

**Before the Panel of Hearing Commissioners  
For the Queenstown Lakes Proposed District Plan**

**In the Matter of**

of the Resource Management  
Act 1991

**And**

**In the Matter of**

of the Queenstown Lakes  
Proposed District Plan – Stage 2

**And**

**In the Matter of**

of Hearing Stream 14 – Wakatipu  
Basin

**Summary of Legal Submissions for  
Boxer Hills Trust (Submitter 2385 and  
2386) and Trojan Helmet Limited  
(Submitter 2387 and Further Submitter  
1157)**

Dated: 18 July 2018

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## Introduction

1. The presentation today pertains to the submissions by Trojan Helmet Limited (**THL**, Submitter 2387) and Boxer Hill Trust (**BHT**, Submitter 2385 and 2386) (together the **Submitters**).
2. The Submitters together own approximately 190ha of land located directly southwest of Arrowtown, which extends between Arrowtown-Lake Hayes Road in the west to McDonnell Road in the east, and Hogans Gully Road in the south.
3. The land includes:
  - (a) approximately 162ha of golf course which is owned by THL and known as "The Hills" golf course (addressed by Submission 2387). For this land THL seeks a bespoke zone - "The Hills Resort Zone" (**HRZ**) - which would recognise and provide for the ongoing operation and development of the existing golf courses and related activities, along with providing for future residential and visitor accommodation activities (including staff accommodation) in accordance with a structure plan. This land is zoned Wakatipu Basin Rural Amenity Zone (**WBRAZ** or **Amenity Zone**) in the notified Proposed Plan, but is recognised as having a "moderate" capability to absorb further development in the Wakatipu Basin Land Use Study (**WBLUS** or **Land Use Study**) and Schedule 24.8 of the Proposed Plan;
  - (b) an approximately 8.4ha block which fronts McDonnell Road which is owned by BHT (addressed by Submission 2386) and currently contains a driving range associated with The Hills golf course, for which a Wakatipu Basin Lifestyle Precinct (**WBLP** or **Precinct**) zoning is sought (albeit with some amendments). This land is located within the WBRAZ in the notified Proposed Plan, but is identified as having a "high" capability to absorb development in WBLUS, which recommends its future urbanisation; and
  - (c) an approximately 19.7ha block adjacent to the intersection of Hogans Gully and the Arrowtown Lakes Hayes Roads, which is also owned by BHT and is currently grazed (addressed by

Submission 2335). This land is included within the WBLP in the notified Proposed Plan, which BHT supports, subject to some amendments to the Precinct's provisions.

### Evidence

4. The Submitters have lodged comprehensive evidence in support of their submissions from the full range of resource management experts.
5. A full range of expert reports were also lodged by THL in February 2018, in support of its submission for the HRZ.
6. The evidence for Submitters demonstrates that there are no technical, physical, landscape, planning or other reasons for refusing the submissions. The evidence also demonstrates that the zonings sought by the Submitters are the "most appropriate" for achieving the Act's purpose, and in terms of THL's submission for the HRZ and BHT's submission for a WBLP zoning of its McDonnell land, that the Submitters' proposed zonings are far superior to the notified zonings.
7. Unless the Panel has a specific preference as to the order in which it hears from the Submitters' witnesses, they will be called as follows:
  - (a) Emma Hill – Director of THL (Submission 2387);
  - (b) Brendan Allen – General Manager of The Hills Golf Club (Submission 2387);
  - (c) Richard Tyler – Masterplanner and Landscape Architect (Submission 2387);
  - (d) Anna Marie Chin – Architect (Submission 2387);
  - (e) Yvonne Pfluger – Landscape Architect (Submission 2386 and 2387);
  - (f) Stephen Peakall – Acoustician (Submission 2387);
  - (g) Tony Penny – Traffic and Transportation Engineer (Submission 2385, 2386 and 2387);
  - (h) Fraser Colgrave – Economist (Submission 2387).
8. It is noted that Mr Hadley, Civil and Structural Engineer, has been excused from attending the hearing as there is no contest to his evidence (noting the Council's infrastructure witness, Mr Jarvis, accepts Mr Hadley's evidence) (relevant to Submission 2385, 2386 and 2387). Mr Hadley's

evidence in respect of the HRZ, the Hogans Gully land and the McDonnell land is that the land can be feasibly serviced with potable, waste and storm water by utilising methods that do not impact upon the Council's network (or alternatively, in some instances connecting to that network subject to payment of the necessary development contributions), and that there are no natural hazard or other constraints (e.g. contamination) to the residential development of the land in accordance with the Submitters' proposals.

