

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER of the Resource management Act (~~1991~~)

AND of the QLDC Proposed District Plan 2015 Chapter 26

**SUPPLEMENTARY PLANNING EVIDENCE OF BEN FARRELL FOR
Real Journeys Limited (#621/#1341)
Te Anau Developments Limited (#607/#1342)**

17 June 2016

INTRODUCTION

1. My name is Ben Farrell. I am an Independent Planning Consultant employed by John Edmonds & Associates Limited, a firm of independent planners and project managers based in Queenstown. My qualifications and experience are provided in my evidence in chief (EiC) dated 29 February 2016.
2. This evidence builds on previous planning evidence I have presented to the Hearings Panel. In preparing this evidence I have reviewed and refer to the following documents relating specifically to this matter: Section 42A Report prepared by Ms Victoria Jones in relation to Proposed Chapter 26 (Heritage), inclusive of the attached reports and evidence by Richard Knott dated 2 June 2016; Heritage Report for the Kelvin Peninsula Slipway, prepared by Peter Petchey, 2015; Evidence of Ms Black dated 17 June 2016; and Memorandum of Counsel for Real Journeys dated 17 June 2016.

Scope of Evidence

3. My evidence is written at the request of Real Journeys (**#621/#1341**) and Te Anau Developments (**#607/#1342**) in support of their mutual interests on Chapter 26. It provides:
 - A background to the TSS Earnslaw and slipway;
 - Rationale for amending the rules in Chapter 26 as they affect the TSS Earnslaw and the slipway, including the Antrim Engine, so that:
 - i. The heritage values of the TSS Earnslaw are not protected via the resource consent process;
 - ii. The heritage status of the slipway (excluding the Antrim Engine) is changed from Category 2 to Category 3;
 - iii. Works within the setting of the TSS Earnslaw and the slipway are not subject to resource consent;
 - iv. Relocation of the Antrim Engine is provided for as a restricted discretionary activity;
 - Support to the amendments recommended in the s.42A Report to Policy 26.5.2.1; and
 - Support to the amendments recommended in the s.42A Report to Policy 26.5.4.3.

CHAPTER 26 – “TSS EARNSLAW” AND THE SLIPWAY

Background

4. Real Journeys own and operate the TSS Earnslaw and Slipway. A brief description of Real Journeys interest in the TSS Earnslaw and Slipway is provided on p.4 of the original submission by Real Journeys (and repeated in Figure 1 below). I have attached a copy of the Heritage Report for the Kelvin Peninsula Slipway to my evidence. This report provides helpful background information regarding the TSS Earnslaw and the slipway.

“TSS Earnslaw” – The lady of the lake

Real Journeys owns and operates the “TSS Earnslaw” Vintage Steamship. Real Journeys is also responsible for the operation, maintenance and upgrading of the steamship as well as the slipway and surrounding land area and buildings at Kelvin Heights Peninsula, and the Steamer Wharf berthing and mooring infrastructure in Queenstown Bay and at Walter Peak.

The “TSS Earnslaw” is a 1912 Edwardian vintage twin screw steamer plying the waters of Lake Wakatipu. It is one of the oldest tourist attractions in New Zealand and the only remaining commercial passenger-carrying coal-fired steamship in the southern hemisphere.

The “TSS Earnslaw” is surveyed for carrying up to 424 passengers and provides a unique historic transport service. It carries about 204,000 passengers each year. The “TSS Earnslaw” continues in routine operation carrying tourist passengers across Lake Wakatipu from Queenstown to Walter Peak High Country Farm, a tourism operation with farm tours, horse treks, cycle tours, barbecue lunches and evening dining at the Colonel's Homestead. The ship also provides an important transport link back to Queenstown for Walter Peak High Country Station and other farmers located around Walter Peak.

The ship works fourteen-hour days in the summer months and cruises for eleven months of the year, despite being over 100 years old. Visitors generally undertake a 1½ hour cruise and passengers are provided with access to a walkway in the engine room, where they can observe the operation of the engines during the cruise.

Each year, the TSS Earnslaw undergoes an annual survey, typically from late May to early June, and she is typically maintained on the Kelvin Peninsula slipway.

Real Journeys employs about 35 staff to operate and maintain the steamship and at present is investing about a million dollars annually to maintain the steamship for out of water survey and its supporting infrastructure.

Due to the size of the steamship; her corresponding momentum and her historic telegraph control system, the “TSS Earnslaw” requires parts of Lake Wakatipu to remain free of vessel traffic; structures and moored vessels in order to provide for the continued use of the steamship as a key transport vessel and to ensure the protection of peoples health and safety.

