BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER **Of the Resource Management Act 1991 ("the Act")**

AND

IN THE MATTER **Of Stage 2 of the Proposed Queenstown Lakes District Plan**

SUBMISSIONS ON BEHALF OF TEECE IRREVOCABLE TRUST NO 3 – SUBMITTER 2599

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MAY IT PLEASE THE PANEL

1 INTRODUCTION

1.1 By decision dated 02 August 2018, the Chair has ruled that the Teece Irrevocable Trust No.3 (the Trust) can seek a visitor accommodation sub-zone on a 278Ha property located at Mill Flat, Glenorchy (the Property).

1.2 The Trust's vision is to develop a high quality lodge and associated facilities on the property, one which will enable visitors to the District to experience at first hand the splendour and high quality amenity of the surrounding landscape, as well as the multiple natural attractions on offer within the District.

1.3 Putting this vision into in a broader context, the importance of the visitor industry to the District and all the benefits it brings is beyond question. Similarly, it cannot be disputed that a percentage of visitors will wish to base themselves in a rural setting. It is this demand which the Trust aims to provide for, while at the same time adhering to principles of sustainability in terms of design and environmental impact.

1.4 The Trust holds the view that identifying a suitable location for a high quality lodge and associated facilities on its Property is a pro-active and positive first step in further meeting the demand for visitor accommodation facilities within the District.

1.5 In brief, the Trust seeks that an Upper Glenorchy Visitor Accommodation Sub-Zone applies over two discreet areas of the Property i.e. Areas A & B described in the evidence of Mr. Espie and Ms. Stewart. Both Areas have been identified by Mr. Espie as locations within the Property where development can readily be absorbed into the environment without compromising important landscape and amenity values.

1.6 The evidence of Ms Stewart includes detailed provisions to regulate development within Areas A & B. Standards are proposed which limit the total development footprint within both Areas to 2400m^2, which in site coverage terms represents less than 1% of the overall Property. Restrictive height controls are also proposed to minimise any potential for visual effects. Finally, all development will be subject to a restricted discretionary activity consent process so as to ensure that the final development does indeed meet the outcomes anticipated by the District Plan in respect of the Rural Zone. The intent behind the matters of discretion is to focus on the key issues, as expressed in the relevant objectives and policies.

1.7 For the avoidance of doubt, the Trust does not seek that the UGVASZ apply over all of the Property.

2 SCOPE OF SUBMISSIONS

2.1 These submissions address the following matters:

(a) Panel evaluation of the Visitor Accommodation Sub-Zone to date;

(b) Statutory Framework/ Appropriateness of a Restricted Discretionary Activity Status; and

(c) Comments on Council Evidence.

3 PANEL REPORTS TO DATE ADDRESSING THE VISITOR ACCOMMODATION SUB-ZONE APPROACH

3.1 In Report 4B, the Panel (Commissioners Nugent & Coombs) addressed the issue of the Visitor Accommodation Subzone within the Rural Residential & Lifestyle Zones, as covered by Chapter 22.

3.2 It is clear from Report 4B that the hearing in question focused on the appropriateness of a single directional policy as well as a controlled activity rule proposed to manage development within identified VASZ's. Reference was made to a specific VASZ (Matakauri Lodge), which had been identified by the Council in the notified version of the Proposed Plan and subsequently supported by planning evidence on behalf of the Council (Robert Buxton). Reference is also made to two other VASZ's within the Report at Speargrass Flat & Makarora.

3.3 The Panel recommended deletion of a policy suggesting that visitor accommodation should only occur within identified locations, as this was inconsistent with other policies which provided: "... *that visitor accommodation should be able to occur in the two zones where the overall qualities of the relevant zone are retained...* In other words, the Panel did not appear to favour the "winner picking" approach of the relevant policy.

3.4 The Panel went to analyse the controlled activity provisions notified for VASZ's as well as potential alternatives:

> *43. Looking at the Strategic Policies (in Chapters 3 and 6), it is clear that the provision for visitor accommodation outside the urban areas is contemplated only where they would protect, maintain or enhance landscape quality, character and visual amenity values. This rule does not enable consideration of any of those characteristics, other than in respect of those scenic and amenity values relating to water bodies.*
>
> *44. We have considered whether this rule could be amended by extending the matters control is reserved over so as to include the deficiencies noted above. However, when one considers the range of matters control would*

need to be reserved over and the policy direction set by the PDP, we are satisfied that a controlled activity status for such visitor accommodation would be inappropriate. In our view, only by having the ability to refuse consent would the Council be able to achieve the policies of the PDP when considering applications for visitor accommodation in a VASZ.

