

APPENDIX 2: Resource Consent RM100294



**QUEENSTOWN
LAKES DISTRICT
COUNCIL**

DECISION OF QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicants:	I. PERCY AND F.J. AITKEN
RM Reference:	RM 100294
Location:	246 Riverbank Road, Wanaka
Proposal:	Land use consent to erect a frost control fan which breaches Zone Standards 5.3.5.2i(b) and 5.3.5.2v(a) and (b) that relate to height and noise respectively.
Type of Consent:	Land use consent.
Legal Description:	Lot 8 DP300773
Valuation Number:	2906102703
Zoning:	Rural General
Activity Status:	Non-Complying
Limited Notification:	16 February 2011
Commissioners:	W D Whitney & R L Overton
Date of Decision:	25 May 2011
Decision:	Consent is granted subject to conditions.

A. INTRODUCTION

A.1

1. Ian Percy and Fiona Aitken have applied to the Queenstown Lakes District Council for land use consent to erect a frost control fan on a concrete pad for the purpose of frost protection at their vineyard during the frost season. The subject site has frontage to Riverbank Road at Wanaka and is described as Lot 8 DP300773 as held in Computer Freehold Register Identifier 3819 in the Otago Land Registration District.
2. The site has an area of 5.4141 hectares more or less and is used for viticultural purposes. The applicants reside in a dwelling on the property with their two children.
3. The site is located in the Rural General Zone. Land immediately to the east (across Riverbank Road) is zoned Rural Lifestyle. Land to the north, west and south of the site is zoned Rural General. Land fronting Ballantyne Road (generally to the north of the site) is located in the Industrial Zone.

A.2 The Proposal

4. Consent is sought to construct a frost control fan for frost protection at a central location on the subject site. The application was accompanied by an Assessment of Environmental Effects, which advised that an Amarillo frost control fan is to be erected and installed; and that such frost control fan would have a height (when the blade is vertical) of 13.7 metres.
5. It is important to note that subsequent to the lodging of the application the applicants have elected to erect a Defender MkII frost control fan rather than the Amarillo frost control fan originally proposed. The Defender frost control fan will have a maximum height of 13.7 metres when the blades are in an upright position; and the tower will require a 6.25m² concrete pad for the foundation. A John Deere 6068T diesel engine is required to run the frost control fan.
6. The frost control fan and the fibreglass cover for the diesel engine will be coloured Karaka.

A.3 Zoning

7. The site is zoned Rural General under the Operative Queenstown Lakes District Plan (Operative District Plan) as shown on District Plan Map 18.

8. The frost control fan falls within the definition of a Building as defined in the Operative District Plan at page D-2.
9. Rule 5.3.3.3i(a)(i) confirms that the construction of any building not within a building platform approved by resource consent is a discretionary activity.
10. The proposal breaches Zone Standard 5.3.5.2i(b) which states that the maximum height for any non-residential building ancillary to viticultural or farming activities shall be 10 metres. A breach of Zone Standard 5.3.5.2i(b) is a non-complying activity in terms of Rule 5.3.3.4vi.
11. The proposal also breaches Zone Standard 5.3.5.2v(a) and (b) which states that non-residential activities shall be conducted such that the noise levels stated in the rule are exceeded, neither at, nor within, the notional boundary of any residential unit, other than residential units on the same site as the activity. The noise levels specified are during daytime (0800 to 2000 hours) 50 dBAL₁₀; and during night time (2000 to 0800 hours) 40 dBAL₁₀ and 70 dBAL_{max}. The maximum noise levels generated from the frost control fan will exceed these standards. A breach of Zone Standard 5.3.5.2v(a) and (b) is a non-complying activity in terms of Rule 5.3.3.4vi.
12. Proposed Plan Change 27A was notified on 19 August 2009 and the Council's decision on the proposed plan change was notified on 19 May 2010. Proposed Plan Change 27A updates noise measurement and assessment standards and we understand that the Council's decision on Proposed Plan Change 27A is under appeal. Zone Standard 5.3.5.2v(a) as amended by Proposed Plan Change 27A confirms that sound from non-residential activities is to be measured in accordance with NZS6801:2008 and shall not exceed the noise limits specified in that rule at any point within the notional boundary of any residential unit, other than residential units on the same site as the activity. The noise limits specified in Zone Standard 5.3.5.2v(a), as amended by Proposed Plan Change 27A, are day time (0800 to 2000 hours) 50 dBL_{Aeq(15min)}; and night time (2000 to 0800 hours) 40 dBL_{Aeq(15min)} with a 70 dBL_{AFmax}. Zone Standard 5.3.5.2v(b) as amended by Proposed Plan Change 27A confirms that sound from non-residential activities which is received in another zone shall comply with the noise limits set in the Zone Standards for that zone. In this instance the Rural Lifestyle Zone noise standards are consistent with those that apply in the context of the Rural General Zone.

