

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

Decision No. [2021] NZEnvC 128

IN THE MATTER of the Resource Management Act 1991
AND an appeal pursuant to clause 14 of the
First Schedule of the Act
BETWEEN J BOYD, J F A & S J REDAI &
OTHERS

(ENV-2018-CHC-163)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner M C G Mabin
Hearing: In Chambers at Christchurch
Last case event: 25 June 2021
Date of Decision: 26 August 2021
Date of Issue: 26 August 2021

THIRD INTERIM DECISION OF THE ENVIRONMENT COURT

Topic 16 – Rezoning Appeals Group 1 – Upper Clutha



- A: Any s274 party who intends to call evidence and/or make submissions on the matters raised in their s274 notice must file and serve that evidence (in affidavit form) and any submissions within 15 working days of the date of this decision.
- B: The appellants and QLDC must file and serve any affidavit(s) in reply and submissions within 25 working days of the date of this decision.
- C: QLDC is to confer with the parties and, within 25 working days of the date of this decision, file a memorandum as the appropriateness or otherwise of hearing the matter on the papers and/or by AVL.
- D: Leave is reserved to any party to seek further (or amended) directions, subject to having consulted with all other parties prior to doing so.

REASONS

Introduction

[1] This is the third interim decision relating to an appeal by Jackie Boyd, Jackie and Simon Redai and several others¹ ('Boyd') in the Queenstown District Plan review ('PDP'). The appeal seeks the rezoning of eight separate land parcels ('Land') between Cardrona Valley Road and the Cardrona River on the outskirts of Wānaka.

[2] QLDC notified the s293 proposal on 29 April 2021 ('Proposal').² As directed in the second interim decision, QLDC has filed a report setting out the submissions received following notification and providing a recommendation

¹ Alastair and Phillipa Gillespie, Juliet Hall, Denise and John Prince, Dean and Michelle Telfer, Polson Higgs Nominees Limited, Lee and Sandy Martin, Simon Jackson and Lorna Gillespie.

² The Proposal enables the court to consider rezoning the Land to Lower Density Suburban Residential Zone and to amend the Urban Growth Boundary ('UGB') at Orchard Road and Riverbank Roads.

based on that response.³

Joinder of section 274 parties

[3] Mr Ian Percy was the only s274 party to the Boyd appeal as at the date QLDC filed its proposed s293 directions. In response to the court's directions, further s274 notices to join the appeal were filed on behalf of the following persons as having an interest greater than the general public:

- (a) William Courtney Rankin and Susanne Merle Rankin⁴ ('Rankin');
- (b) Moira Jean Hughes and Clinton James Hughes⁵ ('Hughes'); and
- (c) Neville Earnest Sanders and Robyne Lynne Hunt⁶ ('Sanders & Hunt').

[4] They are the owners of land at 253, 261 and 317 Riverbank Road. Their notices are substantially similar in opposing the Proposal on the basis that:

- (a) it would convert existing open pastoral land to greater density residential land, such a change would adversely affect the amenity each of the s274 parties, listed above, presently enjoy;
- (b) it has the potential to introduce up to 600 residential dwellings to the Land than what is otherwise provided for by the Rural General Zone, or the Rural Residential Zone, which Boyd originally sought;
- (c) the proposed structure plan fails to provide a sufficient setback from Riverbank Road so as to provide a sensitive transition from the rural setting on the east of Riverbank Road, and the proposed Lower Density Residential Zoning to the west;

³ Report of Amy Narlee Bowbyes on behalf of Queenstown Lakes District Council summarising and making recommendations on submissions received on Boyd, Redai & Ors section 293 Proposal, dated 25 June 2021 ('QLDC summary and recommendation report').

⁴ Section 274 notice of W C Rankin & S M Rankin, dated 27 May 2021.

⁵ Section 274 notice of M J Hughes & C J Hughes, dated 27 May 2021.

⁶ Section 274 notice of N E Sanders & R L Hunt, dated 27 May 2021.

- (d) there should be a greater focus on ensuring positive landscape, privacy and safety outcomes in terms of the setback of development from Riverbank Road.

[5] Their s274 notices are not opposed. I am satisfied Rankin, Hughes and Sanders & Hunt each have an interest in this proceeding that is greater than that of the general public so as to qualify them to join the proceeding. In essence, that is on the well-established principle that where the relief pursued in an appeal could have direct consequences for an individual (whether an advantage or disadvantage in a financial, property, or other significant sense) that sets that person apart from the general public.⁷

[6] Therefore, Rankin, Hughes and Sanders & Hunt are formally recorded as parties to this proceeding.