45. Having reached that conclusion, we have then examined whether provision should be made for visitor accommodation in VASZs as a restricted discretionary activity. However, we are confronted with two difficulties. First, we have no evidence concerning the environment within or surrounding the two VASZs in Speargrass Flat or Makarora. Thus, we are unable to be satisfied that we would be able to create an adequate set of discretions for those two sites.

46. Second, as it stands, the range of matters discretion would need to be restricted to at a minimum so as to give effect to the objectives and policies of the PDP, as discussed above, would be as extensive as to be tantamount to an unrestricted discretionary activity. Consequently, we conclude that provision for visitor accommodation in the VASZs should be a discretionary activity.

3.5 There are a number of matters arising from the Panel's findings in Report 4B. First, they are not binding on the present Panel in respect of the appropriateness of the relief sought by the Trust. The decision dealt with a different Zone and different factual circumstances and indeed the decision is subject to a broad ranging appeal from Matakauri Lodge Limited.

3.6 Secondly, and most importantly it seems that the appropriateness of a restricted discretionary approach in either general or specific terms was not fully argued before the Panel. Certainly, no expert evidence on this particular matter was filed in advance of the hearing by witnesses on behalf of either the Council or Matakauri Lodge. The same of course could not be said to be the case here.

3.7 In Report 17-11, a differently constituted Panel (Commissioners' Nugent, Crawford & Mountfort) turned its mind briefly to the possibility of a Visitor Accommodation overlay on Woodbine Station, which is zoned Rural. It concluded:

35. We also note that the Stream 2 Panel is recommending the deletion of the Visitor Accommodation Sub-Zone from the Rural Lifestyle Zone. Without evidence as to its appropriate application, including objectives, policies and rules, along with a section 32 analysis, we are not prepared to re-instate it for this site.

3.8 The above is interpreted as a signal that future Panels (the present one included) may be open to considering a VASZ for other sites, subject of course to being satisfied on the evidence that it is appropriate. To conclude otherwise would be tantamount to predetermination.

4 STATUTORY FRAMEWORK

4.1 In terms of the relevant framework for decisions on the Proposed District Plan, the Panel will have received multiple submissions to date on this matter.

4.2 Submissions have included, for example, reference to cases such as *A King Family Trust v Hamilton City Council* [2016] NZ EnvC 229, where a summary of the overall framework was set out at paragraphs 9ff:

[9] The legal framework for plan reviews is set out in sections 31, 32 and 72-76 of the RMA. The matters that need to be addressed were comprehensively set out by the Court in ***Colonial Vineyard Ltd v Marlborough DC*** *and* ***Reiher v Tauranga City Council*** *as follows:*

"[10] In examining a provision under the Act, including Section 32, we must consider:

(a) Whether it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act;

(b) Whether it is in accordance with Part 2 of the Act;

(c) If a rule, whether it achieves the objectives and implements the policies of the plan; and

(d) Whether having regard to efficiency and effectiveness, the provisions are the most appropriate way to achieve the objectives of the proposed plan, having regard to the benefits, the costs and the risks of not acting.

[11] In doing so the Court must take into account the actual and potential effects that are being addressed to consider the most appropriate provisions, if any, to respond to this.

[10] As well, s 74 of the RMA requires a territorial authority to prepare and change its district plan in accordance with its functions under s 31 (among other things). These functions include the establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district.

4.3 In its very first decision on the Stage 1 Chapters, the Panel noted that *Colonial Vineyards* predated the 2013 amendments to s 32 of the Act and, accordingly, these amendments should be incorporated into the statutory framework. In respect of the present proceedings, further amendments to the principal Act in 2017 also need to be incorporated into the framework, albeit these amendments are not of any particular significance in the context of the relief sought by the Trust.

4.4 It is also correct to say that not all of the statutory framework must be applied in the present context. The Trust's evidence does not challenge the various objectives and policies of the Stage 1 decision, as they relate to the integrated management of resources within the Rural Zone. Furthermore, to date the Trust's experts have not considered it necessary to incorporate any new policies to support its proposal for a VASZ on the Property. Rather, the Trust's position is that the package of controls set out in Ms. Stewart's evidence, including site coverage and height limits, underpinned by a restricted discretionary activity rule represent all that is required in terms of necessary amendments to the District Plan.

4.5 For present purposes, the key question therefore is whether or not the Trust's proposal is "more appropriate" (in s 32 terms) than the outcome sought by the Council i.e. that visitor accommodation on the Property should only be established pursuant to the default fully discretionary consent process.

