

**BEFORE THE COMMISSIONERS APPOINTED BY
THE QUEENSTOWN LAKES DISTRICT COUNCIL**

Submitter 31021

IN THE MATTER of Queenstown Lakes District
Council Proposed District Plan
Stage 3

IN THE MATTER **RURAL VISITOR ZONE**

**CORBRIDGE ESTATE LIMITED
PARTNERSHIP**

Submitter

**SUBMISSIONS OF COUNSEL FOR CORBRIDGE IN REPLY TO MINUTE
32 AND THE SUBMISSIONS OF SCOPE RESOURCES LIMITED**

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SUBMISSIONS OF COUNSEL

May it please the Commissioners:

1. These submissions respond to minute 32. The proposition advanced by Mr Nolan QC for Scope Resources Limited might result in the Commission not having jurisdiction to determine the merits of the Corbridge submission.
2. In general terms, it is accepted that the *Motor Machinists* test referred to by Mr Nolan QC, and subsequently refined by decisions of the Courts, are generally applicable though need to be considered in the light of the process actually followed by this Council.
3. Where it is submitted that Mr Nolan QC strays is by characterising decisions on stage 1 as rendering the Council (and this panel) *functus officio* in relation to submissions on subsequent Plan Changes (paragraph 3.6 of the Scope submissions).
4. It is submitted that the principle of *functus officio* has no application in relation to Corbridge's submission. To understand that point it is necessary to carefully consider what the Council has actually done.
5. The Council has embarked upon a series of discrete plan changes, rather than a plan review. This is something which has been remarked upon by the Environment Court in *Tussock Rise Limited v Queenstown Lakes District Council* [2019] NZEnvC 111. Corbridge relies on the Court's description of the legal basis for the Council's plan change processes. Although the Court was there concerned with the Industrial zone, the decision would read in exactly the same way if it were referring to the Rural Visitor Zone. Therefore Mr Nolan QC is incorrect in his paragraph 3.6 to refer to "Stage 1 of the Review". There is no "review". The Council has been quite deliberate about that. There is merely a sequence of Plan Changes.
6. In the light of the Court's rather blunt criticism of the Council's position in *Tussock Rise*¹, it is hardly surprising that counsel for the Council has taken the view that a scope objection should not be made where a

¹ Subsequently repeated in a costs decision.

submitter has taken the opportunity to submit in favour of the Rural Visitor Zone for its land in Stage 3 because there was no opportunity to do so when the Rural Zone provisions were at large in Stage 1.

7. For that reason, and as a matter of fact in Corbridge's case, there is no prior decision of the Council that Rural zoning of the Corbridge land better implements the objectives of the Plan than the Rural Visitor Zone does.
8. Even if there were a prior zoning decision for Corbridge's land, there is nothing that prohibits a subsequent plan change initiated by the Council from changing provisions of a Plan in relation to a parcel of land that were the subject of a previous plan change. Indeed that right is in practical terms reserved to the Council, see clause 25 of the First Schedule:

(4) The local authority may reject the request in whole or in part, but only on the grounds that—

(a) the request or part of the request is frivolous or vexatious; or

(b) within the last 2 years, the substance of the request or part of the request—

(i) has been considered and given effect to, or rejected by, the local authority or the Environment Court; or

(ii) has been given effect to by regulations made under section 360A; or

(c) the request or part of the request is not in accordance with sound resource management practice; or


(d) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or

(e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.

9. The fact that the Act reserves to the Council the right to carry on a sequence of plan changes for the same land as it chooses shows that there is no place for the concept of *functus officio* to apply to decisions across separate plan changes. If the concept did apply, it would effectively set in stone planning decisions for all time. Plan changes are often stimulated by changing social and economic conditions and

require responsiveness in planning instruments. Corbridge is an example of that.

10. Accordingly because stage 3/3B is a separate plan change process to stage 1, the principle of *functus officio* has no application in relation to Corbridge's land.
11. For these reasons it is submitted that the submissions for the Queenstown Lakes District Council were correct and the matter of whether a submission is "on" the plan change falls to be decided by a careful analysis of the plan change and the submission. That is a matter of substance and evidence to be exercised generously in the light of the problems described in *Tussock Rise*.
12. For all these reasons it is submitted that the submissions made by Counsel for Scope Resources Limited do not impinge upon the Commission's ability to accept the Corbridge submission.



B Irving

Counsel for Corbridge Estates Limited Partnership

Date: 21 August 2020