9. Due health issues, the Submitters' planning witness, Mr Brown is unable to present his evidence today but has been allocated time to do so next week (on 25 July). Mr Brown will present a revised set of HRZ provisions which take account of and respond to the matters raised by the Council in its evidence. Some of these change will be foreshadowed today by the Submitters' other witnesses. It is noted that much of what been raised by the Council in this respect has been raised in rebuttal evidence when it could, and in my submission should have been raised in its evidence in chief, as it responds to material that was included in THL's submission lodged in February 2018. Accordingly, some of the THL's witnesses' evidence summaries presented today will be slightly longer than one page (although not by much) in order to address the matters raised in the Council's rebuttal evidence.
10. Detailed legal submissions have been pre-lodged in respect of the Submitters' proposals. On the assumption they have been pre-read, only a very brief overview of the law and the case for the Submitters will be presented in this summary.

#### **Hills Resort Zone**

11. The notified WBRAZ zoning of THL's land does not take account of the land's identified "moderate" capability to absorb development, or of the existing activities carried out on and landscape characteristics of the land.
12. The land is already highly modified. It is valued for its scenic attributes but these attributes are a direct result of the investment in and care for the land by its current owners, THL, and the existing golf course development.
13. The landform is hummocky and it is difficult to see into the property from outside its boundaries. Vegetation and landform provide natural screening.

Development can be readily concealed within property to which few or no views will be gained from external viewpoints.

14. Development of the property to date is of the highest standard. THL is committed to sustainable and enduring development outcomes that prioritise the health of the land and its landscape and seek to protect and enhance its scenic values, attributes and unique character.
15. The formulation of and development enabled by the HRZ and its Structure Plan is and will continue to be wholly cognisant of and continue to implement this philosophy.
16. The bespoke HRZ has been carefully and comprehensively considered and planned. The process has been landscape led. The primary influencing factors when formulating the HRZ have been to ensure that future development enabled by the Zone will integrate with the golf course and will not give rise to adverse landscape character and amenity effects for neighbours and the wider community, and that the special landscape and amenity values of the property and the wider area are maintained.
17. Detailed analysis of potential development outcomes has been undertaken, including visibility mapping and photo montages, to identify the parts of the property that can absorb development without giving rise to adverse visual, amenity and landscape effects. This has been complemented by a rigorous landscape assessment which has taken into account the landscape characteristics identified in Schedule 24.8 of the Proposed Plan for the landscape character unit (LCU 22) within which the property is located.
18. Only the parts of the property where built form can be readily absorbed without giving rise to adverse visual or landscape character effects have been identified as suitable and enabled for development.
19. The vast majority of property – over 96% - will be retained as open space, ensuring that the attractive, golf course/parkland landscape and greenbelt buffer the property provides for Arrowtown will be maintained.
20. A walking and cycling trail will be integrated into the Zone, providing a meaningful link between South Arrowtown and the Lake Hayes area for its users.

21. A limited range of commercial activities will be enabled, but only within the Clubhouse Activity Area and of a nature required to support The Hills Resort.
22. Staff accommodation will be provided to accommodate resort staff and their families, so as to ensure that the establishment of the HRZ will not place further pressure on the District's housing supply.
23. Extensive landscaping will be required around most of the development nodes to ensure the visibility of these areas from outside the property is minimised. The landscaping will be established prior to any development commencing, so as to ensure it performs its anticipated mitigation function.
24. All buildings will require a controlled activity consent, with the Council's control limited to infrastructure provision, traffic and building design and appearance<sup>1</sup>. This will ensure that the design of any onsite infrastructure and any necessary upgrading of intersections can be addressed to the Council's satisfaction prior to any development occurring, and that the Council is assured of internal amenity outcomes.
25. Golf events will be enabled subject to compliance with specified standards to ensure effects are appropriately managed.
26. A limited number of helicopter movements will be permitted, provided specified noise limits are met.
27. Development that does not accord with the proposed HRZ Structure Plan will be a non-complying activity.
28. The proposed HRZ, including the Structure Plan and each of the proposed controls on development and activities within the Zone, has been subjected to rigorous and robust scrutiny by the numerous independent experts engaged by THL to provide advice in respect of the proposal.
29. The HRZ's formulation has been an iterative and involved process, culminating in a zone crafted to fit comfortably within, respond to and enhance the unique characteristics and qualities of the property and the wider landscape within which is situated. It is a natural progression of the

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<sup>1</sup> The latter matters of control responds to the Council's evidence and will be addressed at the hearing.