The continued operation of the “TSS Earnslaw” passenger service relies on continued access to the water space and wharf and berthing facilities in Beach Bay at Walter Peak, and Queenstown Bay (Steamer Wharf). Further our Fiordland Class vessels remain critical to our operation in Queenstown. These vessels are used to transport staff and freight to and from Walter Peak daily and operate when the “TSS Earnslaw” is out of service for maintenance; breakdowns or adverse weather such as gale force winds.

Continued provisions of access to and use of the slipway facilities at the Kelvin Peninsula are necessary to maintain the “TSS Earnslaw” and protect its heritage values. These facilities are historic and require constant maintenance and upgrading in order to fulfil their purpose and to meet relevant safety and engineering standards.

Figure 1 Extract from Real Journeys original submission

5. The TSS Earnslaw is a Category 1 Heritage Feature in the Operative and Proposed District Plans. Due to the unquestionable heritage significance of the TSS Earnslaw Real Journeys did not oppose this listing in its submission on the proposed district plan (it generally supported it at that time) however it did seek an exemption from all consenting requirements. Real Journeys also sought amendments to ensure it has continued provision of access to and use of the slipway facilities, which are necessary to maintain the TSS Earnslaw and protect its heritage values. As stated in Real Journeys submission these facilities are historic and require constant maintenance and upgrading in order to fulfil their purpose and to meet relevant safety and engineering standards.
6. Ms Black identifies practical constraints associated with operating and maintaining the TSS Earnslaw and the slipway, which can conflict with preservation of these features. These primarily relate to:
 - The age and rarity of the TSS Earnslaw and slipway and their components.
 - Evolving and increasingly stringent safety requirements.
 - Commercial considerations.
7. Until recently Real Journeys had not been required to obtain any resource consents/planning permissions to operate, maintain or upgrade the TSS Earnslaw or the Slipway (dating back to 1968). However, in September 2015 (after Real Journeys made its submission on the Proposed Districts Plan) Real Journeys began necessary maintenance/upgrade works on the slipway and QLDC intervened by requiring a resource consent for these works. Physical works on the slipway ceased for six months until resource consent was granted in March 2016 (RM160148). I am familiar with the resource consent process, having acted as the agent for Real Journeys.

8. This particular intervention by QLDC resulted in significant risks, costs and inconveniences to Real Journeys¹, including but not limited to:

- Costs associated with delays of the construction works;
- Risks to the TSS Earnslaw (the risk of the ship sinking was increased because she could not be slipped if serious damaged); and
- Costs associated with the resource consent process including council fees and engaging external parties to prepare resource consent documentation, including a heritage report; drawings and engineering certification to the satisfaction of QLDC; planning services.

9. As highlighted by Ms Black:

- It is in Real Journeys interest to preserve the heritage values of the TSS Earnslaw.
- The TSS Earnslaw has been subject to various modifications in her history, primarily in response to changing market demands.
- Necessary maintenance and upgrade works will be required on both the TSS Earnslaw in the future. The extent of these works is not known, particularly as they evolve with health and safety requirements and meeting commercial demands.

10. Ms Blacks evidence is consistent with the Real Journeys company philosophy (discussed in its submission) and supports the following Wikipedia statement describing the history of TSS Earnslaw when Real Journeys purchased the vessel:

In 1968, the Earnslaw was very nearly scrapped but she was fortunately rescued. She was leased by Fiordland Travel (now Real Journeys) in 1969, and later purchased by the same company in 1982. She was taken out of service for a huge makeover in 1984. Her 12 metre high funnel was painted bright red, with the hull a snow white, and her kauri timber decks glassed in.

¹ Personal communication with Real Journeys staff: Fiona Black, Chris Fleck, Tony McQuilkin

Rules affecting the TSS Earnslaw

11. Real Journeys sought an amendment to Chapter 26 to insert a new rule or exemption clause from the rules so that the district plan does not prevent any works from being carried out on the TSS Earnslaw. The s.42A report responded with the following:

22.3 Submitter 621 (Real Journeys Limited) requests that a rule or exemption clause be inserted to clarify that the rules do apply to works associated with the "TSS Earnslaw" (Earnslaw) and that any such works are a permitted activity. As this has not been lodged in relation to any specific clause, the specific concern or relief sought is unclear and it would be helpful if the submitter could offer some more clarification in evidence. If the submission seeks exemption from all the rules (given that, as notified, they all refer to "works") this would be inappropriate in my view, given the Category 1 status of the Earnslaw. If, on the other hand, the submitter is seeking clarification that certain repair and maintenance of the Earnslaw is permitted (Rule 26.6.1) then that maybe appropriate. At this stage I recommend rejection of the submission subject to further information.