4.6 In respect of the "more appropriate" test under s 32, the Court in *A A King* stated at para 12:

[12] The test under s 32 has been considered in many decisions of the Environment Court, including Gisborne District Council v Eldamos Investments Limited, Long Bay-Okura Great Park Society Incorporated v North Shore City Council, Colonial Vineyard Limited v Reiher referred to above to name a few. As well, the High Court considered it in Shotover Park Limited and Remarkables Park Limited v Queenstown Lakes District Council. In Shotover Park Limited, the term most appropriate was applied as follows:

> *[57] The RMA objective is "the most appropriate way" to achieve the purposes of this Act. See above, ss 32(2) (a) and (b). The phrase "the most appropriate" acknowledges that there can be more than one appropriate way to achieve the purpose of the Act. The task of the territorial authority is to select the most appropriate way, the one it considers to be the best.*

4.7 Notably, a decision maker is not required to arrive at the optimal planning solution; rather the task is to decide which of the reasonably practical alternatives the best is.

4.8 In a s 32 context, the benefits of a restricted discretionary v fully discretionary status for subdivision were discussed at some length by Nigel Bryce on behalf of the Council (Stage 1, Chapter 27). In his executive summary, Mr. Bryce states:

> *...A Restricted Discretionary Activity framework provides for a narrower and more transparent rule framework for developers and applicants to advance through, whilst still providing for the ability to decline an application should it be determined that it doesn't achieve the desired outcomes of the PDP*

4.9 Mr. Bryce then expands on the benefits of a restricted discretionary activity throughout his evidence. Examples include:

10.37. In terms of efficiencies delivered through the removal of assessment matters within the ODP, I note that other zone chapters supporting Stage 1 of the District Plan Review have been streamlined by removing assessment criteria, yet still retain both Controlled and Restricted Discretionary Activity classes. As such, I believe that a Discretionary Activity regime is not necessarily required in order to make Chapter 27 more efficient to use and administer. I consider that a Restricted Discretionary Activity regime for subdivision, where matters of discretion are targeted to address specific issues could also introduce efficiencies. Further, this alternative regime is likely to be more effective in guiding plan users as to those matters that are central to achieving good subdivision design, appropriate infrastructure and servicing requirements, and consequently appropriate environmental outcomes.

10.53. I have considered the submissions regarding the potential to generate unnecessary complexity, cost and time delays in relation to a Discretionary Activity subdivision rule. In my experience preparing and assessing Discretionary Activity subdivision applications invariably leads to greater costs associated with the preparation and assessment of an application, given that discretion or control is not limited. Applications require a broader assessment of environmental effects and in the case of a more complex subdivision proposal could result in significant additional costs and delays in advancing a subdivision application. These costs are likely to be passed onto future lot purchasers, and could further add to increased section costs. The economic costs of preparing subdivision applications under a Discretionary Activity rule regime are discussed within the section 32 evaluation. Specifically, it is acknowledged that the removal of specified criteria could result in a loss of direction or guidance in the application and processing of subdivision proposals, where the status allows for the application to be declined.41

10.54. In my opinion, the economic costs to the applicant and potential social costs to the community (through increased section costs) could be reduced in those areas identified as being suitable for development (being the Rural Lifestyle and urban zoned area) by adopting a Restricted Discretionary Activity regime. Such a regime would require the matters of discretion over which the Council is considering an application to be specified, and as such provide certainty to applicants' yet appropriate control to Council. This may better focus the range of matters that are to be considered and therefore make the provisions more effective for plan users (both in terms of preparing applications and processing them).
[Emphasis added]

4.10 It is submitted that the many benefits of a restricted discretionary activity over a fully discretionary activity can and do apply equally to land use consent

applications. Indeed, Ms Stewart's evidence echoes Mr. Bryce's carefully expressed opinions on these benefits.

4.11 There is no challenge in the evidence on behalf of the Trust that fully discretionary activity status for visitor accommodation should not apply over the majority of the Property. Fully discretionary activity is considered appropriate, particularly in the open areas of the Property where it is likely to be more difficult for development to achieve the outcomes anticipated by the relevant objectives and policies.

4.12 Rather, the expert evidence of Mr. Espie is that there are suitable locations within the Property where a limited scale of development is assessed as appropriate. Having identified both suitable locations and development limits, the proposed restricted discretionary activity rule prepared by Ms. Stewart introduces a mechanism whereby the Trust will be able to prepare a focused consent application with a degree of certainty in mind that consent can be granted if all matters are appropriately addressed. At the same time, the proposed rule reserve the ability on the Council's behalf to decline an individual proposal if it is not satisfied that it achieves important objectives and policies in the District Plan.

