

09 DEC 2016

**CRUICKSHANK PRYDE**  
Barristers and Solicitors

9 December 2016

The Registrar  
Environment Court  
Level 1  
District Court Building  
282 Durham Street  
**CHRISTCHURCH 8013**

By Courier

**INVERCARGILL**  
42 Don Street  
P.O. Box 857  
Invercargill 9840  
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DX YA90002  
Phone 03 214 4069  
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**QUEENSTOWN**  
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159 Gorge Road  
Queenstown  
New Zealand  
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**Trust Account**  
ASB 123195 0000222 00

**Heenan, Dixon, Munro, Scott and Oakland Family Trust v Invercargill City Council –  
Appeal against a Decision on Proposed Invercargill City Council District Plan**

On behalf of the Appellant, we enclose:

1. Notice of Appeal (in duplicate)
2. A cheque in the sum of \$511.11 in payment of the filing fee

**SCANNED**  
12 DEC 2016

Yours faithfully  
**CRUICKSHANK PRYDE**



**Rex Chapman**  
Partner

Email : [rex.chapman@cplaw.co.nz](mailto:rex.chapman@cplaw.co.nz)

Copy to:  
Clients



*The Partners and Staff wish everyone a very Merry Christmas  
and a Happy New Year.  
We close at 1.00pm on 23 December 2016 and re-open 8.30am  
on 9 January 2017.*

IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH REGISTRY

ENV – 2016

IN THE MATTER of the Resource Management Act  
1991

AND

IN THE MATTER of an appeal under Clause 14(1), First  
Schedule of the Act in relation to the  
Proposed Invercargill City Council  
District Plan – Variation 8

BETWEEN PETER JAMES HEENAN, THOMAS  
ANDREW DIXON, DOUGLAS  
STANLEY MUNRO and R MUNRO,  
JOHN DAVID SCOTT and  
OAKLAND FAMILY TRUST

Appellant

AND INVERCARGILL CITY COUNCIL

Respondent

---

**Notice of Appeal against a decision on Variation to the Proposed  
Invercargill City District Plan 2013 – Variation 8**

*Dated 8 December 2016*

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*Presented for filing by:*  
**Cruickshank Pryde**  
P O Box 857  
Invercargill  
Ph (03) 214 4069  
Fax (03) 214 4760  
*Solicitor Acting*  
*R T Chapman*

To: The Registrar  
Environment Court  
Christchurch

1. We Peter James Heenan, Thomas Andrew Dixon, Douglas Stanley Munro and R Munro, John David Scott and Oakland Family Trust appeal against part of the decision of Invercargill City Council on the Proposed Invercargill City Council District Plan – Variation 8.
2. We made a submission on the Variation.
3. We are not trade competitors for the purposes of Section 308 B of the Resource Management Act 1991.
4. We received notice of the decision on 31 October 2016.
5. The decision was made by Invercargill City Council.
6. The part of the decision that we are appealing is the decision to reject our submissions in relation to the land specified in the submissions being 166 and 180 McIvor Road, 117 and 118 Retreat Road and 319 Bainfield Road (*“the Appellant’s land”*).

#### Reasons

7. The reasons for the appeal are as follows:
  - 7.1 Variation 8 reduced the extent of the Residential 3 Zone and replaced it with a Rural 2 Zoning.
  - 7.2 The Appellant’s land is affected by the change in zoning.
  - 7.3 The decision on Variation 8 will not provide for urban growth and development as required in Proposed Regional Policy Statement and does not promote the sustainable management of the land affected.

7.4 The Respondent's decision was based primarily on the cost of services and the implications of those costs to the Council and ratepayers without consideration of alternative means of funding services.

Relief Sought

8. We seek the following relief:

8.1 The Residential 3 Zoning proposed under the Proposed Invercargill City District Plan 2013 be retained.

8.2 The Objectives, Policies and Rules of the Residential 3 Zone as set out in the Proposed Invercargill City District Plan 2013 are retained.

9. We attach the following documents to this notice:

(a) A copy of our submissions

(b) A list of names and addresses of persons to be served with a copy of the notice

(c) A copy of the decision on the Proposed Invercargill City District Plan – Decision 34 – Residential Zones.



