

**Before the Hearing Commissioners
At Queenstown**

In the Matter of

the Resource Management Act
1991 (**Act**)

And

In the Matter of

a proposed variation to the
Queenstown Lakes Proposed
District Plan – Te Pūtahi Ladies Mile

**Memorandum of Counsel on behalf of
Doolytle & Son Limited
Procedural Matters**

Dated: 6 November 2023

Lane Neave
Level 1
2 Memorial Street
Queenstown 9300
Solicitor Acting: Joshua Leckie
Email: joshua.leckie@laneneave.co.nz
Phone: 03 409 0321

lane neave.

Introduction

1. We act for Doolytle & Son Limited¹ (**Doolytle**) in relation to its submission on the proposed Te Pūtahi Ladies Mile (**TMLM**) variation (**Variation**) to the Queenstown Lake District Council's (**Council**) Proposed District Plan (**PDP**).
2. By minute dated 10 August 2023, the Hearing Panel (**Panel**) directed parties to raise any procedural matters with the Hearings Administrator by 6 November 2021.² The purpose of this memorandum is to respond to the Panel's direction.

Summary

3. The Section 42A Report concludes that Doolytle's submission seeking to rezone a smaller narrow parcel of land at Lot 403 DP 322452 is out of scope as it is not "on" on the Variation. The Section 42A Report also considers that the alternate relief of High Density Residential to be out of scope.
4. We consider this is incorrect. In summary, we consider that:
 - (a) There is settled case authority on the proposition that scope can be extended by way of submission, provided the proposed extension is fair and reasonable.
 - (b) The submission to include Lot 403 DP 322452 is a fair and reasonable extension to the Variation as it only seeks to include a small parcel of land that is adjacent to and amalgamated with land already included in the Variation.
 - (c) Accordingly, we consider Doolytle's submission that Lot 403 DP 322452 be included in the Variation is entirely within scope of the Variation.
 - (d) To not include Lot 403 DP 322452 in the Variation will result in a sliver of rural zoned land in the middle of urban development, which is not the most appropriate outcome.

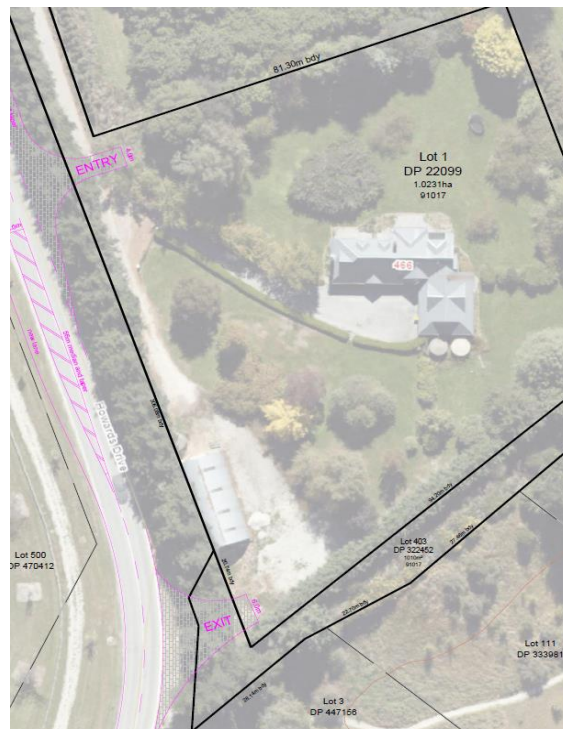
Doolytle Submission

5. Doolytle owns land at 466 Frankton – Ladies Mile Highway, legally described as Lot 2 DP 536321 and Lot 403 DP 322452 (**Site**). Lot 2 DP 536321 is the main parcel, with Lot 403 DP 322452 being a small parcel adjacent to and amalgamated with Lot 2 DP 536321.

¹ Submitter Number 81 and Further Submitter Number 135.

² Minute of the Hearing Panel dated 10 August 2023, at para [11.2].

