

# QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on the Proposed District Plan

Report 16.7

Report and Recommendations of Independent Commissioners  
Regarding Upper Clutha Planning Maps  
Rekos Point Rural Residential Zone

## Commissioners

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## 1. SUMMARY OF RECOMMENDATIONS

### 1.1. Overall Recommendation

1. We recommend the submissions be accepted and the site the subject of submission rezoned Rural. The further submission should accordingly be rejected.

### 1.2. Summary of reasons

2. Retaining the Rural Residential Zone would be inappropriate as the land is an ONL and the Rural Zone has the most appropriate provisions to manage the wide variety of effects that are possible.

## 2. PRELIMINARY MATTERS

### 2.1. Subject of Submission

3. These submissions relate to part of Lot 4 DP 20242 (Computer Freehold Register 666550), a 27.35 ha site located on the true left bank of the Clutha River, at Rekos Point.

### 2.2. Outline of Relief Sought

4. The submissions sought the rezoning of the site to Rural. Currently, the site is zoned Rural Residential, as shown on Planning Maps 18 and 18a.
5. These submissions are opposed by James Cooper in his further submission (FS 1162.112) on the basis that the relief sought *“does not result in sound resource management planning”*.

### 2.3. Description of the Site and Environs

6. The site is shown on an aerial photograph in Mr Barr's section 42A report, reproduced below.

### Aerial Photograph of the site



Aerial photograph of the land subject to submissions 706, and 339, approximate boundaries of Rekos Point Rural Residential Zone (red). Refer to submission for more detailed information.

**Figure 1: approximate location of notified Rural Residential Zone at Rekos Point**

7. The site is on a terrace above the Clutha River. As at the date of our site visit (May 2017) it was in the process of being converted to irrigated pasture for use as part of the Devon Dairies dairy farm (which we understood to be owned by Mr Cooper). Legal access to the larger site, of which the Rural Residential zoned land forms part, is via Kane Road.
8. The landscape values of the site and its environs have been reviewed by the Hearing Panel in the context of its consideration of the submission by James Cooper<sup>1</sup> seeking that the ONF notation shown on Planning Map 18a as including the site, be altered so that the boundary of the ONF would sit between the site and the Clutha River.
9. The Hearing Panel has recommended that the ONF notation be converted to ONL but otherwise be retained over the site, recognising that it forms part of the broader outstanding landscape of the Clutha River that includes the terraces on both sides of the river<sup>2</sup>.

<sup>1</sup>Submission 400

<sup>2</sup>Refer Recommendation Report 16.1 at Section 2.11

## 2.4. Relevant Background

10. Mr Barr's section 42A report helpfully set out the history of the Rural Residential enclave the subject of submission, which he subsequently updated (and corrected) in his Reply statement<sup>3</sup>. Counsel for the Council also provided us with background materials from that history that assist in filling out the detail.
11. The key aspects of that history are that:
  - a. The site is the subject of a registered covenant granted in August 2001 restricting any subdivision to a maximum of three allotments with one dwelling per allotment;
  - b. The site was rezoned Rural Residential through a consent order of the Environment Court in July 2002 (the Council decision had been to reject rezoning);
  - c. Consent was granted in 2004 and ultimately confirmed on appeal by the High Court in August 2006 enabling up to 52 leasehold properties to be developed, but requiring all buildings be removed from the site and building platforms removed from the title to the land after 30 years;
  - d. The High Court granted a declaratory judgement in March 2007<sup>4</sup> confirming that the covenant limited the number of both allotments and buildings to three. The effect of the High Court's declaration was to defeat the attempt to structure the development in a way that did not create a subdivision under the Act;
  - e. The consent was not implemented and lapsed in 2011.
  - f. The covenant remains on the title.