13. The proposal has status as a non-complying activity in terms of the Operative District Plan and in terms of Proposed Plan Change 27A.

A.4 Submissions

14. The application was notified on a limited basis on 16 February 2011 and seven submissions were received by the closing date of 16 March 2011.
15. Submissions lodged in opposition include submissions by D.P. Stayne and L.F. Dean, L.T. and N.J. Lindsay, Jo Dippie, D.L. Strong, and Orchard Road Holdings Limited. A submission neither in support or opposition to the application was received from J. & S. Redai and N. Smith. A submission from L. & J. Benson was initially lodged but withdrawn on 6 April 2011. All of the submissions were made available to the Commission prior to the hearing.

A.5 Affected Persons Approvals

16. Affected persons approvals were provided by the Hall Trust Ltd, A. & P. Gillespie, R. & P. Shanks, L. Sellick and J. Benson, M. & R. Erichsen, C. & N. Hughes, W. & J. Smith, C.K. & H.C. Penney, J. & S. Limmer and D. & N. Telfer. In addition, an affected persons approval was received from the Rankin Family Trust albeit that this appears to be a conditional approval. In these circumstances the Commission has not regarded the Rankin Family Trust document as an affected persons approval for the purposes of considering this application.

A.6 Reports and Hearing

17. We had the benefit of a planning report from Mr Ian Greaves, a planner with Lakes Environmental Ltd; a landscape report from Mr Antony Rewcastle, a senior landscape architect with Lakes Environmental Ltd; and reports from Zoe Hammett and Mary Rose Fitzgerald, an environmental health officer and the Principal: Environmental Health with Lakes Environmental Ltd, respectively. We also had the benefit of a report prepared by Dr Stephen Chiles and Mr Daniel Murray of URS New Zealand Ltd dated 2 February 2011, which had been commissioned by Lakes Environmental Ltd to review specific aspects of the proposal.
18. At the hearing we were assisted by Mr Greaves, Ms Robin Rawson, a senior landscape architect with Lakes Environmental Ltd, and Ms Fitzgerald. For completeness we note that Ms Paula Costello, a planner at Lakes Environmental Ltd,

was also in attendance. Ms Rachel Beer, the Planning Process Manager at Lakes Environmental Ltd, provided administrative support at the hearing.

19. We have had the opportunity to consider the application and supporting material lodged subsequently by the applicant, together with the submissions and affected persons approvals. In the company of Mr Greaves, we also made a site inspection on the morning of the hearing on Wednesday 4 May 2011.
20. At the hearing the applicants were represented by Mr Ian Percy who, together with the owner Fiona Aitken, are the co-owners of the Aitkens Folly Vineyard Ltd; Mr Miklin Halstead, an Associate with Marshall Day Acoustics Ltd; and Mr Sean Dent, a resource management planning consultant with Southern Planning Group Ltd.
21. Ms Jo Dippie, a submitter, was in attendance for the early part of the hearing. Email correspondence was received from Mr Allan Dippie, a director of Orchard Road Holdings Ltd, that confirmed that this submitter no longer wished to speak at the hearing on the basis that the submitter was satisfied with the planner's report and recommendation. No other submitters were in attendance at the hearing.
22. The planning, landscape and environmental health reports were taken as read and Ms Rawson, Ms Fitzgerald and Mr Greaves were invited to comment following the presentation of the evidence in support of the application. Following Mr Dent's reply the hearing was adjourned.

B. EFFECTS ON ENVIRONMENT

B.1 Permitted Baseline

23. Farming activities, including fencing and viticulture, are permitted on the site. Zone Standard 5.3.5.2v(b)(i) of the Operative District Plan and Zone Standard 5.3.5.2v(c) as amended by Proposed Plan Change 27A confirm that when associated with farming and forestry activities, the noise limits specified in the Zone Standard shall only apply to sound from stationary motors and stationary equipment. The permitted baseline therefore includes noise associated with farming activities (including viticulture) that exceeds the levels specified in the Zone Statement, provided that such sound does not come from stationary motors and stationary equipment. The permitted baseline therefore includes the use of a helicopter to combat frost events on the subject site. Mr Dent advised us that a helicopter, when utilised for frost protection, is required to

operate at a height of approximately 15 metres to 40 metres above the ground to force warm air downwards onto the grape vines and is required to "tour" around the property during frost fighting.