The Hills and will enable the Golf Club to better realise its potential as one of New Zealand's premium golf destinations, while providing significant community benefits, including significant enduring economic benefits. There are no real costs of the HRZ.

30. The Council's evidence does not seriously challenge the appropriateness of the HRZ. The landscape evidence is generally supportive, and any concerns Ms Gilbert identifies can be addressed by amendments to or the inclusion of additional HRZ provisions, as can the concerns raised by Mr Smith in respect of traffic and transportation. Mr Brown will proffer a revised set of HRZ provisions in this respect.
31. As for the Council's planning assessment, it is superficial. The assessment does not accord with or endeavour to address section 32 matters. It takes no account of the benefits of the HRZ (which Mr Colgrave has quantified) or the costs of the notified WBRAZ. This is a significant deficiency given the effects of the HRZ and WBRAZ are otherwise fairly balanced.
32. If the costs and benefits of the HRZ and WBRAZ are weighed, the HRZ is clearly the better, optimal outcome.

#### **McDonnell Road WBLP**

33. A WBLP zoning for BHT's McDonnell Road land would anticipate (subject to the necessary resources consent being obtained) the creation of up to 8 residential lots (each a minimum of 2500m<sup>2</sup>), with controls on various landscape and amenity related matters.
34. There is no contest that the landscape can absorb this level of development. In fact, the landscape witnesses agree that the land can be urbanised, without adverse effects.
35. A WBLP zoning would clearly achieve the objectives and policies of the Proposed Plan (unsettled as they are), with their strong landscape focus. It would also achieve the purpose of the Act by enabling the efficient use of the land. A WBRAZ is not efficient, as it effectively sterilises the land from any residential development, and does not recognise or reflect the established land use patterning of the area.

36. While accepting the landscape can absorb it, the Council opposes a WBLP zoning because it says it *may* wish to urbanise the land in the future. It has however, presented no cogent evidence in this respect and the evidence it has presented provides no timeframes and indicates an unwillingness to commit to future urbanisation, notwithstanding it is the only real reason it opposes the WBLP.
37. The Council approach is unfair to affected landowners, including BHT who has invested significantly in the District Plan Review process and is entitled to have its submission determined. The option of urbanisation is not before the Panel. The options that are before it are the WBRAZ or the WBLP. The totality of the evidence supports the WBLP, and given it is the more enabling of the options, it better achieves the purpose of the Act and should be preferred.
38. If the Council wishes to preserve the land for future urbanisation, it should withdraw it from this Stage of the Proposed Plan, undertake the necessary work, and notify a later variation which promotes that outcome.

#### **Hogans Gully WBLP**

39. BHT supports the notified WBLP zoning of its Hogan Gully land, although it seeks some amendments to the WBLP provisions so as to ensure they better recognise and provide for the development opportunities that the evidence demonstrates the landscape can absorb.
40. No evidence has been presented in challenge to the notified zoning, whereas BHT has presented evidence that it is appropriate. There is therefore, no reason for the Panel not to endorse it.

#### **Important Legal Principles**

41. It is important to note that this hearing is not about *rezonings*, but rather, what is the *most appropriate* zoning. In this regard, when evaluating the zoning options at issue, the Panel must ensure it commences its inquiry with a clean slate.<sup>2</sup> There is no presumption in favour of the Council's notified proposal,<sup>3</sup> including the Chapter 24 objectives, policies, provisions or zone boundaries shown on the planning maps.