## 2.5. The Case for Rezoning

12. The submitters did not provide evidence in support of the requested rezoning or attend the hearing. Paraphrasing their submissions, the reasons given for the requesting rezoning are:
  - a. Development of the site would have a significant adverse effect on the natural character of the Clutha River and its margin (by decreasing naturalness);
  - b. Such development would have a significant adverse effect on the outstanding natural feature of the Clutha River corridor (by decreasing naturalness and reducing landscape coherence);
  - c. The Rural Lifestyle Zone is an isolated small pocket completely surrounded by ONF;
  - d. It is a very sensitive part of the landscape and cannot absorb this type of development;
  - e. Development would have a significant adverse effect on the recreational value of the popular Clutha River track (Newcastle Track) which at present is overwhelmingly dominated by open pastoral and natural landscape. There is no dense residential development, either rural lifestyle or rural residential, anywhere through the Clutha River corridor, except in Albert Town. Rural lifestyle development is completely out of character and would be an anomaly;
  - f. Development would involve putting a new sealed access road through which would result in further degradation.
13. While the submitters' reasons were based on the mistaken understanding that the current zoning is Rural Lifestyle, the relief sought is clear and the greater density of development possible within the Rural Residential zone means that their reasons are if anything more relevant when considered on the basis of the notified Rural Residential Zoning.
14. As above, the reasons provided by Mr Cooper in his further submission opposing the relief sought are broad and relatively uninformative (reflecting the fact that a single reason was

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<sup>3</sup> C Barr Reply Evidence at paragraph 29.2

<sup>4</sup> *Congreve and others v Big River Paradise Ltd* CIV 2005 404 6809 (Williams J)

given for opposing all of the Society's submissions). During the hearing of Mr Cooper's own submission opposing the proposed ONF/L line over his property, we invited his counsel (Mr Todd) to make legal submissions on the further submission. Mr Todd advised that Mr Cooper did not own the land. Mr Barr's reply included a copy of the Computer Freehold Register for the property that indicates Mr Todd was mistaken. Be that as it may, we had no substantive input from Mr Cooper to consider, other than that provided in support of his own submission.

15. Council staff did not support retention of the Rural Residential zone. Ms Mellsope opposed the Rural Residential zoning on the basis that the site is part of the Clutha River ONL and that Rural Residential development is inappropriate in an ONL. Mr Davis opined that despite disturbance to the land as a result of farming activity there may still be areas of ecological value within an area that he had previously assessed as having significant ecological values. From a planning perspective, Mr Barr considered that the most appropriate zone is Rural having regard to Strategic Direction Objective 3.2.5.4 and Policies 3.2.5.4.1 and 3.2.5.4.2, which relate to protection of ONL's and, more specifically, Landscape Objective 6.3.1 where it is intended that landscapes are managed and protected from the adverse effects of development. He noted that the associated policies also identify that development is unsuitable in many locations in the rural landscape, and that urban types of subdivisions and development are to be discouraged. The importance of protecting the landscape character and visual amenity values, particularly as viewed from public places is also to be recognised. Ms Mellsope advised that the land would be easily viewed from several public points.

## 2.6. Discussion of the Planning Framework

16. Mr Barr provided us with input on the planning background to the issues as above. Of necessity, he had to work off the latest version of the PDP available (that recommended in the staff reply on each chapter). In our Report 16, we summarised the key background provisions in the PDP, as recommended by the Hearing Panel, that is to say, a further iteration along from that considered in the planning evidence.
17. Focussing on the most relevant provisions, given that the site is within an ONL, the question as to whether the proposal protects the landscape and visual amenity values and the natural character of that ONL from more than minor effects in terms of recommended Objective 3.2.5.1 is clearly a fundamental consideration. Likewise the corresponding provisions of recommended Policy 3.3.30.
18. Policy 6.3.12 is also particularly relevant, given its emphasis on subdivision and development in ONLs needing to be an exceptional case "*where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site.*"
19. Chapter 22 - Rural Residential and Rural Lifestyle Zones - has similar objectives and policies sitting underneath these higher order provisions. Accordingly, while Objective 22.2.1 is - *The district's landscape quality, character and amenity values are maintained and enhanced while enabling rural living opportunities in areas that can absorb development*, there is a presumption that in order for a site be appropriately zoned as Rural Residential, all of the criteria in Policy 6.3.12 must be met. This is a high hurdle for any form of rural living in an ONL or ONF, let alone the comparatively high densities of rural living enabled by the Rural Residential Zone.