12. Firstly, the submission applies to all rules that affect works to the TSS Earnslaw. Accordingly, introduction of an exemption clause could be introduced so that Real Journeys relief can be given effect without altering existing provisions.
13. In respect of the principle of requiring resource consent, I do not agree that QLDC should be able to interfere with the operational requirements of the TSS Earnslaw simply on the basis that she carries a Category 1 status in the district plan. In my opinion the relief sought by Real Journeys (to exempt the TSS Earnslaw from consent processes) is more appropriate. This is primarily because the benefits of protecting the heritage values of the TSS Earnslaw by requiring resource consent are outweighed by:
- The fact that the heritage values of the TSS Earnslaw have and continue to be satisfactory protected by its owners, coupled with Real Journeys commitment to protecting these values. This includes Real Journeys working with heritage experts and Heritage New Zealand to prepare a heritage conservation management plan for the TSS Earnslaw and her associated infrastructure.
 - The risks and costs to the efficient commercial operation of the TSS Earnslaw.

- The ability for the heritage values associated with the TSS Earnslaw to potentially be managed via non-regulatory methods and other legislation for example the Heritage New Zealand Pouhere Taonga Act 2014².
 - The ability for QLDC to make a bespoke plan change that has immediate legal effect should, for any reason, it loses comfort that the heritage values of the TSS Earnslaw are at serious threat.
14. Rule 26.6.6 prohibits the relocation of the TSS Earnslaw. Applying this rule to the TSS Earnslaw is problematic in that the TSS Earnslaw is a movable object not fixed to land . arguably it ~~relocates~~ on a daily basis. Moreover, it is not clear what ~~site~~ applies to the TSS Earnslaw. This has practical implications for the interpretation of both Rules 26.6.6 and also Rule 26.6.7.
15. In terms of Rule 26.6.7 and the meaning of ~~setting~~ for the TSS Earnslaw is not easily definable. Arguably her ~~setting~~:
- May include all of Lake Wakatipu (using the broad meaning of the term in the notified plan); or
 - May include all of Lake Wakatipu if the lake is titled on the basis that the lake is the area around and/or adjacent to the ship and the lake is integral to the ships function, meaning, and relationships (using the meaning recommended in the s.42A Report);
 - Does not exist the basis that Lake Wakatipu does not have a title (using the meaning recommended in the s.42A Report).
16. Moreover, the legal advice provided in the Memorandum Of Council prepared by M Baker-Galloway and R Hill suggests that that the rules in Chapter 26 which are intended to apply to the TSS Earnslaw are *ultra vires*.
17. This advice supports Ms Black's opinion that protection of the TSS Earnslaw does not sit comfortably in the district plan, on the basis that chapter 26 focuses on the protection of places (land) or buildings or structures fixed to the land.

² To clarify, the heritage values of the TSS Earnslaw are not protected by any other regulatory means.

18. This advice is also consistent with the opinion provided in the s.42A Report that the RMA does not contemplate controlling the effects of inappropriate subdivision, use, and development on mobile heritage items:

[21.10] With regard to the removal of the Kingston Flyer from the Inventory, I am of the view that the RMA does not contemplate controlling the effects of inappropriate subdivision, use, and development on mobile heritage items. This conclusion comes from the fact that the definition of historic heritage in the RMA is constrained to 'natural and physical resources' and that mobile heritage such as the Kingston Flyer or classic cars would not fall within the definition of natural and physical resources. As such, the Kingston Flyer would not fall within the term 'historic heritage' as intended in the RMA."

19. In respect of the s.42A Report paragraphs 21.10 and 22.3 contradict appear to each other. At a minimum there is an inconsistency in the rationale for listing the TSS Earnslaw and not listing the Kingston Flyer.
20. Having regard to the above matters I am of the opinion that the proposed district plan should not contain any methods that employs the use of resource consents to protect the heritage values of the TSS Earnslaw.

The Slipway

21. As discussed in the evidence of Mr Knott (par 5.11 and Ms Black par 3.19) Real Journeys is seeking that the Slipway be demoted from Category 2 to Category 3. In his consideration of this matter, Mr Knott states the following:

5.11 I have not had an opportunity to carry out a full heritage assessment of this item against the PDP criteria. However, having considered the Peter Petchey report, I believe that the work which is being carried out would have a negative impact upon some of the heritage values of the slipway. However, I believe that it remains of moderate Historic and Social Value, Townscape and Context Value and Technological Value. It therefore remains appropriate that it be recognised as a Category 2 item.

