

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

**LEGAL SUBMISSIONS FOR DARRYL SAMPSON & LOUISE
COOPER (#495)**

Dated this 23rd day of August 2017

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MAY IT PLEASE THE COMMISSIONERS

Introduction

- [1] These legal submissions are presented on behalf of Darryl Sampson and Louise Cooper (Submitter #495) (“Submitters”) in respect of Hearing Stream 13, Queenstown Mapping of the Queenstown Lakes District Council Proposed District Plan (“PDP”).
- [2] The Submitters are the owners of land located at 182D Arthurs Point Road, Queenstown. The site has a split zoning, with part zoned Rural Visitor (not subject to Stage 1 of the Review) and part zoned Rural General (subject to Stage 1 of the Review). For the purpose of these submissions I refer to the land included in Stage 1 of the Review proposed to be zoned Rural as “Site”.

Overview

- [3] These submissions set out the following matters:
- a. an overview of the relief sought;
 - b. consideration of the remaining issue between the Submitters and Council’s planner; and
 - c. an assessment of scope considerations in relation to the relief sought by the Submitters.

Overview of relief sought

- [4] The Site is outside the Urban Growth Boundary (“UGB”) and subject to the Outstanding Natural Landscape (“ONL”) classification. The Submitters preference is to have the Site zoned Rural Visitor (“RV”). They also seek that the Site be located within the UGB and the ONL classification follows the boundary of the Site. In the event the Panel finds itself unable or unwilling to recommend in favour of the original

relief sought, the Submitters request that the Site be zoned Medium Density Residential.

- [5] Expert evidence in this Hearing Stream will be provided by Carey Vivian (planner) and Ben Espie (landscape architect), and has already been filed on behalf of the Submitters.

Remaining issue as between the Submitters and Council

- [6] Council's planning, landscape, transport, ecology and infrastructure experts do not oppose the proposed rezoning of the Site per se. The main area of difference between Council and Submitters is the process by which the Site is to be rezoned.

- [7] Council's planner, Ms Devlin, takes the view that any such re-zoning would need to be notified through a variation in Stage 2 of the PDP review (or any subsequent stage when the RV provisions or any provisions in replacement thereof are notified)¹.

Process

- [8] The submitters find themselves in the unfortunate situation of being in a "no-man's-land" as a result of the staged review process that has been adopted by the Council.

- [9] There is also a degree of unfairness and prejudice arising from the staged review in terms of process², particularly where, the more/most appropriate zone for that Site is not part of the Stage 1 review³. Because the Site has been included in Stage 1 of the Review, the submitters must take part in the process to rezone the land, or otherwise risk the land retaining the Rural zoning and thereafter "fall through the cracks" so to speak.

¹ S 42A Report/Statement of Evidence of Rosalind Devlin dated 24 May 2017(at paragraphs 51.15 and 51.16) and Rebuttal Evidence of Rosalind Devlin dated 7 July 2017 (at paragraphs 17.3 to 17.5).

² See also Mr Vivian's comments at paragraphs 5.11 to 5.15 in his Statement of Evidence dated 9 June 2017) in this regard.

³ Devlin, rebuttal evidence at paragraphs 17.3, 17.4.

- [10] As I indicated earlier, the submitter's preferred outcome is for the site to be zoned RV zone, consistent with the balance of the submitter's property. Mr Vivian's evidence is to the effect that the RV zone provisions "give effect" to the higher order PDP provisions and can thus "sit" under that framework.
- [11] It is accepted however that the operative RV provisions (or an iteration of them) would have to be "transplanted" into the PDP and be able to stand independently of any operative rules that may or may not survive a subsequent stage of the review. To this end, there may be a question of the efficiency of including this zone in the PDP, depending on the area/extent of land to which it may have application.
- [12] The only other realistic route for any RV type rezoning to occur is in a subsequent stage, and on the likely proviso that a variation is initiated, at the same time, to revisit the Site's zoning⁴.
- [13] Understandably, the submitter is reluctant to place all of its eggs in one basket and rely in a recommendation of the reporting planner⁵, and with respect, from this Panel. Therefore a "two-pronged" approach is suggested as the appropriate way forward:
- [a] The Panel make a recommendation, consistent with the substance of the evidence it has before it, that the Site be included in the subsequent stage of the Review addressing the RV zone at Arthurs Point, noting that a variation may be required if Stage 1 of the review is not yet operative.
- [b] In the interim a "PDP-appropriate" zone is applied to the Site.

What is the "PDP-appropriate" zone

- [14] Mr Vivian will give evidence that a Medium Density Residential zoning ("MDR") is an appropriate zone for the Site. From a

⁴ Unless the Stage 1 rezoning is operative, which is unlikely given current Council estimates to notify the remaining stages (2-5) of the review.

⁵ Devlin, S42A Report/Evidence, paragraph 51.16.
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jurisdictional standpoint, it is open to the Panel to recommend that such alternative relief be granted, as the relief sought is within the scope of original submission #495.

- [15] The effects of development under a MDR zoning will certainly be no greater than those that could arise under a RV zoning. Mr Vivian addresses this in further detail.

Development restrictions – terrace area

- [16] During questioning of Ms. Devlin by the Hearings Panel, an issue was raised with respect to split zoning the site urban and rural vs. zoning the whole site urban with a building restriction overlay over the escarpment face. I understand the Hearings panel’s concern with such a split zoning was the effect of the definition of “site” in the PDP when applied in this case. The definition of “site” provides that where any site is crossed by a zone boundary, then the site is deemed to be divided into two or more sites by that zone boundary.

- [17] A better outcome would appear to be to zone the entire site urban with the imposition of a “no-build” zone in respect of the terrace. This proposal is consistent with the relief sought in original submission which requested the Site in toto be re-zoned Rural Visitor, with the removal of the ONL classification. There is no scope issue with such an outcome.

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