

**In the Environment Court
at Christchurch**

In the Matter of the Resource Management Act 1991 (**Act**)
And
In the Matter of the Queenstown Lakes Proposed District Plan – Stage 2
And
In the Matter of an appeal under Clause 14(1), Schedule 1 of the Act

Between The Trustees of the Burgess Duke Trust

Appellant

And Queenstown Lakes District Council

Respondent

**Notice of Appeal by the Trustees of
the Burgess Duke Trust (Submitter
2591) against a decision on the
Proposed Queenstown Lakes District
Plan – Stage 2**

Dated: 7 May 2019

Lane Neave
Level 1, 2 Memorial Street
PO Box 701
Queenstown
Solicitor Acting: Joshua Leckie
Email: Joshua.Leckie@laneneave.co.nz
Phone: 03 372 6307

lane neave.

To: The Registrar
Environment Court
Christchurch

Notice of Appeal

1. The trustees of the Burgess Duke Trust (**Appellant**) appeal against part of a decision of the Queenstown Lakes District Council (**Respondent**) on the Queenstown Lakes Proposed District Plan – Stage 2 (**Proposed Plan**).
2. M & C Burgess made a submission on the Proposed Plan (submission 2591). The Appellant is their successor.
3. The Appellant is not a trade competitor for the purposes of section 308D of the Act.
4. The Appellant received notice of the Respondent's decision on 21 March 2019.
5. The decision was made by the Respondent through ratifying the recommendations of the Independent Hearings Panel (**Panel**) on 7 March 2019.
6. The part of the decision that the Appellant is appealing is contained in Stream 14 - Wakatipu Basin, Report 18.5, Area C - Central Basin (**Mapping Decision**), as it relates to the Stage 2 zoning of its land on the corner of Lower Shotover and Slopehill Road, legally described as Lot 1 DP 425385 (**Site**).

Background

7. The Site is zoned Rural General under the Operative District Plan (**ODP**).
8. Under Stage 1 - Notified Proposed District Plan (**Stage 1**) the Appellant's Site was included in the Rural Lifestyle Zone. The Appellant supported this zoning and lodged a submission (submission 669) seeking that the Stage 1 Rural Lifestyle zoning be retained.
9. Subsequently, the Respondent Memorandum dated 22 December 2017 confirmed that the Appellant's Stage 1 submission which was previously

allocated to Stream 14, would now be considered under Stage 2 – Wakatipu Basin, as a submission against the variation to Stage 1.

10. Under Stage 2 it was then proposed that the Site be included in the Wakatipu Basin Rural Amenity Zone (**WBRAZ**). On 23 February 2018 the Appellant lodged a submission (submission 2591) on Stage 2 opposing the inclusion of its Site in the WBRAZ. The Appellant in its submission sought that the Site be included in the Rural Lifestyle or Wakatipu Basin Lifestyle Precinct (**WBLP**).
11. The Appellant's submission to re-zone the Site was rejected by the Independent Hearing Commissioners in the Mapping Decision, as ratified by the Respondent.
12. The Appellant specifically seeks:
 - (a) That its Site be rezoned WBLP.

General reasons for the appeal

13. The general reasons for this appeal are that the Mapping Decision fails to provide for the most appropriate zoning of the Site, because:
 - (a) It does not give effect to the higher order strategic directions, objective and policies in the Proposed Plan;
 - (b) It does not give effect to the Otago Regional Policy Statement;
 - (c) It does not represent an efficient use of land under section 7(b);
 - (d) It fails to meet the requirements of section 32; and
 - (e) Overall it fails to promote sustainable management of natural and physical resources and therefore, does not achieve the purpose of the Act.

Particular reasons for the appeal

14. Without limiting the general reasons for the appeal given above, the following are further and/or more particular reasons for the appeal.

Appropriateness of the Rezoning

15. The Respondent's decision to re-zone the Site WBRAZ is based on an arbitrary road boundary which extends along the eastern side of Lower Shotover Road. The re-zoning decision does not give regard to the geomorphological properties of the Site, the Site's ability to absorb change and accordingly, lacks justifiable evidence.
16. For the above reasons, the Respondent erred in its Mapping Decision. The Mapping Decision does not achieve Part 2 of the RMA, does not give effect to the Otago Regional Policy Statement and does not represent the most efficient use and development of the Site under s 7(b) of the RMA.