24. A helicopter moving to and from the site from, say, the Wanaka Airport, would pass over land in the Rural General and Rural Lifestyle Zones.

B.2 Assessment Matters

25. The Queenstown Lakes District Plan became fully operative on 10 December 2009. The Operative District Plan contains assessment matters in Part 5 that are relevant to development in the Rural General Zone. Rule 5.4.2 confirms that in considering whether or not to grant consent or to impose conditions assessment matters contained in Rule 5.4.2 are to be addressed. Rule 5.4.2.1 advises that there are three steps of applying the assessment criteria. These include Step 1 – Analysis of the Site and Surrounding Landscape, Step 2 – Determination of Landscape Category and Step 3 – Application of the Assessment Matters.

26. Mr Rewcastle has conducted an analysis of the site and surrounding landscape and has determined that the site is part of a Visual Amenity Landscape (VAL). We accept this determination. We also note that the assessment matters are primarily concerned with the visibility of development and do not explicitly address noise effects. In these circumstances we apply the VAL assessment matters to the frost control fan structure only and address noise effects in Section B.3 of this decision (below).

27. Rule 5.4.2.2(3) contains assessment matters specific to VAL. We do not propose to reproduce these assessment matters here in full, but simply note that Rule 5.4.2.2(3) presents the relevant assessment matters under the headings listed below:

- (a) *Effects on natural and pastoral character*
- (b) *Visibility of Development*
- (c) *Form and Density of Development*
- (d) *Cumulative effects of development on the landscape*
- (e) *Rural Amenities*

28. When applying these assessment matters it is reasonable to acknowledge that the frost control fan will have an overall height (when the blade is in the vertical position) of 13.7 metres. The frost control fan is to be located in a central position on the site which contains an established vineyard. It is also appropriate to acknowledge that the frost control fan tower and engine container will be finished in a Karaka colour.
29. In terms of assessment matters listed in Rule 5.4.2.2(3)(a) the Commission finds that the proposal will have no particular effect on natural and pastoral character. In essence the frost control fan is associated with primary production and this functional relationship is appropriate, as the site is located in the Rural General Zone. The Commission is satisfied that the scale and nature of the development will not compromise the natural or arcadian pastoral character of the surrounding VAL, or cause over-domestication, given that the frost control fan is not a residential building.
30. In terms of Rule 5.4.2.2(3)(b), while the frost control fan will be highly visible from Riverbank Road, it will not result in a loss of the natural or arcadian pastoral character of the landscape. In terms of Rule 5.4.2.2(3)(b)(iii), screen planting with shelter belts is not appropriate as this would hinder frost protection and reduce rural amenity, in terms of visual access to open space.
31. In terms of Rule 5.4.2.2(3)(c), the form and density of development proposed is appropriate. Again it is acknowledged that the frost control fan has a functional association with primary production, being the vineyard on the subject site.
32. In terms of Rule 5.4.2.2(3)(d), a single frost control fan is proposed on a rural site, being the only vineyard in this locality. The Commission is therefore satisfied that the proposal is unlikely to give rise to adverse cumulative effects on the natural or arcadian pastoral character of the landscape.
33. In terms of Rule 5.4.2.2(3)(e), the Commission has noted Mr Rewcastle's conclusion that the frost control fan will maintain adequate and appropriate visual access to open space and views across the arcadian pastoral landscape from public and private areas. The assessment matter in Rule 5.4.2.2(3)(e)(ii) requires us to take into account whether and to what extent the proposed development compromises the ability to undertake agricultural activities on surrounding land. The frost control fan will not compromise this ability.

34. Rule 5.4.2.3 lists Assessment Matters General, being assessment matters which apply in addition to the assessment matters specific to VALs. Rule 5.4.2.3iv relates to all buildings which have status as a discretionary activity. These assessment matters, as specified in Rule 5.4.2.3iv are:

“(a) The extent to which the location of buildings and associated earthworks, access and landscaping breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes.

“(b) Whether the external appearance of buildings is appropriate within the rural context.”