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<sup>2</sup> *Seabreeze*,

<sup>3</sup> *Eldamos etc*



42. The Panel's assessment is more in the nature of an inquiry into the merits of the competing proposals,<sup>4</sup> and your task is to seek to obtain the optimum planning solution (within the scope of the matters before you) based on the *totality* of the evidence you are presented with<sup>5</sup>. In this regard, the Submitters' evidence is comprehensive, and indicates its proposals can be supported by a broad range of qualified independent experts.
43. In examining the appropriate zonings of the Submitters' land, the Panel must look at the entire environment, and take historical, present and potential future uses of the land into account.<sup>6</sup> This is of particular relevance to THL's land, and the existing golf courses established on it, which the HRZ seeks to recognise and provide for, in contrast to the WBRAZ.
44. Under section 32 the Panel must make a value judgment as to which proposal, on balance, is the most appropriate, when measured against the relevant objectives (to the extent there are any) and the purpose of the Act. "Appropriate" means "suitable" and while section 32 does not require that the option chosen is superior,<sup>7</sup> in this case the Submitters' proposals clearly are.
45. Notwithstanding the above principle, when considering the rule options before you, you must be satisfied that any rule adopted in your decision is necessary, in the sense that is "*the better [of the] choices before [you] on the evidence*" for achieving the purpose of the Act, and in the case of unchallenged objectives and policies (if any), in implementing them.<sup>8</sup>
46. Importantly, where the purpose of the Act and the relevant objectives (if any) can be met by a less restrictive regime, then that regime should be adopted. This promotes the Act's purpose by enabling people to provide for their wellbeing while addressing the effects of their activities.<sup>9</sup> In this case, the Submitters' proposals are less restrictive than the notified zonings, and they also meet the purpose of the Act. In accordance with this principle, they should be adopted.

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<sup>4</sup> *Hibbit*.

<sup>5</sup> *Eldamos*.

<sup>6</sup> *Seabreeze*, [20].

<sup>7</sup> *Rational Transport*.

<sup>8</sup> *WESI v QLDC C153/2004.*,

<sup>9</sup> *Royal Forest and Bird*, and *WESI*.

47. There is no requirement for the Submitters to demonstrate a "need" for the activity sought to be enabled by their proposed zonings, in terms of whether or not there is a present insufficiency of that form activity.<sup>10</sup> This principle is of particular relevance to the HRZ, and the proposed enablement of additional resort development within the Basin and suggests that the Council's (or anyone else's) appetite for additional resort development is irrelevant, if, as here, it otherwise achieves the purpose of the Act.
48. Where, as here, the objectives and policies of the Proposed Plan are unsettled, the Council's Variation/Chapter 24 should be tested by whether it achieves the purpose of the Act as stated in section 5; and by whether it achieves any settled objectives and policies of the Proposed Plan that are not being altered by the Variation/Chapter 24.<sup>11</sup>
49. As for the objectives and policies, the current unsettled nature of the Proposed Plan, including the higher order strategic provisions which are subject to 100 appeals (with a much greater number of interested parties), means that the Panel can place very little or no weight on them. No weight should be placed on the Chapter 24 objectives and policies because it is those that are being tested by this hearing and decision process, and to give them any weight, or assess the Submitters' proposals under them would indicate a presumption by the Panel in favour of them, which the Court has made clear would be wrong.
50. The objectives and policies of the higher order statutory documents, in particular the RPS, also do not provide the Panel with much assistance because they too are unsettled. Parts of the Proposed RPS have been resolved by the Environment Court through the very recent issuance of consent orders, however the manner in which that Court process is being managed means a careful stocktake is required to determine which provisions have been resolved by consent orders and which remain outstanding. It is likely that by the time the Panel comes to write its decision on this Stage of the Proposed Plan, there will be more certainty around the provisions of the PRPS, in which case it may be appropriate to provide submitters with an opportunity to make submissions or provide further evidence as to their effect. In the meantime, the Operative RPS

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<sup>10</sup> *Gus Properties.*

<sup>11</sup> *Infinity Group v QLDC C010/05, [120]-[124].*

should be given little weight as it is certain it will be very shortly superseded by the (settled) PRPS.

51. Given this complex state of affairs in terms of the objectives and policies, the Panel must focus its inquiry on evaluating the competing proposals against the Act's purpose as stated in Part 2. This purpose is broad: to enable people and communities to provide for their social and economic wellbeing while avoiding, remedying or mitigating any adverse effects of activities on the environment.
52. The evidence for the Submitters demonstrates, without serious contest, that the Act's enabling purpose will be achieved by their proposals. Significant benefits will accrue, while potential adverse effects will be avoided or otherwise remedied or mitigated. The Submitters' proposals are more enabling and less restrictive than the Council's notified proposals, and in accordance with established legal principles, as summarised above, they should be preferred.
53. [timing of questions]

**R Wolt**

**Counsel for Trojan Helmet Limited and Boxer Hill Trust**