Submissions to QLDC on the Proposal and QLDC's response

[7] The court's s293 directions allowed for the making of submissions on the Proposal direct to QLDC. Not all persons who made submissions to QLDC filed s274 notices to join the proceeding.

[8] On behalf of QLDC, Senior Policy Planner Ms Bowbyes reports that QLDC received three submissions opposing the Proposal and that those submissions express the following concerns:⁸

- (a) the rate of growth the Upper Clutha area is, and continues to be experiencing, is excessive and unsustainable and is resulting in over-development, poor planning and the overloading of community resources;⁹

⁷ *Swap Stockfoods Ltd v Bay of Plenty Regional Council* [2020] NZEnvC 117, referring to *Mt Christina Limited v Queenstown Lakes District Council* [2018] NZEnvC 190.

⁸ QLDC summary and recommendation report, at [2.2].

⁹ QLDC summary and recommendation report, at [3.1]-[3.2].

- (b) the Proposal would cause a significant increase in traffic and congestion along Ballantyne Road which has the potential to create an unsafe traffic environment particularly at the Orchard and Riverbank Roads intersections;¹⁰
- (c) there is a lack of detail provided in terms of the design or built form of the proposed new ‘major intersection’ at Orchard and Riverbank Roads;¹¹ and
- (d) there is a lack of controls or rules proposed to ensure provision of open space areas in proximity to Riverbank Road, which would encourage and achieve a sensitive transition between land uses, when viewed from the submitters’ properties.¹²

[9] Ms Bowbyes reports that various owners of land on the south side of Riverbank Road made a joint submission. The submission is generally concerned with ensuring provision is made for an adequate transition between Urban and Rural land uses and seeks the following changes to the Proposal:¹³

- (a) amendment to Obj 27.3x to include provision for a shared cycle/pedestrian path within the Riverbank Road Structure Plan, instead of the road reserve. The submission seeks that the path would have a minimum width of 15m from Riverbank Road, landscaping that screens urban development, and a policy framework to encourage single ownership in order to discourage fragmentation of planting;
- (b) rezoning of the land between the shared cycle/pedestrian path and the first internal road to Large Lot Residential with a minimum lot size of 2,000m²;

¹⁰ QLDC summary and recommendation report, at [4.1]. [5.2(a)].

¹¹ QLDC summary and recommendation report, at [5.2(b)].

¹² QLDC summary and recommendation report, at [5.2(c)].

¹³ QLDC summary and recommendation report, at [5.3].

- (c) subdivision treatments and conditions that require a consistent landscape treatment along the interface between the shared cycle/pedestrian path and riverbank road; and
- (d) inclusion of a new policy within Ch 27 to ensure high quality amenity and transition between the urban and rural land uses.

[10] Ms Bowbyes sets out her opinion in response to the various issues and concerns raised in submissions.¹⁴ It is sufficient that we record at this stage that Ms Bowbyes does not recommend any changes to the notified Proposal in response to those submissions.¹⁵

Outcome

[11] In view of the positions expressed in the s274 notices, it is now appropriate that we make timetabling directions for evidence and submissions. Given the COVID-19 lockdown continues, parties are invited to consider whether it would be appropriate for matters to be determined on the papers and/or AVL. Directions are made for QLDC to confer on that and file a reporting memorandum. In the meantime, directions provide for evidence to be in affidavit form. If need be, a judicial telephone conference can be convened at short notice.

[12] It is directed:

- (a) any s274 party who intends to call evidence and/or make submissions on the matters raised in their s274 notice must file and serve that evidence (in affidavit form) and any submissions within 15 working days of the date of this decision;
- (b) the appellants and QLDC must file and serve any affidavit(s) in reply and submissions within 25 working days of the date of this decision;

¹⁴ QLDC summary and recommendation report, at [3.3]-[3.4], [4.2]-[4.4], and [5.4].

¹⁵ QLDC summary and recommendation report, at [5.4].

- (c) QLDC is to confer with the parties and file a memorandum on the appropriateness or otherwise of hearing the matter on the papers and/or by AVL within 25 working days of the date of this decision; and
- (d) leave is reserved to any party to seek further (or amended directions) subject to having consulted with all other parties prior to doing so.

For the court



J J M Hassan
Environment Judge