4.13 Taken together it is the combination of:

- The identification of suitable locations for development;
- The express limits on development within these areas;
- The benefits of a restricted discretionary activity approach; and
- The ability of the Council to decline inappropriate applications;

which makes the approach proposed by the Trust more appropriate or better than having to fall back on the default discretionary activity category.

5 COUNCIL EVIDENCE

5.1 It appears to be a central point of the evidence of Ms Devlin (Supplementary Evidence of 10 August 2018 that there is no policy support in the District Plan for the relief sought by the Trust. Ms Devlin goes so far as to state [para 3.13] that visitor accommodation sub-zones are only enabled within the Urban Growth Boundaries.

5.2 It is acknowledged that Ms. Devlin's evidence pre-dated the Trust's significantly more refined position of the Trust as set out in its evidence. In that respect, there is no argument that the relief originally sought (in terms of a Rural Visitor Zone for the entire Property) would not be appropriate.

5.3 That aside, it is submitted that the policy framework for the Rural Zone supports diversification, which quite clearly includes the provision of visitor accommodation. In particular Objective 21.2.9 and supporting policies read:

21.2.9 - Objective Provision for diversification of farming and other rural activities that protect landscape and natural resource values and maintains the character of rural landscapes.

21.2.9.1 Encourage revenue producing activities that can support the long-term sustainability of the rural areas of the district and that maintain or enhance landscape values and rural amenity.

21.2.9.2 Ensure that revenue producing activities utilise natural and physical resources (including existing buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural resources.

21.2.9.3 Provide for the establishment of activities such as tourism, commercial recreation or visitor accommodation located within farms where these enable landscape values and indigenous biodiversity to be sustained in the longer term. [Emphasis added]

5.4 The District Plan is not prescriptive in terms of the methods that can or cannot be used to implement the abovementioned Objective. Accordingly, methods such as a visitor accommodation sub-zone can be included within the Rural Zone subject to a thorough assessment against the statutory framework outlined above.

5.5 From a landscape perspective, the unchallenged evidence of Mr. Espie is that the above Objective and associated policy 21.9.2.3 can be achieved by appropriately controlled development within Areas A & B. Mr. Espie holds the same opinion in respect of the policy framework for development within outstanding landscapes.

5.6 Ms Bowybes in her rebuttal evidence of 31 August 2016 agrees with and adopts the evidence of Ms Devlin, notwithstanding the timing of the latter's evidence. Ms Bowybes notes [para 6] that Ms. Stewart does not suggest any amendments to the objectives and policies of the Plan which currently: *support the discretionary activity regime for VA..."*

5.7 If it is implied that amendments are required to the objectives and policies in order to support the relief sought by the Trust, this is not accepted. Rather, the evidence on behalf of the Trust is that the UGVASZ proposed is better at achieving these objectives and policies.

5.8 Ms Bowybes is critical of the list of matters of discretion included by Ms Stewart in her package of controls. While this is more of a plan drafting matter, as opposed to being integral to a s 32 assessment, the reality is that there are no hard and fast rules as to ideal number of matters of discretion. This is well illustrated by a reading of the District Plan (decisions version) itself, where the matters of discretion range from a single matter to some 14 in total for a range of subdivision categories.

5.9 It is accepted that if the matters of discretion are too extensive, then this would likely render any distinction between a restricted vs fully discretionary activity status meaningless, albeit non-environmental matters such as precedent and plan integrity would not be considered relevant under the former. However, it is submitted that the matters of discretion suggested by Ms Stewart are appropriately targeted to address the key issues associated with development within Areas A & B and to achieve/implement the relevant objectives and policies.

5.10 As a final comment, it is notable that Ms Bowybes provided no evaluation whatsoever as to whether or not the package of controls offered by the Trust is more appropriate (in s 32 terms) than the default discretionary activity category.

6 CONCLUSION

6.1 There are recognised benefits to a restricted discretionary approach, as reflected in the use of this consent status throughout the District Plan (Decisions Version).

6.2 In the present case, the unchallenged landscape evidence is that there are locations within the Property where a limited scale of development can be absorbed into the surrounding landscape. Accordingly, the use of a more focused restricted discretionary activity status within these select locations is more efficient the default discretionary activity category. In other words, it is considered appropriate to adopt a less restrictive consent status for areas that can readily be distinguished from the balance of the Property where the default category is to apply.

6.3 The package of controls suggested in the Trust's evidence will ensure that the final design of the development can achieve all of the objectives and policies of the District Plan. At the same time, these controls will not add to the complexity of the District Plan in any meaningful way.

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17 September 2018