20. Also applicable are Policies 22.1.1.1 and 22.1.1.4:

22.1.1.1 Policy

*Ensure the visual prominence of buildings is avoided, remedied or mitigated,...*

22.1.1.4 Policy

*Manage anticipated activities that are located near Outstanding Natural Features and Outstanding Natural Landscapes so that they do not diminish the qualities of these landscapes and their importance as part of the District's landscapes. (our emphasis)*

21. We see this policy as making it clear that Rural Residential zones may be located near, but are not anticipated within ONLs or ONFs.
22. Having identified these as the relevant higher order planning provisions in the PDP that form the reference point for our Section 32 analysis, as noted above, we need to be satisfied also that the end result is consistent with Part 2 of the Act.

### 3. ISSUES

- a. What is the relevance, if any, of the covenant on the title?
- b. What is the most appropriate zoning for the site given the Hearing Panel's separate finding that it sits within an ONL?

### 4. DISCUSSION OF ISSUES AND CONCLUSIONS

23. In the Independent Commissioner's decision on the 2004 resource consent application, he expressed surprise that the land had been rezoned on a consent order basis, given the level of opposition to the proposed development and the cogency of the concerns that had been expressed by the submitters who had appeared before him. He wondered whether interested parties had assumed no development would proceed once the covenant was on the title.
24. If that was the assumption, it was ultimately borne out, although not without the assistance of the High Court. The covenant, however, operates alongside and independently of the zoning in the District Plan. A covenant granted in favour of a private party (as here) can be removed from the title with that party's agreement. Accordingly, while the covenant effectively stymies any use of the site for Rural Residential purposes at present (at least beyond the permitted three dwellings), we need to consider the position as if the covenant did not exist.
25. Even if we are wrong on that score, three dwellings might still be three too many on this site.
26. The starting point is that a Rural Residential Zone within an ONL is an anomaly. Ms Mellsop commented to us in a different context that Rural Residential development does not maintain rural amenity to any great extent and such zoning should be employed only when rural amenity is not important. We do not consider this is a landscape where rural amenity is unimportant.

27. The topography of the surrounding landscape means that the site is highly visible from a range of public and private viewpoints. As noted above, this is a key consideration in terms of Policy 6.3.12.
28. Nor did we have any evidence that suggested to us that Rural Residential development might be able to proceed with only minor effects on the landscape and visual amenity values and the natural character of this ONL<sup>5</sup>.
29. As against those considerations, we did not find Mr Davis's reasoning persuasive. Given our understanding that terrestrial ecological values on the site have been degraded<sup>6</sup> we would require rather more than the possibility that there may still be areas of ecological value on the site to support downzoning it.
30. The landscape issues, however, are a much more concrete basis on which to proceed. In our view, the purpose of the Rural Residential Zone is to enable development at a much higher density than that which is compatible with landscape and visual amenity values in an ONL other than in the most exceptional circumstances. Accordingly, the notified zoning of the site as Rural Residential does not align with the plan's strategic objectives and policies let alone those for the Rural Residential zone. In circumstances where the landowner did not present a case to retain the existing zoning and appears to have no intention of utilising that zoning - the evidence in support of Mr Cooper's separate submission was that the site will shortly have a pivot irrigator on it, and is being run as part of a large dairy farm – the Rural Zone is the most appropriate mechanism for achieving the objectives of the PDP.

## 5. OVERALL CONCLUSIONS AND RECOMMENDATIONS

31. For the reasons set out in this report our recommendation is therefore that submissions 706 and 339 are accepted and further submission FS1162.112 rejected, with the result that the notified Rural Residential zoning shown on Maps 18 and 18a would be uplifted and the land revert to a Rural Zoning.

For the Hearing Panel



Trevor Robinson, Chair

Dated: 27 March 2018

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<sup>5</sup> Refer recommended objective 3.2.5.1

<sup>6</sup> Refer *Royal Forest and Bird Protection Society Inc v Innes* [2014] NZEnvC 40 and 72