35. In this instance, the subject site at Riverbank Road is flat and the frost control fan will not break the line and form of the landscape. The Commission also considers, in the context of Rule 5.4.2.3iv(b) that the external appearance of the frost control fan is appropriate within the rural context, having regard to the functional relationship of the frost control fan to the established vineyard activity.

36. Following consideration of the effects of the proposal in this VAL landscape, the Commission considers that any visual effects associated with the frost control fan as proposed will be no greater than minor. The Commission acknowledges Mr Greaves' conclusion (based on Mr Rewcastle's report) that the proposed development is in keeping with the anticipated character of the Rural General Zone and will not have any significant adverse effects on open pastoral space or any wider views and outlook.

B.3 Noise Effects

37. The applicants propose to install a Defender MkII frost control fan on the site. The Defender frost control fan is significantly quieter than the Amarillo frost control fan referred to in the application, the latter being subject to a Amarillo Frost Fan Noise Assessment report dated 20 August 2004 that was lodged with the application. That Assessment confirmed that the emitted sound pressure level at 300 metres from the Amarillo frost fan when run at its rated speed of 590rpm is 57 dBAL₁₀; and when run at a reduced speed of 513rpm is 55 dBAL₁₀.

38. A report also prepared by Marshall Day Acoustics and dated 27 July 2010 on the Defender MkII frost fan confirmed that at an engine speed of 1850rpm sound pressure levels in the range of 48 dBAL₁₀ – 52 dBAL₁₀ were recorded at a distance of 300 metres. The Commission is satisfied that the Defender MkII Frost Fan is able to operate at significantly lower sound levels than that associated with the Amarillo frost fan as originally proposed.
39. Mr Dent advised us that the Defender blade has been developed by Farm Machinery Repairs Ltd of Blenheim and the Mechanical Engineering Department of the University of Canterbury. The Defender blade has been specifically designed to reduce noise emissions and provide a greater thrust, and accordingly, a range of thermal effectiveness.
40. The Commission notes that two-blade and four-blade frost fans are both found on vineyards in the wider Central Otago region. Mr Halstead informed us that the Defender two-blade fan is quieter than four-blade fans, albeit that the noise is of a different character. He advises that a chop tonality is associated with a two-blade fan whereas a hum tonality is associated with a four-blade fan. Mr Halstead informed us that to his knowledge the Defender fan is the quietest machine available for the wind coverage it provides.
41. When considering the actual effects of potential noise emissions, the frequency of use of the frost control fan is also relevant. Messrs Percy and Dent informed us that the applicants have experienced an average of seven frost events per annum during the critical periods of bud burst and prior to harvest between the years 2008 and 2011. These critical periods occur during spring (i.e. generally October to November) and autumn (i.e. generally March to the first 10 days of April).
42. Mr Percy advised us that during the 2010/11 spring period, the applicants utilised a helicopter for frost protection on three occasions. We were advised that frosts occur during the period of approximately three hours between 3.00 a.m. and 6.00 a.m. and that the frost control fan will be automatically set to operate when the local air temperature is 2°C or below.
43. Mr Halstead advised us that the World Health Organisation (WHO) recommends an indoor sleeping environment of no more than 30 dBA which conservatively translates

into an outdoor level of 45 dBA with windows open, or 54-56 dBA with windows closed, depending on the modernity of the particular building. Mr Halstead was of the opinion that for an activity that is a cold night time operation (such as a frost control fan) a "windows closed" assumption is reasonable.

44. Mr Halstead advised us that at the notional boundary of the nearest residential unit for which an affected persons approval has not been received, a sound level of 52 dBA is predicted when the Defender frost control fan is in operation. For completeness it is noted that as the frost control fan exhibits special audible character an additional penalty of 5 dBA should be applied when assessing noise effects.
45. As noted above, the permitted baseline includes the operation of a helicopter for frost fighting purposes; and Mr Percy confirmed to us that a helicopter has been used on three occasions in the 2010/11 spring season. Mr Halstead advised us that sound power levels emitted by helicopters range from approximately 15 dB to 25 dB noisier than the Defender frost fan. Mr Halstead confirmed that in subjective terms an increase of 10 dB is considered twice as loud, and 20 dB is four times as loud. The Commission therefore accepts Mr Halstead's opinion that the Defender frost control fan is by far a quieter alternative to the use of helicopters for frost protection.
46. The Commission also considers it appropriate, when considering noise effects, to acknowledge that Zone Standard 5.3.5.2v as contained in the Operative District Plan and as amended in terms of Proposed Plan Change 27A is a generic noise standard which applies to all activities conducted in the Rural General Zone. The District Plan makes no particular allowance in the Rural General Zone for the level of noise normally associated with frost control fans, which are commonplace at vineyards in the district. The Commission notes for example that in the Gibbston Character Zone (where vineyards are concentrated) Zone Standard 5.7.5.2iii(i) confirms that the standard noise rule does not apply to wind machines and frost fighting devices, whether stationary or not, that are operated in accordance with the manufacturer's specifications; provided that no single event of noise (L_{100}) shall exceed 85 dBA measured at the notional boundary 20 metres from a dwelling house on an adjacent site. As noted above, Mr Halstead has advised that the noise at the closest notional boundary of a residential unit not subject to an affected persons approval will be 52 dBA in this instance.