Geomorphological Characteristics of the Site

17. While the Site is included in the Slope Hill LCU (**LCU 11**) the Site's geomorphological characteristics better align with land falling within the Hawthorn Triangle LCU (**the Hawthorn Triangle**). Therefore, the Site should be included in the Hawthorn Triangle and re-zoned WBLP (consistent with the notified re-zoning of other land falling within the Hawthorn Triangle in the Mapping Decision).
18. The Site was included within the Hawthorn Triangle in Dr Read's 2014 Land Use Study for the Council. Contrary to this study, the Site has recently been merged into LCU 11 under the 2017 Land Use Study. While the Site is now included in LCU 11, it is considered that LCU 11 is inconsistent with the Site's geomorphological characteristics.
19. The Mapping Decision is inconsistent with the Respondent's own methodology and recognised best practice which requires that preference is given to geomorphological boundaries such as topography and vegetation patterns when forming zone boundaries and preventing development creep. These are:
 - (a) The flatter portion of the land between the Slope Hill Foothills Ridge and Lower Shotover Road largely being part of the same geological make up;
 - (b) The legible geomorphological boundary following the land contour;

- (c) The landscape character effects of development rendering a rural living landscape character throughout all of the Lower Shotover Road Corridor; and
 - (d) The land between slope Hill Foothills Ridge and Lower Shotover Road have very limited visual connection with the more elevated plateau characterising the Slope Hill Foothills.
20. This is also supported by a previous Environment Court (**EC**) decision *Hawthorn Estates Limited v QLDC C83/2004*¹ which provided comment on the landscape characteristics of the lower flanks of Slope Hill, which logically includes the Appellant's Site.
21. The EC in this case expressed:²

Mr D J Miskell, another very experience landscape architect called by the applicant, referred to the triangle in his primary evidence. He said that while once it may have had a rural pastoral Arcadian landscape as a result of agricultural uses, it was now a "lifestyle" landscape which no longer possessed the simple, poetically rural attributes associated with "arcadia". The developments on the lower flanks of Slope Hill are also highly visible and detract significantly from any Arcadian qualities of the wider setting. We doubt if Virgil could have stood in this landscape and written Et in Arcadia ego.

22. The Respondent has failed to give the Appellant's Site the fine grained assessment it requires. The Mapping Decision is inconsistent with the Respondent's own evidence that concluded in relation to the Site, that rural residential development is unlikely to be of importance to views from the surrounding landscape to Slope Hill and that in specific locations; additional rural residential development may be acceptable.

Social, Economic and Cultural Wellbeing of the Appellant

23. The Mapping Decision does not place appropriate weight on the costs of the notified WBRAZ on the Appellants. The Respondent's failure to account for the Appellant's social, economic and cultural well being

¹ *Hawthorn Estates Limited v QLDC C83/2004.*

² *Hawthorn Estates Limited v QLDC C83/2004.*

while managing effects on the environment when making its Mapping Decision is contrary to the RPS and Part 2 of the RMA.

24. Instead, the Respondent has applied a blunt restriction on rural residential living areas such as the Appellant's Site when making its Mapping Decision. The Council has failed to consider the cost of an 80 hectare minimum lot size in amenity landscapes on the Appellant under s 32 RMA. An assessment as to whether further intensification in the Wakatipu Basin should be provided for requires more than such a narrow assessment. Ultimately, s 32 RMA requires consideration of wider costs, benefits and risks and Part 2 requires that people and communities are enabled to provide for their social, economic and wellbeing. By failing to take this into account the Council when making its Mapping Decision failed to meet its obligations under s 32 of the RMA and has also failed to achieve the purpose Act.
25. Landscape evidence demonstrates that including the Site in the WBLP will allow the Appellants to provide for their economic, social and cultural well being while appropriately avoiding, remedying and mitigating adverse effects on the environment and landscape. On this basis it is considered that the WBLP is the more appropriate zoning when considered against the WBRAZ.

Relief Sought

26. The Appellant seeks that the Site be zoned WBLP; and
27. Any consequential relief to give effect to that zoning and the relief sought in the Appellant's Stage 2 submission.

Attached Documents

28. The following documents are **attached** to this notice:
 - (a) A copy of the Appellant's Stage 2 submission as **Annexure A**;
 - (b) A copy of the relevant part of the Mapping Decision as **Annexure B**; and

- (c) A list of names and addresses of persons to be served with a copy of this notice as **Annexure C**.

Dated this 7th day of May 2019



Joshua Leckie / Sam Chidgey
Counsel for the Appellant

Address for Service for the Appellant:

Lane Neave
Level 1, 2 Memorial Street
PO Box 701
Queenstown 9300
Phone: 03 409 0321
Email: Joshua.leckie@laneneave.co.nz / Sam.chidgey@laneneave.co.nz

Contact person: Joshua Leckie / Sam Chidgey