

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of Hearing Stream 18 – Rural Visitor Zone –
Chapter 46 Stage 3 of the Queenstown Lakes
Proposed District Plan (“**PDP**”)

LEGAL SUBMISSIONS FOR LOCH LINNHE STATION

DATED 24 July 2020

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INTRODUCTION

- [1] These legal submissions are presented on behalf of Karen and Murray Scott the leaseholders of Loch Linnhe Station (“**LL**”) in respect of Hearing Stream 18, Rural Visitor Zone – Chapter 46, Stage 3 of the Queenstown Lakes District Council Proposed District Plan (“**PDP**”).
- [2] LL are the owners of Loch Linnhe Station, which is comprised of two pastoral leases. LL is a vast high country pastoral property comprising some 3765 hectares.
- [3] These submissions address the following matters:
 - [a] Background to LL involvement in the PDP;
 - [b] An overview of the relief sought;
 - [c] Legal Submissions by QLDC
 - [d] Consideration of the areas of disagreement between LL’s experts and Council officers;

BACKGROUND TO LL INVOLVEMENT IN THE PDP

- [4] LL occupies a vast area stretching from Wye Creek in the north, to south of the Devils Staircase in the south, and the Nevis Valley in the east. The station is extensively farmed. All of LL’s buildings and infrastructure are at the southern end of the property.
- [5] In his evidence, Mr Vivian provides a comprehensive overview of LL’s involvement in Stage 1 of the PDP. While accepting that this hearing stream is comprised of different panel members and experts, LL’s prior involvement in the PDP process is relevant in a number of respects. Significantly it lays the foundation for the submission LL has made to seek two nodes of Rural Visitor zoning (“**RVZ**”) on the station, and also for that “foundation” to be recognised by the Council and the Panel in its evaluation of the submission and evidence in support of it.

- [6] As Mr Vivian explains in his evidence, this is the second submission LL has made to the PDP. In Stage 1, LL sought that ‘Two Farm Base Areas’ be identified on the station – a concept adopted in the Mackenzie District for the encouragement of clustering homesteads and farm buildings (as well as tourism activities) in recognition of a property’s contribution to retaining the openness of the ONL.
- [7] This concept was however completely new to the Queenstown Lakes District and the novelty and lack of analysis of it in a QLDC context, meant it did not find sufficient favour with the reporting officers or the Stage 1 Hearings Panel to be accepted. In the alternative, LL sought a Rural Visitor zone over the two Farm Base areas.
- [8] The LL submission at Stage 1, seeking a Rural Visitor zone faced some challenges. These challenges have been well canvassed in the Stage 1 hearing panel recommendations¹.
- [9] The pertinent paragraphs of the Stage 1 hearings panel recommendation are included in Mr Vivian’s evidence². Relevantly they include the following:
- [25] *Firstly we observe that we are entirely sympathetic to the submitters wish to provide a second homestead and farm buildings at Wye Creek, and to diversify the economic base of the station by developing visitor accommodation and activities on the two sites. This is specifically recognised and provided for in the PDP provided that it is carried out in an appropriate way. The question to be resolved is the most appropriate way to do this.*
- ...
- [32] *For the reasons set out above, we recommend that:*
- [a] *Submission 447.2 be rejected; and*
- [b] *That the Council consider the introduction of a variation to a form of zoning that would enable an appropriate*

¹ See also Mr Vivian’s evidence at paragraph [2.9].

² From paragraph [2.9]

level of development at the submission sites when it reviews the ODP Rural Visitor Zone;...

- [10] One could hardly blame LL for getting its hopes up that the economic diversification it was seeking to enable and with it 'an appropriate form of zoning' would be addressed by the Council as they proceeded with the staged review the PDP, and in particular the review of the Rural Visitor Zone. Out of caution, LL lodged an appeal to the Stage 1 decision. That appeal sits on hold, pending the outcome of this hearing.
- [11] LL expresses its disappointment that the Council failed to explore at all, prior to notification of the Rural Visitor zone, the possible inclusion of LL's sites within the zone³, and that the opportunity has been lost to formulate (in collaboration with the Council), a zone that would allow for an appropriate level of development at the submission sites.
- [12] While the short answer to that may be that LL has not missed out on a rezoning opportunity, and it can seek to formulate such a zone through this submission process, it ignores the fact that LL has already been through the process once, has borne the costs associated with the same⁴, and now it finds itself here a second time, bearing those same costs, when clearly the Stage 1 hearing panel had a different process, and indeed outcome in mind.
- [13] LL submits the process has been inefficient and unfair, and is yet another example of the failings of undertaking the review of the PDP in stages.

OVERVIEW OF RELIEF SOUGHT

WYE CREEK RVZ

- [14] The relief has been refined, and is as follows:

[a] Modification to the extent to the Wye Creek RVZ

³ See paragraph [2.14] Mr Vivian's evidence where the e-mail exchange with Mr Barr is quoted.