.....  
R T Chapman

Solicitor on behalf of the Appellants

Dated: 9 December 2016

Address for service of appellant: Cruickshank Pryde  
Solicitors  
PO Box 857  
INVERCARGILL

Telephone: 03 2144069

Fax: 03 2144760

Email: [rex.chapman@cplaw.co.nz](mailto:rex.chapman@cplaw.co.nz)

Contact Person: R T Chapman

### **Advice to recipients of copy of notice of appeal**

#### *How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

#### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

#### *Advice*

If you have any questions about this notice, contact the Environment Court in Christchurch.

19 The Crescent, PO Box 1262,  
Invercargill 9840, NEW ZEALAND  
Telephone: 03 218 2546  
Facsimile: 03 214 4285  
Email: admin@bonischconsultants.co.nz  
Web: www.bonischconsultants.co.nz



18<sup>th</sup> December 2015

RESOURCE MANAGEMENT ACT 1991 (Act)

Submission on Proposed Invercargill City District Plan 2013

To: Invercargill City Council  
Private Bag 90104  
INVERCARGILL 9840

Submitters: Mr Tom Dixon - 180 Mclvor Road  
Mr D and Mrs R Munro – 117 Retreat Road  
Mr J Scott – 118 Retreat Road  
Oakland Family Trust – 166 Mclvor Road

Subsume

**This is a submission on the Proposed Invercargill City District Plan 2013 – Variation 8.**

The Submitters can not gain an advantage in trade competition through this submission.

**The specific provisions of the proposal that this submission relates to are:**

All of the provisions in Variation 8 as they relate to the land at 166 and 180 Mclvor Road and 117 and 118 Retreat Road (**the Land**).

**The submitter's submission is:**

The proposal to implement Option 2 in regards to zoning of the above land identified above is not supported by the Submitter in so far as it relates to the Land. The proposal to include Rule 3.18.6 which requires that all subdivisions creating lots of less than 2000m<sup>2</sup> to be a non-complying activity is also not supported.

Variation 8 is opposed in its entirety by the submitter and it is requested that the variation be rejected.

**Reasons for submission:**

The submitter's reasons include, but are not limited to, the matters set out below.

We submit that the proposed zoning of the Land as Residential 3 Zone is the most appropriate outcome for the following reasons:

- The Land is a highly desirable area for development as has been shown by the significant level of development that has been undertaken in the Retreat Road area in recent years
- The retention of land in two hectare blocks in what is acknowledged to be a semi-urban environment is a poor use of land, particularly land which is able to be easily serviced.
- Option 2 whilst allowing for existing consented sites to be zoned Residential 3 does not allow for growth in the District. This should be an over-riding concern for the Council as is set out in successive planning documents at both a regional and national level.

#### ***What is the most appropriate zoning for the Land***

The submitter submits that the proposed zoning of the Land as Rural 2 is inappropriate given the existing land use in the area and the trends in land development in Invercargill.

#### **Regional Policy Statement**

The s32 report references the provisions of the Proposed Regional Policy Statement (PRPS) and states that the Variation gives effect to the RPS by retaining some areas as Residential 3 Zone “providing for urban growth and development and provides for lower density of development than in the other Residential Zones whilst also addressing issues relating to the integration of land use with infrastructure...”. This, however, is certainly not the case for Option 3 which does not allow for any subdivision of the Site as all existing properties are a minimum of 2 hectares or less already. Option 3 therefore does not provide for urban growth and development as required under the PRPS and should be removed from consideration.

The above statement is also rejected for Option 2. Under Option 2, which reduces the size of the Residential 3 Zone, the proposed zoning only provides for existing titles or consented subdivisions under Residential 3. This again cannot be said to allow for urban growth and development as required under the PRPS. The zoning as proposed is merely a ‘catch up’ exercise for development which has already been undertaken in the Invercargill City District and does not show any forward planning. In particular this goes against the signalled National Policy Statement on Urban Development which looks set to require local authorities to provide sufficient capacity for urban development. Given the proposed District Plan has a life of ten years the intention of this variation to curtail development is short-sighted.