22. Without consideration of the specific PDP criteria mentioned above, I am of the opinion the moderate Historic and Social Value, Townscape and Context Value and Technological Value does not justify the retention of the Slipway as a Category 2 item.

23. The direction in the proposed plan (as recommended in the s.42A report) is to permanently preserve Category 2 features because they are ~~very~~ significant to the District. Whereas preservation for Category 3 features is encouraged and the ~~Council~~ Council will be more flexible regarding significant alterations. Category 3 shall include places of ~~special historical~~ special historical value. In my opinion the Slipway and Cradle fit nicely in the Category 3 description but with only moderate values cannot be said to be ~~very significant~~ to the district.
24. Moreover, Ms Black has outlined how the slipway has since been altered by replacement of the original timber foundations (which were rotten and/or rotting) with concrete.
25. For the reasons provided above I recommend the list of protected features be amended so that:
- The Slipway and Cradle (#3) are classified as ~~category 3~~ category 3, not ~~category 2~~ category 2.
 - The Antrim Engine should be retained as Category 2.
 - A new row could be inserted with the Slipway and Cradle numbered #3A.
26. Rule 26.6.7 coupled with the meaning of ~~setting~~ setting is problematic to the management of the Slipway. For example, the rule could be interpreted as requiring resource consent for any works on land or water in the vicinity of the Slipway. Potentially, this could require trivial works requiring resource consent, including: clearing of vegetation or planting of trees on the Council reserve; establishing interpretation signs and park benches; and upgrading the existing walking/cycling track.

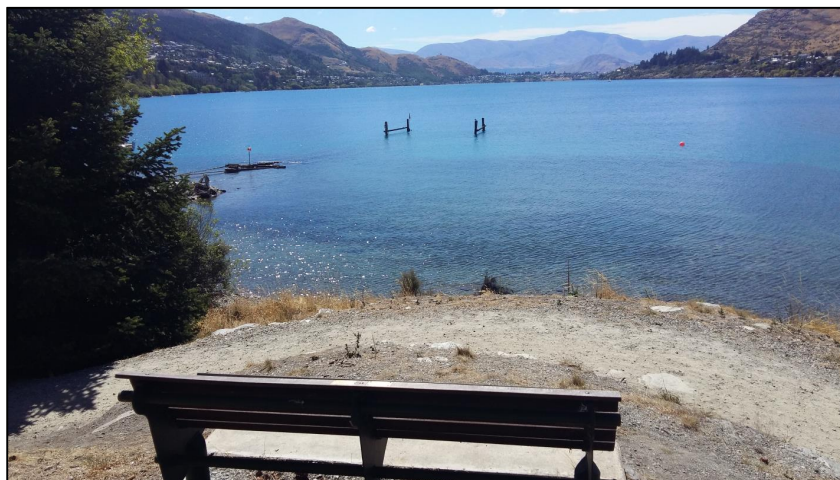


Figure 2 Photo of part of the slipway showing Kelvin Peninsula Walkway and nearby park bench (arguably within setting of the slipway)

27. Rule 26.6.4 classifies relocation of the Slipway, including the Antrim Engine, as a Non-Complying Activity. This activity status discourages relocation and in my opinion provides a strong signal that (without consideration of its merits) relocating the engine is not an appropriate activity. However, relocating the engine could be an entirely appropriate activity, particularly given:
- The Antrim Engine is likely to have a shelf life in terms of its ability to be practically used to haul the TSS Earnslaw;
 - The engine is a movable object (bearing in mind it was relocated to its current location);
 - It could be used and maintained for something other than the working slipway in a manner that maintains and celebrates its heritage values (for example by making it more available and visible to interested parties and members of the public).
28. For the above reasons, including the matters raised in the submission by Real Journeys and in the evidence of Ms Black, I consider it is appropriate that:
- Clauses be inserted into Chapter 26 (Table 1 and 2 or these rules amended) to permit the continued use, operation, maintenance, repair and upgrading of the slipway, cradle and Antrim Engine for any purpose associated with the TSS Earnslaw;
 - Rule 26.6.4 is amended to make relocation of the Antrim Engine (or any Category 2 or 3 feature) a restricted discretionary activity, with Councils discretion restricted to the effects on the heritage values and consideration of the benefits associated with the relocation.
 - Rule 26.6.7 be amended to:
 - i. Exclude development and works that are within the ~~the~~ setting of a protected feature located on Lakes or Rivers; public land; or land that does not have a title.
 - ii. Exclude and permit or control development or works that are associated with the use of the protected feature.