47. The Commission has concluded in all the circumstances that noise effects will be no greater than minor. The Commission has come to this view having regard to the limited number of occasions when the frost control fan is likely to operate in any year (estimated at seven nights per year based on experience over the last four years) and to the permitted baseline which allows the use of a helicopter to tour around the property generating significantly louder noise than that associated with the Defender frost control fan. The Commission also considers it appropriate to acknowledge in this context that frost control is an integral part of the viticulture activity which is a permitted activity in the Rural General Zone.

B.4 Other Effects

48. Mr Greaves' report referred to potential effects on rural amenity. Such effects relate to noise which we have discussed in some detail above. The frost control fan is directly associated with the vineyard activity which is permitted and anticipated in the context of the Rural General Zone. In these circumstances the Commission does not consider that the proposal will have an effect that is more than minor in terms of rural amenity. For completeness the Commission notes that residents of Rural Lifestyle Zones which are adjacent to the Rural General Zone must expect that some activities associated with rural production will have some adverse effects in terms of the rural amenity that they enjoy.

49. The submission by Orchard Road Holdings Ltd raises the potential for adverse effects of noise on future development on that company's land and also refers to a consent for 50 business units which contain a first storey residential apartment. The Commission understands that the consent referred to is RM 061149 which authorises a three lot freehold subdivision, the construction of 50 industrial and custodial units and subdivision by unit title. Mr Dent advised us that these industrial units and custodial flats are located within the Industrial Zone; and that the permitted noise level for any activities in the Industrial Zone between the hours of 8.00 p.m. to 8.00 a.m. is 50 dBAL₁₀ at the boundary of the Zone. Mr Dent noted that based on the acoustic modelling provided by Marshall Day Associates, the noise effects of the proposed frost control fan on the units approved by RM 061149 are less than those which could be associated with a permitted activity in the Industrial Zone. We therefore consider that any adverse effect on the development authorised by RM 061149 would be less than minor.

50. The Commission also notes that adjacent land is currently zoned Rural General. The effects of the proposed activity should be considered in the context of this existing environment, and the Commission does not consider it appropriate to speculate on the effects of the proposal in the context of any future development which may or may not be authorised by future rezoning of adjacent land.

B.5 Summary: Effects and Assessment Matters

51. The Commission finds that the proposal will have less than minor visual effects and noise effects which are no greater than minor, having regard to the limited operation of the frost control fan and the permitted baseline that enables a helicopter to be used for frost fighting purposes at the subject site. Such adverse effects must be balanced against the positive effects of the activity in terms of facilitating the operation of the vineyard that is an activity permitted in the Rural General Zone. Mr Percy advised us that the applicants' vineyard is expecting its first harvest in late March to early April 2012 and that the vineyard is expected to reach a peak production of 900 cases of wine annually by the year 2017.

C. THE QLDC DISTRICT PLAN : OBJECTIVES & POLICIES

52. Parts 4 and 5 of the Operative District Plan contain objectives and policies for the whole district and for rural areas respectively. The objectives and policies from Parts 4 and 5 have been presented in Mr Greaves' report, and to a large degree the objectives and policies relate to matters discussed in the context of the assessment matters above. It is neither desirable nor necessary, therefore, for us to undertake a line by line analysis of every objective and policy as this would involve a significant amount of repetition without materially advancing our analysis of this application.

C.1 Part 4

53. Section 4.2 relates to Landscape and Visual Amenity. Clause 4.2.4(3) confirms that Visual Amenity Landscapes are the landscapes to which particular regard is to be had under section 7 of the Act.

54. Objective 4.2.5 is:

“Objective:

Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values.”