#### **Big Picture – Spatial Plan**

The report also refers to the Spatial Plan (The Big Picture) which identified areas for urban growth on the fringes of the Urban Zone. The Big Picture was specifically identified the Retreat Road area as having potential for further lifestyle development. The Section 32 report identified an issue of the Spatial Plan as having a well-defined urban edge ‘recognising that a compact and well-defined urban form is more economical to service and therefore more sustainable’. It is considered that the zoning of the Land as Residential 3 is not contrary to that provision and given the existing level of development along Retreat Road is an efficient use of available land which is no longer of a size to be an efficient farming unit.

A significant portion of the discussion with the s32 report relates to the number of lots available for development in the Residential 3 zones. The report states that approximately 525 homes could be built within the Residential 3 zone if Option 1 is retained and that a significant amount of infill development is possible within the Residential 1 and 1a zones. Providing a variety of lifestyle options is essential in any city plan and restricting people to infill development, on potentially small sites, in potentially undesirable areas of the city does not achieve this purpose – which is a policy of the PRPS. 400m<sup>2</sup> lots appeal to a small percentage of the population, the likelihood of lots being subdivided to this degree on a wide spread scale is unlikely.

In section 5.3.2.5 the report discusses that ‘zoning a specific area for large lot residential development with specific provisions that set out the anticipated amenity expectations protects the nearby farming activities from reverse sensitivity effects, and also helps provide an environment that residents are looking for in the large lot residential properties.’ This paragraph is no less relevant to the Land subject to this submission than to those area identified as Residential 3 under Option 2. The land use in this area has changed considerably over the last 20-30 years and there is now very little incidence of intensive rural use. Almost all properties in the area are lifestyle blocks.

#### *Infrastructure/Servicing*

The report discusses costs relating to the installation or upgrading on services and roading. In general it has always been Councils policy that the ‘first cab off the rank’ is responsible for installation of services –as was the case for the subdivision by G.Mason on Retreat Road and the Inverurie subdivision which provided ‘future proofed’ sewer reticulation along Bainfield Road.

#### *Meeting the Proposed District Plan Objectives*

It is considered that zoning the Land as Residential 3 meets the objectives and policies of the Proposed District Plan. Lifestyle blocks are provided for adjacent and adjoining to the urban area of Invercargill (Objective 1); The adverse effects of urban development are able to be avoided, remedied or mitigated through appropriate zone requirements, i.e connection to council sewerage network (Objective 2); the large lot size of 1500m<sup>2</sup> - 2000m<sup>2</sup> retains opportunities for urban intensification and redevelopment within the existing urban area (Objective 3); high quality urban design is able to be incorporated through appropriate design conditions (Objective 4); provision is made for new, larger houses on greenfield sites within reach of urban services (Objective 5); the amenity of the zone is able to be maintained and enhanced (Objective 6). All of the Objectives for the Residential 3 Zone are able to be met through the retention of the Residential 3 Zoning as shown on the Option 1 plans.

The objectives of the Residential Overview are also able to be met through the provision of a zone which provides for a range of housing types whilst still maintaining the critical mass within the defined residential areas. A high standard of residential amenity is typical of existing Residential 3 development and the use of existing rural-residential land provides for an urban edge, restricting peripheral expansion to defined areas.

Overall it is considered that the most appropriate zoning for the Land is Residential 3 and that Variation 8 should be rejected.



#### Non-Complying Activity Status

Variation 8 includes a change to Rule 3.18.6 and 3.37.5. These changes restrict subdivision and development to sites with a minimum area of 2000m<sup>2</sup>, making subdivision and development on site less than 2000m<sup>2</sup> a non-complying activity. Usually non-complying activity status is reserved for activities which may have a more than minor effect on the environment. It is difficult to see how lots of between 1999m<sup>2</sup> and 1500m<sup>2</sup> in existing established large lot environments could have more than minor effects. In any case discretionary activity status allows Council full control over what issues may be considered and whether or not a consent is granted or declined. The submitter requests that the proposed changes to Rules 3.18.6 and 3.37.5 are rejected.