6. On 9 June 2023, Doolytle filed a submission on the Variation seeking that:
- (a) Lot 2 DP 536321, originally notified as Low Density Suburban Residential Zone, be rezoned to TPLM – Commercial Precinct Zone; and
 - (b) Lot 403 DP 322452, which was not included in the notified Variation, be included in the Variation and also zoned TPLM – Commercial Precinct Zone.
7. The relevant land is shown on the screen grab below with Lot 403 DP 322452 being the narrow strip of land shown at the bottom of the image:



Issues as to Scope

8. In the Council's Section 42A Report, the reporting officer considered that the submission seeking rezoning of the smaller narrow parcel of land, being Lot 403 DP 322452, was out of scope as it was not "on" the variation.³ However, the author considered that, if the Panel were to take a different view on scope, it would be practical to include Lot 403 DP 322452 within the Variation.⁴
9. The Section 42A Report also considered the alternate relief sought by Doolytle of High Density Residential to be out of scope.

³ Section 42A Report, at para [12.58].

⁴ Above, n 3.

10. For the reasons that follow, we disagree with the position taken in the Section 42A Report and consider that the submission seeking to include Lot 403 DP 322452 in the Variation is within scope.

The Law

11. The question of whether a submission is “on” a plan change or variation has been addressed by a number of cases, most significantly by *Palmerston North City Council v Motor Machinists Ltd*.⁵ In that case, the previous leading authority, *Clearwater Resort Ltd v Christchurch City Council*⁶ was endorsed, which identified the following test for determining whether a submission was “on” a plan change:
- (a) First, the submission can only be regarded as being “on” a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.
 - (b) Secondly, if the effect of regarding a submission as being “on” a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, that will be a powerful consideration against finding that the submission was truly “on” the variation.
12. Further, the Court in *Countdown Properties Limited v Dunedin City Council* [1994] NZRMA 145 held that a submission may seek to go beyond the bounds of the notified plan change and that submissions may seek fair and reasonable extensions to a notified variation or plan change.⁷ The criteria as to fairness and reasonableness include answering such questions as:
- (a) What is the scope of the plan change or variation?
 - (b) What is the extent of the submission in proportion to the plan change or variation?
 - (c) Does the submission relate to the notified variation or plan change?

Position on Scope

13. We consider Doolytle’s submission to include Lot 403 DP 322452 within the Variation is squarely within scope on the basis that the submission is a fair and reasonable extension to the Variation as notified. The submission seeks to include in the Variation a small parcel of land adjacent to and amalgamated with land

⁵ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.

⁶ *Clearwater Resort Ltd v Christchurch City Council*. HC Christchurch AP34/02, 14 March 2003.

⁷ *Countdown Properties Limited v Dunedin City Council* [1994] NZRMA 145.

already included in the Variation as notified, and which is owned by the same entity. Doolytle's submission is therefore a logical extension of the boundary of the Variation and would not be disproportionate to the Variation as a whole. Accordingly, we consider the submission seeking to include Lot 403 DP 322452 within the Variation area is a fair and reasonable extension of the Variation.

14. We do not consider there to be any prejudice to other parties in finding that the submission is "on" the Variation. As discussed above, the land in question is a small parcel of land adjacent to land that is already contained in the Variation and is owned by the same entity. Accordingly, accepting the submission as being "on" the Variation will not result in a materially different Variation being adopted to the one that was notified, and no other submitter will be prejudiced by the proposed alteration.

Conclusion

15. The case law is clear that scope can be extended by way of submission if the submission is a fair and reasonable extension of the Variation.
16. We consider that the extension of the Variation to include Lot 403 DP 322452 is a fair and reasonable extension because it seeks to include a small section of land adjacent to and amalgamated with land already included in the Variation. The submission is therefore a logical extension of the Variation boundary.
17. Accordingly, we consider Doolytle's submission to include Lot 403 DP 322452 within the Variation to be within scope and its relief sought should be determined by the Panel.
18. Counsel seeks leave to be excused from the procedural matters hearing and instead provide further legal submissions on scope to assist the Panel.



Joshua Leckie

Counsel for Doolytle & Son Ltd