55. Objective 4.2.5 is supported by a number of policies. Policies of relevance include Policy 1 Future Development which relates to the effects of development; Policy 4 that relates to Visual Amenity Landscapes; Policy 8 that relates to Avoiding Cumulative Degradation; Policy 9 that relates to Structures; and Policy 17 that relates to Land Use.

56. In terms of Policy 1 – Future Development – the proposed frost control fan will not detract from landscape and visual amenity values in the area. The proposed frost control fan will maintain visual access to open space and views across the landscape and the use of Karaka that is a recessive colour will reduce the visual prominence of the frost control fan structure. The Commission also considers, having regard to the functional nature of the frost control fan in the context of an established vineyard, that the proposal is consistent with Policy 4, Policy 8, Policy 9 and Policy 17 that support Objective 4.2.5.

57. The Commission notes again in the context of Policy 9 that the applicants do not propose to provide screening by way of shelter belt planting as this will have an adverse effect in terms of frost control. The Commission has also noted that Ms Rawson did not support shelter belts for screening purposes on the basis that this would reduce rural amenity by obstructing visual access to open space in the Rural General Zone. This is also relevant in the context of Policy 17.

C.2 Part 5

58. Part 5 of the Operative District Plan contains objectives and policies that specifically relate to rural areas. These objectives and policies seek to allow the establishment of a range of activities that are managed in such a way as to protect the character and landscape values of the rural area.

"Objective 1 – Character and Landscape Value

To protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.

Policies:

- 1.1 Consider fully the district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.*
- 1.2 Allow for the establishment of a range of activities, which utilise the soil resource of the rural area in a sustainable manner.*
- 1.3 Ensure land with potential value for rural productive activities is not compromised by the inappropriate location of other developments and buildings.*
- 1.4 Ensure activities not based on the rural resources of the area occur only where the character of the rural area will not be adversely impacted.*
- 1.5 Provide for a range of buildings allied to rural productive activity and worker accommodation.*
- 1.6 Avoid, remedy or mitigate adverse effects of development on the landscape values of the District.*
- 1.7 Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.*
- 1.8 Avoid remedy or mitigate the adverse effects of the location of structures and water tanks on skylines, ridges, hills and prominent slopes. ..."*

59. In terms of Policy 1.1 the district wide landscape objectives and policies have been considered fully above. In terms of Policy 1.2 the frost control fan will enhance the site's ability to utilise the soil resource of the rural area for vineyard activity and the production of wines. In terms of Policy 1.3 the proposal will also enhance the ability to continue rural productive activity on the subject site. The proposal is based on the rural resources of the area that are referred to in Policy 1.4.

60. The Commission considers that the proposal is entirely consistent with Policy 1.5. The frost control fan is allied to rural productive activity on the subject site, being viticulture. The Commission also considers that the proposal is consistent with Policies 1.6, 1.7 and 1.8 which raise matters which have previously been addressed in our consideration of the visual effects of the proposed activity.

61. Objective 2 relates to the life supporting capacity of soils. The Commission considers that the proposal is entirely consistent with Policy 2.2 which is to enable a range of activities to utilise the range of soil types and microclimates. Mr Percy advised us that the vineyard is significantly warmer than the Central Otago average (by more than 100 growing degree days) and this microclimate is a relevant consideration in terms of the policy. The frost fighting machine is necessary to enable viticulture activity to utilise the soil and microclimate attributes of the subject site.

62. Objective 3 and its associated policies relate to rural amenity. These state as follows:

“Objective 3 – Rural Amenity

Avoiding, remedying or mitigating adverse effects of activities on rural amenity.

Policies:

- 3.1 Recognise permitted activities in rural areas may result in effects such as noise, dust and traffic generation, which will be noticeable to residents in the rural areas.*
- 3.2 Ensure a wide range of rural land uses and land management practices can be undertaken in the rural areas without increased potential for the loss of rural amenity values.*
- 3.3 To avoid, remedy or mitigate adverse effects of activities located in rural areas.”*

63. In terms of Policy 3.1 the vineyard is a permitted activity in the Rural General Zone and frost fighting utilising a helicopter is also permitted. In essence the frost control fan will have less adverse effect on nearby residents than noise effects associated with the use of a helicopter at the vineyard. The effect of Policy 3.1 is to acknowledge that noise effects can be expected associated with permitted activities in rural areas.

