

**BEFORE THE QUEENSTOWN LAKES**  
**DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act  
1991

**AND** in the matter of the Queenstown Lakes  
Proposed District Plan

**AND** in the matter of Hearing Stream 13 –  
Queenstown Mapping

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**LEGAL SUBMISSIONS FOR MIDDLETON FAMILY TRUST (#338)**

**Dated this 18<sup>th</sup> day of August 2017**

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MAY IT PLEASE THE COMMISSIONERS

**Introduction**

[1] Low Density Residential (“LDR”) and Rural Residential (“RR”) Zoning sought

[a] 53ha Low Density Residential (“LDR”) (1060 lots)<sup>1</sup>

[b] 18ha Rural Residential (“RR”) (45 lots)

**Amendments to Rezoning Proposal**

[2] Set out in Mr Geddes’s evidence from paragraph 3.2; but in summary:

Escarpment Protection Area

[3] Extended extent of area. Includes a consent notice mechanism preventing building and subdivision.

Open Space Central Corridor

[4] Protects open space (no building or subdivision) with clearance of pest species and replacement with native planting. Provided for by way consent notice mechanism.

Open Space Edge Protection (Open Space Pastoral<sup>2</sup>)

[5] No building or subdivision, cleared of pests and to remain pastoral. Provided for by consent notice mechanism.

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<sup>1</sup> Note extent of Middleton land that is in the ONL (small part of LDR only)

<sup>2</sup> Referred to in Mr Geddes evidence as “Open Space Protection Area, but is depicted on the plans as Open Space Pastoral Area.

Low Density Residential

- [6] Zone provisions set out in Mr Geddes's Appendix 3 (based on Council's reply version).
- [7] Tucker Beach Overlay - applied to the land outlined in red on Mr Geddes's Appendix 1. Amendments provide for a maximum height of 5.5m above ground level.
- [8] The land outlined in yellow will be subject to the LDR provisions, QLDC reply version.
- [9] Developable area of 53ha – 1060 dwellings.

Rural Residential

- [10] Adopts the provisions as per QLDC reply version within the RR part of the site, being the area the subject of the orange diagonal lines.
- [11] 18ha – 45 dwellings

Tuckers Beach Trail

- [12] Trail is denoted in pink.
- [13] Pedestrian and cycle access to southern end of Lake Johnson from the formed end of Hansen Road traversing the edge of the escarpment to the southern end of Lake Johnson where it follows the outlet of Lake Johnson to Tuckers Beach Reserve.

Access

- [14] Shown in blue, provides a direct connection to the western end of Tuckers Beach Road.

- [15] Tuckers Beach Road shown in burgundy. Upgrading of current unformed portion of Tucker Beach Road required.

### **Legal Principles**

- [16] The submitter has no particular issue with the legal principles set out in the Council's opening submissions for Stream 13. How these principles are applied in the context of the land covered in the submission is to all intents and purposes an evidence based exercise. To that end, I have, in the main, restricted my legal submissions to addressing matters of law or interpretation that supplement what other Counsel have said, or where I have a different view than that shared by other counsel.

### **National Policy Statement on Urban Development Capacity ("NPS")**

- [17] As a general comment, a key concern remains for the submitter that a significant proportion of development opportunities are located in more dispersed high priced areas that do not cater for a growing proportion of the residential population,<sup>3</sup> and that realisable capacity lacks robust assessment.
- [18] In this regard, the Submitter is concerned that there appears to be an inconsistent approach being taken by the Council when it comes to assessing realisable capacity. The Council needs to provide an explanation of how it can give evidence to this hearings panel that there is sufficient development capacity to last us until 2048 (which it says takes account of realisable capacity), yet on the other hand promotes the inclusion of "new" urban development at or in the vicinity of Ladies Mile based on concerns about realisable capacity<sup>4</sup>.

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<sup>3</sup> Geddes at paragraph 5.14

<sup>4</sup> Report on proposed amendment to the Council's Lead Policy for Special Housing Areas to Include Ladies Mile dated 13 June 2017  
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- [19] The submitter agrees with the Council's position in terms of the relevance and extent of consideration of the NPS.<sup>5</sup>
- [20] With respect to legal submissions for Oasis, I do take issue with the interpretation of the applicability of the NPS to the submission land<sup>6</sup>. The submission is to the effect that as the submission land does not form part of the "Queenstown urban environment", the submitters case is fundamentally flawed.
- [21] In my submission, the requirement for there to be an "urban environment"<sup>7</sup> is what triggers policies PA1 – PA4. The submission land is not part of the existing urban environment – it is rural land. It is not a requirement of PA1 that development capacity must be provided within an existing urban environment. The submission land is rather available to provide that development capacity - being the *out* of the "up or out" referred to in the preamble.
- [22] The Council chooses where and how to provide that capacity. The NPS anticipates that new development capacity may be provided on greenfield land, outside what may be the confines of the current urban environment.
- [23] Oasis also appear to accept the proposition<sup>8</sup> that there may be a requirement for consideration of urban development into Outstanding Natural Landscapes ("ONL's"), however go on to say the matter is one for the future, based on Council's evidence that there is sufficient development capacity to 2048.
- [24] Oasis refers to the future development strategy required under the NPS.<sup>9</sup> In advance of that further detailed work being done, and Mr Geddes's criticisms of the Council's dwelling capacity model, and

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<sup>5</sup> Paragraph 2.14 - 2.16 Counsel for the Council's opening legal submissions

<sup>6</sup> From paragraph 10

<sup>7</sup> By reference to the definition in the NPS

<sup>8</sup> Paragraph 27, legal submissions

<sup>9</sup> Paragraph 28, legal submissions

inconsistent approach to progressing Special Housing Areas (“SHAs”), it is arguable that it is premature for the Council to be recommending rejection of rezoning requests based on it fulfilling the requirements of the NPS.