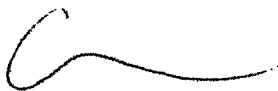
#### Relief Sought:

We request that the Proposed Plan be amended such that:

- a) The zoning proposed under the Proposed Plan 2013 (Option 1) is retained
- b) The Objectives, Policies and Rules of the Residential 3 Zone as set out in the Proposed Plan 2013 are retained.

Yours faithfully

**BONISCH CONSULTANTS**



Christine McMillan

*encl*

19 The Crescent, PO Box 1262,  
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17<sup>th</sup> December 2015

**RESOURCE MANAGEMENT ACT 1991 (Act)**

Submission on Proposed Invercargill City District Plan 2013

To: Invercargill City Council  
Private Bag 90104  
INVERCARGILL 9840

Submitter: Mr P Heenan (**the Submitter**)  
319 Bainfield Road  
RD 2  
INVERCARGILL 9872

Subsume

**This is a submission on the Proposed Invercargill City District Plan 2013 – Variation 8.**

The Submitter can not gain an advantage in trade competition through this submission.

**The specific provisions of the proposal that this submission relates to are:**

All of the provisions in Variation 8 as they relate to the land at 319 Bainfield Road (**the Land**).

**Mr Heenan's submission is:**

The proposal to implement Option 2 in regards to zoning of the above land identified above is opposed by the Submitter in so far as it relates to the Land. The proposal to include Rule 3.18.6 which requires that all subdivisions creating lots of less than 2000m<sup>2</sup> to be a non-complying activity is also opposed.

Variation 8 is opposed in its entirety by the submitter and it is requested that the variation be rejected.

**Reasons for submission:**

The submitter's reasons include, but are not limited to, the matters set out below.

We submit that the proposed zoning of the Land as Residential 3 Zone is the most appropriate outcome for the following reasons:

- The Land is a highly desirable area for development as has been shown by the significant level of development that has been undertaken in recent years

- The retention of land in two hectare blocks in an urban environment is a poor use of land, particularly land which is able to be easily serviced.
- Option 2 whilst allowing for existing consented sites to be zoned Residential 3 does not allow for growth in the District.
- Growth and development of the District should be an over-riding concern for the Council as is set out in successive planning documents at both a regional and national level.

### ***What is the most appropriate zoning for the Land***

The submitter submits that the proposed zoning of the Land is inappropriate given the existing land use in the area, the availability of services to the Land and the trends in land development in Invercargill.

### ***Regional Policy Statement***

The s32 report references the provisions of the Proposed Regional Policy Statement (PRPS) and states that the Variation gives effect to the RPS by retaining some areas as Residential 3 Zone “providing for urban growth and development and provides for lower density of development than in the other Residential Zones whilst also addressing issues relating to the integration of land use with infrastructure...”. This, however, is certainly not the case for Option 3 which does not allow for any subdivision of the Site as all existing properties are a minimum of 2 hectares or less already. Option 3 therefore does not provide for urban growth and development as required under the PRPS and should be removed from consideration.

The above statement is also rejected for Option 2. Under Option 2, which reduces the size of the Residential 3 Zone, the proposed zoning only provides for existing titles or consented subdivisions under Residential 3. This again cannot be said to allow for urban growth and development as required under the PRPS. The zoning as proposed is merely a ‘catch up’ exercise for development which has already been undertaken in the Invercargill City District and does not show any forward planning. In particular this goes against the National Policy Statement on Urban Development which looks set to require local authorities to provide sufficient capacity for urban development. Given the proposed District Plan has a life of ten years the intention of this variation to curtail development is short-sighted.

### ***Big Picture – Spatial Plan***

The report also refers to the Spatial Plan (The Big Picture) which identified areas for urban growth on the fringes of the Urban Zone. The Big Picture specifically identified the Retreat Road area as having potential for further lifestyle development. The Section 32 report identified an issue of the Spatial Plan as having a well-defined urban edge ‘recognising that a compact and well-defined urban form is more economical to service and therefore more sustainable’. The Land is already located close to the Bainfield Road sewer main (within 65 metres) and as Stages 2 and 3 of Inverurie are completed the sewer main to be constructed to service this area will run past the submitters land. It is therefore considered that the zoning of the Land as Residential 3 is not contrary to that identified issue and given the existing level of development along Retreat Road is an efficient use of available land which is no longer of a size to be an efficient farming unit.