64. In terms of Policy 3.2 the acoustic information provided by Mr Halstead and in reports previously provided by the applicant, confirm that the proposal will not have significant adverse effects on rural amenity and specifically, in terms of sleep disturbance. The Commission also notes in this context the limited number of frost fighting events which are anticipated to occur in any particular year. These matters are also relevant in the context of Policy 3.3.

65. Mr Dent drew our attention to the Explanation and Principal Reasons for Adoption that relate to Objective 3 and its associated Policies. This states as follows:

"Explanation and Principal Reasons for Adoption

The rural environment has particular amenity and environmental values, which are important to rural people. These include privacy, rural outlook, spaciousness, ease of access, clean air, and at times, quietness. However, a wide range of activities occur in the rural areas, including traditional livestock farming and the growing of supplementary crops, as well as more intensive new pastoral and horticultural enterprises. These result in levels of noise, dust, traffic generation and smell that are an integral part of rural amenity values, and which will be noticeable to residents in rural areas. Provided that these effects do not constitute a genuine nuisance or health risk, the Council considers they should be accepted as anticipated components of rural amenity values; however the potential for conflicts between such amenity values and the expectations of rural residents should be avoided, as far as possible."

66. The Commission acknowledges that the Operative District Plan anticipates that a wide range of activities will occur in rural areas and that these will result in levels of noise that are an integral part of rural amenity values, and which will be noticeable to residents in rural areas. In this instance, and having regard to the permitted baseline and the evidence of Mr Halstead with respect to WHO standards, the Commission is satisfied that the effects do not constitute a genuine nuisance or health risk. The above statement confirms that the Council considers (through the Operative District Plan) that such effects should be accepted as anticipated components of rural amenity values, albeit that conflicts between such amenity values and expectations of residents should be avoided, as far as possible.

C.3 Summary : Objectives and Policies

67. Following the above analysis, the Commission finds that the proposal is generally consistent with those objectives and policies that are relevant to the application. The Commission finds that overall the proposal is more consistent with the objectives and policies stated in the Operative District Plan when read as a whole, rather than being opposed to them. The Commission considers that the proposal is not contrary to the objectives and policies of the Operative District Plan.

D. OTHER MATTERS

68. Section 104(1)(c) requires the consent authority to have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application. In this instance the application is for consent to a non-complying activity and precedent is a relevant consideration. The Commission notes that in this instance

a frost control fan is proposed to be constructed on an existing vineyard in the Rural General Zone. Given that the frost control fan is functionally associated with the viticultural use of the land for productive purposes, the Commission finds that granting consent to the proposal would not establish a significant precedent. In essence the Rural General Zone identifies a part of the district where a frost control fan is an expected activity as part of productive rural activity.

69. No other matters appear to have any particular relevance in this instance in terms of section 104(1)(c).

E. SECTION 104D

70. Section 104D(1) confirms that a consent authority may only grant a resource consent for a non-complying activity if one of the gateways is satisfied. In this instance the Commission is satisfied that the adverse effects of the activity on the environment will be minor; and that the activity will not be contrary to the objectives and policies of the Operative District Plan, which is the relevant Plan. Both gateways are therefore satisfied.

71. The Commission is therefore able to exercise its overall discretion that is inherent in section 104D of the Act.

F. PART 2 OF THE ACT

72. Part 2 of the Resource Management Act contains sections 5 to 8. We refer to them in reverse order.

73. Section 8 requires us, in exercising our functions on this application, to take into account the principles of the Treaty of Waitangi. No issues were raised with us in reports or evidence in relation to section 8.

74. Section 7 directs that in achieving the purpose of the Act we are to have particular regard to certain matters which include, of relevance here, the efficient use and development of natural and physical resources; the maintenance and enhancement of amenity values; and the maintenance and enhancement of the quality of the

environment. In our opinion the proposal will facilitate the efficient use of natural and physical resources, being the vineyard on the subject site. The proposed activity will also serve to enhance amenity values and the quality of the environment for nearby residents when compared to the permitted baseline that enables a helicopter to be used for frost fighting (with considerably greater noise) at the subject site. There are no other matters stated in section 7 which are of any particular relevance to the current application.

75. Section 6 sets out a number of matters which are declared to be of national importance and directs us to recognise and provide for them. None of these matters appear to be of any particular relevance to the current proposal.

76. Section 5 sets out the purpose of the Act – to promote the sustainable management of natural and physical resources. Taking into account the definition of sustainable management contained in section 5(2), the Commission has reached the view that on balance the application before us does achieve the purpose of the Act. Sustainable management means managing the use, development and protection of natural and physical resources within certain parameters. The physical resources of the site will be developed in such a way that social and economic wellbeing are provided for, while any adverse effects of the proposal can be avoided, remedied or mitigated by adherence to appropriate conditions of consent.