Clause 26.2.3 - Identification and Protection

29. Real Journeys requested that 26.2.1 be amended to delete the requirement for ~~an~~ report from an appropriately qualified and experienced conservation / landscape architect~~or~~ amend provision to clarify precisely what an ~~an~~ appropriately qualified and experienced conservation / landscape architect entails.
30. The S.42A Report recommends amending 26.2.1 as follows:

~~The Queenstown Lakes District Council believes that its schedule of protected features is well informed and robust. It also acknowledges that it this is a snapshot of protected features as they stood at a particular point in time and may subsequently change. In order to accommodate anticipated changes it will review this schedule at the midpoint in the life of the Plan (i.e., in five years from becoming Operative.) The effectiveness of the Inventory will be monitored and reviewed and, if appropriate, a plan change initiated to ensure the Inventory remains current. Nominations for inclusions, removals, or amendments to Categories for individual protected features will be are welcomed from the public. Such nominations are encouraged to include , but must contain sufficiently detailed and robust reports, using the evaluation criteria contained in the District Plan in line with assessments that. It would be advantageous to include:~~

- ~~For heritage precincts and landscapes, a report from a appropriately qualified and experienced Conservation/ Landscape Architect is required. These may include site specific reports from government bodies with a remit for heritage, such as Heritage New Zealand Pouhere Taonga and the Department of Conservation.~~
- ~~For sites of significance to Maori, a detailed assessment of the extent of the site and related values must be obtained from prepared by the appropriately mandated iwi.~~
- ~~For individual buildings and structures, a report from a suitably qualified Conservation Architect, using the Council's criteria and, for Category 1 features, a Conservation Plan is encouraged. Any Conservation Plan should be prepared in accordance with Heritage New Zealand's Best Practice Guidelines.~~
- ~~For archaeological sites, a detailed assessment by a suitably qualified and experienced archaeologist.~~

~~They must It is preferable that nominations include the written consent of the owners or where this has not been obtained, that they advise what consultation has occurred with the owner.~~

31. I support the recommended amendment because it removes the requirement for people to submit a report from a conservation architect. This almost addresses Real Journeys concerns as it will reduce unnecessary risks and costs should the status of the Slipway be tested. The recommended amendment does not recognise that in some cases, such as the Slipway, provision of a report from a conservation architect is unlikely to be relevant. In my opinion it would be more appropriate for the district plan to state that it ~~may~~ be advantageous to provide a report from a conservation architect, rather than saying it ~~would~~ be advantageous.
32. Having regard to the above I recommend the recommended amendment be accepted subject to the following adjustment:

...It would may be advantageous to include:

Policy 26.5.2.1

33. Real Journeys requested that a new policy be inserted to recognise that engineering and safety standards are constantly evolving hence to ensure the continued use of heritage structures and buildings the structures may need to be modified or be re-engineered. The s42A supports this submission point and recommends Policy 26.5.2.1 be amended as follows:

- 26.5.2.1 Encourage the ongoing economic use of heritage buildings and sites by allowing adaptations and uses that:
- (a) Are in accordance with best practice; and
 - (i) Either enhance heritage values or do not permanently adversely affect heritage values to the extent that the heritage significance of the feature would be reduced, noting that the cumulative effects of incremental change must also be considered; and are in accordance with best practice.
 - (b) Improve the viability of the protected feature and/ or improve public health and safety.
 - (c) Recognise that heritage structures and buildings may need to be modified or re-engineered as engineering and safety standards evolve.

34. I support the amendments recommended in the s42A Report for the reasons given on page 11.

Policy 26.5.4.3

35. Real Journeys requested minor amendments to this policy as follows:

Enable and encourage ~~Accept that~~ ongoing improvements to buildings and structures, including earthquake strengthening and other safety measures, which will assist in providing for their ongoing use and longevity.

36. The s42A recommends the policy be amended as follows:

- 26.5.4.3 Enable and encourage ~~Accept that~~ ongoing improvements to protected features buildings, including earthquake strengthening and other safety measures, in recognition that this will provide for their ongoing use and longevity.

37. I support the insertion of enable and encourage for the reasons provided in the s.42A Report (page 49).

CONCLUSION

38. Having regard to the matters raised in my evidence above, I consider chapters 26 should be amended as suggested throughout my evidence above or otherwise amended with like effect.



Signed 17 June 2016

APPENDIX BF8 – Photos of the Kelvin Peninsula Slipway



Figure 3 Photo showing the Slipway and shed that houses the Antrim Engine – photo taken during works being carried out prior to completion



Figure 4 Photo showing the slipway 'cradle'



Figure 5 Photo showing slipway and associated buildings (Antrim Engine located in the shed in centre of picture – chimney visible)