **[TBC]**. After all written comments are received, the Council will file a report with the Court (and evidence, as required), and the Court will then consider the matter further.
- 3.5 The directions issued by the Court at this point in time are set out below:

Under section 293 of the RMA, to enable consideration of a change from Rural Zone to a Large Lot Residential Area A Zone, an amended Urban Growth Boundary (*UGB*), changes to the provisions, and other consequential changes affecting the south western strip of land within Hāwea / Wānaka Sticky Forest (the *Remnant Area*), it is directed:

Notification

- 1) Within 20 working days of 9 April 2025, QLDC must:
 - (a) serve written notice on the owner of the property that is subject to the rezoning by way of letter to the registered ratepayer of that property;
 - (b) publicly notify the proposed rezoning, amendment to the UGB, changes to the provisions and consequential changes by way of written notice on Council's website and in the local newspapers;
 - (c) state in those written notices that:
 - (i) any person may provide to QLDC written comments and any supporting expert evidence on the change by a date specified in the notice (not less than 20 working days after publication of the notice) but that:
 - (ii) any person who wants to formally join the Beresford, Rouse and Bunker appeal as a section 274 party (see (3) 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;

- (d) provide a summary description of the proposed rezoning and consequential changes with the written notice; and
- (e) provide a website link to a 'consultation package' which will be available.

Rights to make written comments

- 2) By the date specified in the notice in (1)(a) and (b) (not less than 20 working days after the date of written notice), any person may provide to Council:
 - (a) written comments on the proposed rezoning and consequential changes; and
 - (b) any supporting expert evidence.

Formally joining the Beresford, Rouse and Bunker appeal as a section 274 party

- 3) By the date specified in the notice in (1)(a) and (b) (not less than 20 working days after the date of written notice), any person who has an interest greater than the general public may apply to formally join the Beresford, Rouse and Bunker appeal by lodging with the Environment Court, and serving on the Council and the Appellant, a section 274 notice. If they wish to make written comment, they must also do that under (2) above.

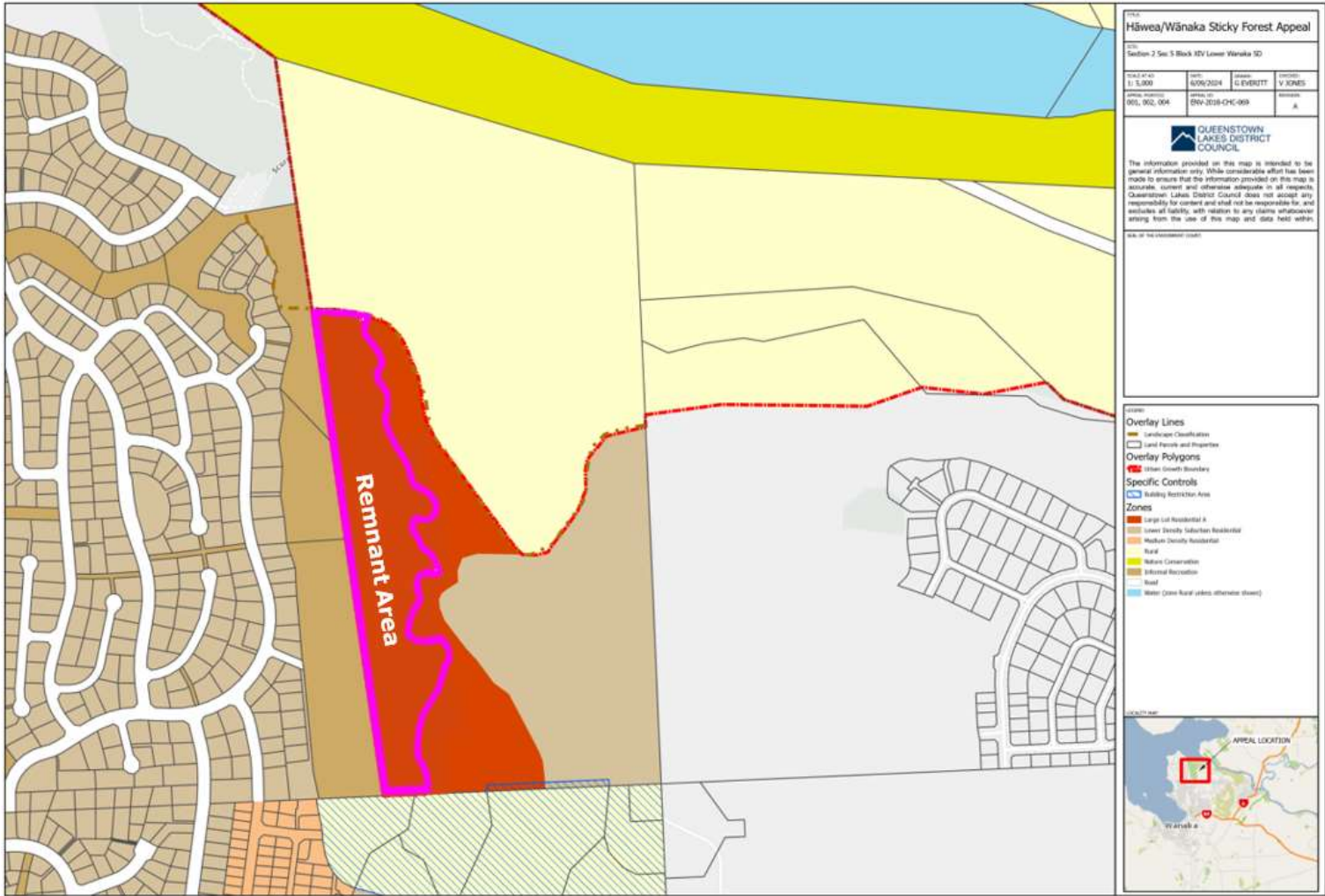
Council report

- 4) Within 30 working days after the date on which written comments are to be provided in accordance with (2), Council must file with the Court a report which:
 - (a) 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); and
 - (b) makes recommendations for the Court's consideration.

Court's determination

- 5) Once the Court has received the report from Council as directed in (4), this will be considered and the Court will then either, determine the rezoning and consequential changes, or issue further directions.

ATTACHMENT 1: ZONING RESULTING FROM THE S293 DIRECTIONS



ANNEXURE 2

S293 DIRECTIONS

Under section 293 of the RMA, to enable consideration of a change from Rural Zone to a Large Lot Residential Area A Zone, an amended Urban Growth Boundary (*UGB*), changes to the provisions, and other consequential changes affecting the south western strip of land within Hāwea / Wānaka Sticky Forest (the *Remnant Area*), it is directed:

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