G. OUTCOME

77. Section 104 directs that when considering an application for resource consent and any submissions received in response to it, we must, subject to Part 2, have regard to the actual and potential effects on the environment of allowing the activity together with the relevant provisions of the Operative District Plan. In the course of considering the application and submissions in reaching our decision, the Commission has followed this process. Under section 104D the Commission has discretion to grant consent to the application and we hereby do so subject to the imposition of conditions as attached in a Schedule to this decision.

78. This decision on RM 100294 is dated 25 May 2011.

W D Whitney
COMMISSIONER

For the Commission being W D Whitney and R L Overton

SCHEDULE : CONDITIONS OF CONSENT FOR RM 100294 : I. PERCY AND F.J. AITKEN

1. The development must be carried out in accordance with the plan ("**Location Plan**" **received 30 April 2010 stamped as approved on 24 May 2011**) and the application as submitted, with the exception of the amendments required by the following conditions of consent.
2. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991 and shall pay to the Council an initial fee of \$100.
3. The frost control fan authorised by this consent is the Defender MkII Frost Fan.
4. The frost control fan shall only be operated for the purpose of protecting viticultural crops from frost during the critical periods of bud burst and prior to harvest.
5. The frost control fan shall not be operated at an engine speed exceeding 1850 RPM.
6. The frost control fan shall only be operated when the air temperature in the vineyard drops to 2 degrees Celsius or less.
7. For the purpose of condition 6 above, the thermometer used to measure the air temperature in the vineyard shall be located at a height above ground relevant to the height of the buds or fruit above ground on the plants to be protected.
8. The frost control fan shall cease operation when the air temperature in the vineyard reaches 3 degrees Celsius.
9. The frost control fan shall only be operated for maintenance purposes between the hours of 7.30 a.m. and 6.00 p.m. weekdays. Test operation may take place only for emergency maintenance purposes outside these hours.
10. The frost control fan shall not be operated when the wind speed exceeds 8km/hr.
11. A written log shall be maintained; clearly recording on each occasion the frost control fan is operated, the date and length of time the frost control fan is used. The log shall include the air temperature at which the frost control fan started operation and include running for maintenance purposes. A copy of the log shall be made available to the Principal: Environmental Health at Lakes Environmental Limited at any time upon request and records shall be kept for a minimum of four years.
12. The frost control fan (excluding the blades) and the diesel engine cover shall be painted "Karaka" green in colour.
13. The frost control fan is not to exceed a height of 14 metres when the blades are in the upright position.
14. In the first spring or autumn period following the installation of the frost control fan the consent holder shall prior to the operation of the frost control fan provide written notice to all parties who received a copy of the application RM 100294 at the time that this application was notified on a limited basis. The notice to be provided by the consent holder shall advise recipients of:
 - a. The location of the frost control fan; and

- b. The time of year and hours during which the frost control fan can be expected to operate; and
 - c. The estimated number of times per year that the frost control fan is likely to operate; and
 - d. Measures that can be taken to reduce noise effects (e.g. keeping windows closed); and
 - e. The name and contact telephone number of a person whom neighbours can contact in the event that they have any concerns with respect to the operation of the frost control fan.
15. Subject to the agreement in writing of the Chief Executive of the Queenstown Lakes District Council, in subsequent years following the first year in which the frost control fan operates the consent holder shall provide a notice that contains the details listed in condition 14 to residents of the Rural Lifestyle Zone located on the east side of Riverbank Road, south of Ballantyne Road; residents of properties in the Rural General Zone and Industrial Zone south of Ballantyne Road which are located within the 45 dBA noise level contour as shown on Page 4 of 4 in the Marshall Day Acoustics Ltd report dated 10 September 2010; and residents of the properties at Orchard Road known as 83 and 89 Orchard Road. For the avoidance of doubt it is recorded that this lesser number of residents is permitted to be notified (when compared to those to be notified in terms of condition 14) only with the written agreement of the Chief Executive.
16. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:
- a. To deal with any adverse effects on the environment which may arise from the exercise of the consent and which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.
 - b. To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.
 - c. To avoid, remedy or mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

28 APR 2010

Location Plan

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLANS: RM 100294

24/5/11

Date _____

RW

Initials

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