A significant portion of the discussion with the s32 report relates to the number of lots available for development in the Residential 3 zones. The report states that approximately 525 homes could be built within the Residential 3 zone if Option 1 is retained and that a significant amount of infill development is possible within the Residential 1 and 1a zones. Providing a variety of lifestyle options is essential in any city plan (and is a policy of the PRPS) and restricting people to infill development, on potentially small sites, in potentially undesirable areas of the city does not achieve this purpose. 400m<sup>2</sup> lots appeal to a small percentage of the population, the likelihood of lots being subdivided to this degree on a wide spread scale is unlikely.

#### *Infrastructure/Servicing*

The report discusses costs relating to the installation or upgrading on services and roading. In general it has always been Councils policy that the 'first cab off the rank' is responsible for installation of services – as was the case for the subdivision by G.Mason on Retreat Road and the Inverurie subdivision which provided 'future proofed' sewer reticulation along Bainfield Road. In any case the sewer main to service Stages 2 and 3 of Inverurie will shortly be constructed and will run past the submitters land. The sewer main in Bainfield Road was sized to allow for future connections at the request of Council. It should also be noted that the existing dwelling on 319 Bainfield Road is connected to the Council sewer network.

#### *Meeting the Proposed District Plan Objectives*

It is considered that zoning the Land as Residential 3 meets the objectives and policies of the Proposed District Plan. Lifestyle blocks are provided for adjacent and adjoining to the urban area of Invercargill (Objective 1); The adverse effects of urban development are able to be avoided, remedied or mitigated through connection to the council sewerage network and appropriate design requirements (Objective 2); the large lot size of 1500m<sup>2</sup> - 2000m<sup>2</sup> retains opportunities for urban intensification and redevelopment within the existing urban area (Objective 3); high quality urban design is able to be incorporated through appropriate design conditions (Objective 4); provision is made for new, larger houses on greenfield sites within reach of urban services (Objective 5); the amenity of the zone is able to be maintained and enhanced (Objective 6). All of the Objectives for the Residential 3 Zone are able to be met through the retention of the Residential 3 Zoning as shown on the Option 1 plans.

The objectives of the Residential Overview are also able to be met through the provision of a zone which provides for a range of housing types whilst still maintaining the critical mass within the defined residential areas. A high standard of residential amenity is typical of existing Residential 3 development and the use of existing rural-residential land provides for an urban edge, restricting peripheral expansion to defined areas.

Overall it is considered that the most appropriate zoning for the Land is Residential 3.

#### Non-Complying Activity Status

Variation 8 includes a change to Rule 3.18.6 and 3.37.5. These changes restrict subdivision and development to sites with a minimum area of 2000m<sup>2</sup>, making subdivision and development on site less than 2000m<sup>2</sup> a non-complying activity. Usually non-complying activity status is reserved for activities which may have a more than minor effect on the environment. It is difficult to see how lots of between 1999m<sup>2</sup> and 1500m<sup>2</sup> in existing established large lot environments could have more than minor effects. In any case

discretionary activity status allows Council full control over what issues may be considered and whether or not a consent is granted or declined. The submitter requests that the proposed changes to Rules 3.18.6 and 3.37.5 are rejected.

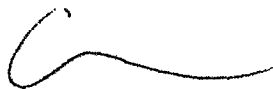
**Relief Sought:**

We request that the Proposed Plan be amended such that:

- a) The zoning proposed under the Proposed Plan 2013 is retained
- b) The Objectives, Policies and Rules of the Residential 3 Zone as set out in the Proposed Plan 2013 are retained.

Yours faithfully

**BONISCH CONSULTANTS**

A handwritten signature in black ink, appearing to be "Christine McMillan", written in a cursive style.

Christine McMillan

*encl*

1. Greg Simmons  
80 Terrace Street  
INVERCARGILL 9810  
  
Mr Simmons  
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Attention: Gavin Gilder or Sonya Nicol  
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Email: [service@es.govt.nz](mailto:service@es.govt.nz)
7. W and J Devine  
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Bill  
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9. Peter Donald Carnie  
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10. P A and J M Murray House Trust  
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Attention: Christine McMillan  
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