⁴ Legal, and expert witness costs

- [b] Identification of a central area (approximately 1ha) mapped as low landscape sensitivity rating where buildings are a controlled activity. Buildings with the area mapped as medium-high landscape sensitivity are a discretionary activity
- [c] No buildings are to be visible from State Highway 6⁵
- [d] Maximum total building footprint 1,800m²
- [e] One residential building/homestead
- [f] Limit of 10 Overnight guests in visitor accommodation activity
- [g] Informal airport to have status as non-complying

LOCH LINNHE RVZ

[15] The relief has been refined and is as follows:

- [a] Modification of the extent of the Loch Linnhe RVZ
- [b] Identification of a northern area (approximately 3.6ha) mapped as low landscape sensitivity rating where buildings are a controlled activity. Buildings with the area mapped as medium-high landscape sensitivity are a discretionary activity
- [c] Maximum total building footprint 4,700m² (includes existing buildings footprint area)
- [d] Limit of 30 Overnight guests in visitor accommodation activity

⁵ Ms Gilbert notes in her rebuttal evidence at page 3, footnote 3, a discrepancy between Mr Vivian's and Espie's evidence. Mr Espie's evidence sets out the correct position with respect to the standard proffered.

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- [16] LL does not take any particular issue with QLDC's opening legal submissions, including those directed to submissions seeking a Rural Visitor Zone.
- [17] LL agrees that there is no statutory presumption that a notified zone is more appropriate than a zone sought through a submission and further, that submitters still need to provide a level of detail and analysis that corresponds to the scale and significance of the environmental effects that are anticipated from the implementation of the new zone sought.
- [18] LL submits the evidence it has provided is sufficient to assist the Panel in considering whether actual or potential adverse effects are satisfactory, before it makes a recommendation that the zone is more appropriate than the notified zone. As discussed below, LL submits that providing the extent of additional "base information" requested by Ms Gilbert will not get us any further ahead. In short, it will cost LL a lot more and achieve very little. Again, LL refers to the "foundation" submission made above⁶. These two sites are deserving of a zone that enables an appropriate level of development at the submission sites to provide a second homestead and farm buildings, and to diversify the economic base of the Station.
- [19] Ms Scott points out⁷ that certain strategic directions provisions, including those which provide for Exception Zones are subject to refinement in drafting through on-going Topic 2 directions, and that if there is to be a new RVZ located in the ONL, then the panel needs to be satisfied that the zone framework provides a regulatory framework that is protecting the values of the ONL in question.
- [20] LL submits that the RVZ framework, with the amendments it proposes for the Wye Creek RVZ and Loch Linnhe RVZ, sufficiently protects the values of the ONL in this location. Those ONL values are identified by Mr Espie in his evidence⁸, which do not appear to be disputed by Ms

⁶ At paragraph [5]

⁷ Paragraph [8.11] opening legal submissions

⁸ At paragraph [7.7]

Gilbert. Mr Espies evidence is that the two RVZ's sit comfortably within the existing ONL landscape character and have very little influence on it⁹.

AREAS OF DISAGREEMENT BETWEEN LL EXPERTS AND COUNCIL OFFICERS

- [21] Council's landscape and planning experts oppose the proposed rezoning primarily on landscape grounds. While both landscape experts agree the two RVZ areas can absorb some development¹⁰, Ms Gilbert says she lacks sufficient information to support the extent of rezoning sought. She calls for a thorough landscape analysis supporting the extent of RVZ zoning sought over both locations, and more detailed structure planning.
- [22] LL submits that its evidence provides the necessary assessment to support the extent of the rezoning sought. This together with the revised mapping of landscape sensitivity areas and controls/standards that are proposed to apply to each RVZ area are sufficient to satisfy the ONL landscape policy requirements and result in development that is appropriate in this ONL.
- [23] Mr Espie opines that in an overall sense, the two RVZ's represent small areas of flatter improved paddocks within a vast, rugged, mountainous station¹¹. That in terms of the character of the landscape, the results of the requested RVZ will be a further element of human modification in a landscape that is dramatic and natural. While reducing natural character, development will occur in a way that accords with the Districts traditional rural settlement patterns – a small cluster of buildings situated on a fan landform associated with a large farming station. The clusters will be the only two on the southern arm of the lake and will be inconspicuous and in contained locations.¹²

⁹ At paragraph [7.8]

¹⁰ Espie at paragraph [3.2]

¹¹ At paragraph [5.4]

¹² At paragraphs [5.8] and [5.13]

- [24] Ms Grace has helpfully turned her mind to the other changes sought by LL, in the event the rezoning submission finds favour with the panel. LL makes the following points with respect to her rebuttal evidence¹³:
- [a] LL accepts the revised policy set out in paragraph 4.7, with respect to provision for a farm homestead at the Wye Creek RVZ;
 - [b] LL submits the activity status for the homestead should be determined by its location – that is, a controlled activity within the area mapped as low landscape sensitivity and a discretionary activity in the area mapped as medium-high sensitivity.
 - [c] The non-complying status for informal airports within the Wye Creek RVZ, and limitation on overnight visitors (10 Wye Creek and 30 Loch Linnhe) is accepted as appropriate.
 - [d] Ms Grace defers to Ms Gilbert on the building coverage standards proposed. LL submits that the building coverage standards will result in an appropriate scale and intensity of development.

CONCLUSION

- [25] LL submits that its refined zoning proposal will protect the ONL values identified by Mr Espie, and with the regulatory framework proposed, the two RVZs are more appropriate than the notified zone. The refined zoning proposal is in line with that envisaged by the Stage 1 hearings panel as a form of zoning that will enable an appropriate level of development at the two RVZ sites.



Jayne Elizabeth Macdonald
Counsel for Loch Linnhe Station
24 July 2020

¹³ From paragraph [4.4]