### **Landscape considerations**

[25] Section 6(b) protects Outstanding Natural Landscapes from inappropriate subdivision, use and development. Without landscape evidence to support the rezoning, the submitters proposal is particularly challenging both in terms of section 6(b) considerations, and for that part of the submission land that lies outside of the ONL.

[26] The evidence for the submitter is that s6(b) matters do not trump other considerations, such as the NPSUDC and the needs of the greater community to provide for social and economic wellbeing.<sup>10</sup>

[27] Counsel for Oasis in the Basin appears to agree, where she acknowledges that there may be a requirement for urban development in ONL’s<sup>11</sup>.

### **Servicing**

[28] The submission land can be efficiently and effectively serviced with infrastructure. Mr Geddes will provide the Panel an update of where discussions have got to between Mr Hansen and Mr Glasner.

### **Traffic and access**

#### Carr

[29] Roundabout access is challenging to build. Capacity constraint on Tucker Beach Road.

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<sup>10</sup> Geddes paragraph 5.42, 5.47

<sup>11</sup> Paragraph 27 Oasis Legal Submissions  
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- [30] NZTA – an improvement scheme has been identified at Tucker Beach Road/SH6 intersection (underpass).
- [31] If scheme (or some form of it) proceeds, Tucker Beach Road is the most viable and appropriate option for access.

*Bartlett*

- [32] Can access site from two possible locations:
- [a] New “4<sup>th</sup> arm” off the EAR roundabout
  - [a] Tucker Beach Road
- [33] Both feasible and will require input from NZTA. NZTA looking into intersection capacity and safety improvements at Tucker Beach intersection. Prefers both access arrangements are available to better distribute traffic.

**Development contingent on future events occurring**

- [34] The Council is not opposed in principal to a potential deferred zone, or a type of trigger rule deferring development until certain works have been completed<sup>12</sup>.
- [35] In the event the site is to be rezoned, the evidence with respect to traffic and access to the site supports such a trigger rule or deferred zoning. Mr Carr in his evidence goes so far as to say that he has confidence that some form of improvement scheme will be implemented by NZTA at the Tucker Beach intersection in the short term and that any such scheme will improve the capacity of the intersection.

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<sup>12</sup> From paragraph 7.1 QLDC legal submissions  
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## Rural Residential Zoning

- [36] Dr Read – first statement of evidence – part of the area being addressed is in the Wakatipu Basin Land Use Study (“WBLUS”) area (RR) therefore excluded from consideration in this evidence.<sup>13</sup>
- [37] Ms Banks – section 42A report/first statement of evidence – RR rezoning request, not opposed on landscape grounds – but outstanding issues as to servicing. In principle supportive of a RL zoning<sup>14</sup>.
- [38] *Supplementary evidence of Dr Read* – belated consideration/assessment of RR zoning request. No opposition on landscape grounds and thus disagrees with the findings in the WBLUS, although supports a Rural Lifestyle density.
- [39] Despite Dr Reads evidence, and her own initial recommendation, Ms Banks in her supplementary statement recommends the RR and RL rezoning be rejected.<sup>15</sup> There is no analysis of why she has departed from her prior recommendation.
- [40] There is an element of unfairness and lack of natural justice at play in the manner in which the reporting officers have addressed the Rural Residential rezoning request over the submitters land. While it is accepted that memoranda were issued with respect to the land that would be in/excluded from this hearing stream, Dr Read’s evidence and the statements therein were relied upon by the submitter to the intent that the Council had cvv decided not to consider the RR zoning as part of this hearing stream. Furthermore, to the extent it was discussed in the initial section 42A report by Ms Banks, a servicing issue, rather than a landscape one was identified as the barrier to rezoning. As a consequence, the submitter did not request its

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<sup>13</sup> Paragraph 10.2

<sup>14</sup> Discussion at paragraph 13.19

<sup>15</sup> Discussion from paragraphs 5.55-5.61



landscape architect to produce evidence addressing the Rural Residential zoning.

- [41] Added to this is the issue of the timing of the assessments – contained as they are in rebuttal evidence, rather than the primary evidence for the Council. To comprehensively address those assessments and recommendations is something that shouldn't be left to a supplementary statement or to be covered off in a summary statement of evidence.
- [42] This calls for a solution that accords with the principals of natural justice. The submitter should be entitled to a fair opportunity to present evidence in response to the position belatedly put forward by the Council. It has not been afforded that opportunity and confusion has been introduced into the mix as a result of statements made in Dr Read's evidence. It is submitted that the commission defer consideration of the RR zoning request, and that it be heard as part of the greater WBLUS zoning hearings.

### **Positive Benefits**

- [43] As recognised by Mr Goldsmith,<sup>16</sup> rezoning of the Middleton land offers significant benefits in terms of a community (within and outside the zone) who would enjoy public access to Lake Johnson, and a link from Tucker Beach Road to Hansen Road.
- [44] Subdivision rules could, as suggested by Mr Goldsmith, be tailored to realise this significant benefit.

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Jayne Elizabeth Macdonald  
Counsel for Submitter

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<sup>16</sup> Paragraph 24  
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