

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL HEARINGS PANEL

UNDER the Resource Management Act 1991

IN THE MATTER of the review of parts of the Queenstown Lakes District Council's District Plan under the First Schedule of the Act

AND

IN THE MATTER of submissions and further submissions by **REMARKABLES PARK LIMITED, QUEENSTOWN PARK LIMITED, SHOTOVER PARK LIMITED, and QUEENSTOWN WHARVES (GP) LIMITED**

**SYNOPSIS OF SUBMISSIONS ON BEHALF OF QUEENSTOWN PARK LIMITED,
REMARKABLES PARK LIMITED, SHOTOVER PARK LIMITED, AND QUEENSTOWN
WHARVES (GP) LIMITED**

**CHAPTER 3 – STRATEGIC DIRECTION, CHAPTER 4 – URBAN DEVELOPMENT,
CHAPTER 6 – LANDSCAPES**

29 FEBRUARY 2016

**BROOKFIELDS
LAWYERS
J D Young / R A Davidson
Telephone No. 09 379 9350
Fax No. 09 379 3224
P O Box 240
DX CP24134
AUCKLAND**

MAY IT PLEASE THE PANEL

1. INTRODUCTION

1.1 These submissions are made on behalf of Remarkables Park Limited (RPL) and Queenstown Park Limited (QPL), Shotover Park Limited (SPL), and Queenstown Wharves (GP) Limited (QWL).

1.2 The parties are calling evidence from Jeff Brown in relation to the submissions on these chapters.

2. PARTIES' POSITIONS

Strategic Direction

2.1 RPL, SPL, and QPL's position on the Strategic Direction chapter can be summarised as follows:

(a) The recognition of the Remarkables Park Zone within the new Strategic Directions provisions relating to the Frankton Flats commercial area is supported, subject to the amendments proposed by Mr Brown in his evidence; and

(b) A greater recognition of the role of tourism in the district is essential.

Urban Development

2.2 RPL and QPL are not opposed to urban growth boundaries (UGBs) in principle. However, it is submitted that the PDP should provide for limited and carefully described exceptions where urban development can occur in areas outside the UGBs. The proposed UGB provisions are problematic because there is inadequate evaluative work in their formulation and therefore inconsistency in application.

Landscape

2.3 RPL, QWL, and QPL's position on the Landscapes chapter can be summarised as follows:

(a) The wording of various provisions favours the protection of ONLs at the expense of potential subdivision, use, or development in land identified as an ONL; and

(b) There is a disproportionate emphasis on farming activities in rural areas and a lack of recognition of the importance of other activities that typically

establish in rural areas, such as tourism and commercial recreation, that provide significant social, economic, and environmental benefits.

3. RELEVANT LEGAL FRAMEWORK

3.1 The relevant statutory tests for assessing the merits of the PDP's provisions are principally located in sections 31, 32, 72, 74, 75, and 76 of the RMA.

3.2 The Part 2 matters particularly relevant to Chapters 3, 4, and 6 are:

(a) Section 6 as it relates to the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, outstanding natural landscapes and features (ONLs and ONFs), areas of significant indigenous vegetation, and significant habitats of indigenous fauna¹;

(b) Section 7 as it relates to the efficient use and development of natural and physical resources², amenity values³, maintenance and quality of the environment⁴, and any finite characteristics of natural and physical resources⁵; and

(c) Section 5 which authorises regulating the use, development and protection of resources in order to enable people to provide for their wellbeing, including social and economic wellbeing.

3.3 In addition, section 32 of the RMA requires a threshold assessment of what is the "most appropriate"⁶ in relation to the objectives, policies, rules and other methods in the PDP. Through the 2013 amendments to the RMA, evaluation may also be required in relation to proposed standards, statements, regulations, plans or changes.

3.4 The Panel must also consider whether the Council has identified and considered other reasonably practicable options (section 32(1)(b)(i)), and whether the proposed provisions are efficient and effective (section 32(1)(b)(ii)).

¹ Section 6(a)-(d);

² Section 7(a).

³ Section 7(c).

⁴ Section 7(f).

⁵ Section 7(g).

⁶ Also known as the threshold test. This test changed from the "necessity" test in 2003 under section 32(1)(a) of the RMA, to the "most appropriate test" under section 32(3), which made it easier for a local authority to initiate a plan change and assume a proactive, rather than reactive, role. (See Harrison J's comments in the High Court decision in **Gisborne District Council v Eldamos Investments Limited** CIV-2005-485-1241, paragraphs [31] and [34]). This test is retained under the 2013 amendments to the RMA.

4. OVERARCHING APPROACH OF THE STRATEGIC DIRECTION

- 4.1 RPL and QPL's submissions both sought the deletion of certain sections of the Strategic Directions chapter on the basis that there was a significant amount of repetition in the PDP.
- 4.2 The officer's section 42A report accepts there is a case for the deletion of some of the more "mechanical" policies where they are also covered in other chapters⁷. As a result policies 3.2.2.1.1 to 3.2.2.1.7 which relate to the urban development goal are proposed for deletion as those matters are covered off in the Urban Development chapter. RPL and QPL support this amendment.

5. PLACE OF REMARKABLES PARK ZONE AND TOURISM IN THE PDP

- 5.1 The fundamental issue in relation to Goal 1 of the Strategic Directions chapter for RPL and QPL was the failure of the Chapter to recognise the role of the Remarkables Park Zone and the Frankton Flats in the centres hierarchy. The District Plan needs to recognise the scale and significance of development at Frankton.
- 5.2 As a result of submissions, the officer's section 42A report proposes to include the Frankton area as a commercial centre (citing the "contiguous nature of Remarkables Park – Airport – Five Mile"⁸). Accordingly, an additional suite of objectives and policies are proposed for inclusion. Mr Brown has proposed amendments to these additional provisions in his evidence. Further, the recognition by Mr Paetz that the hierarchy approach is not necessary is supported, as is the recognition that Frankton is an economic hub.
- 5.3 RPL and QPL made further submissions in support of submission point numbers 621-6 to -8 by Real Journeys Limited in relation to the addition of a Goal at the Strategic Direction level identifying the importance of tourism to the District. This submission has been accepted to a certain extent by the officer's section 42A report in its proposal to include an additional objective and policy within Goal 1 in relation to tourism.
- 5.4 This amendment is supported. Tourism is an integral feature of the District and the economy and its recognition in the Strategic Directions chapter is entirely appropriate.

⁷ Section 42A Report, Chapters 3 & 4: Strategic Direction and Urban Development, page 16, para 12.8.
⁸ Section 42A Report, Chapters 3 & 4: Strategic Direction and Urban Development, page 18, para 12.23.

6. URBAN GROWTH

- 6.1 Broadly speaking, RPL and QPL are not opposed to UGBs in principle, however, if UGBs are to be implemented it is submitted that the PDP must provide for limited exceptions where urban development can occur in areas outside the UGBs.
- 6.2 Mr Brown's evidence proposes a number of criteria which apply to development outside UGBs. It is submitted that the criteria results in a regime for urban development that is still fairly circumscribed however recognises that in some instances urban development outside an UGB is appropriate and allows for such development accordingly.
- 6.3 As noted above, there is inadequate evaluative work behind the proposed UGB which results in inconsistency in their application. For instance, Jacks Point, which is predominately open space is inside the UGB, whereas Millbrook is outside the UGB. Further, the definition of "urban development" is difficult to apply.

7. PROTECTION OF LANDSCAPES AND DEVELOPMENT IN RURAL AREAS

- 7.1 RPL and QPL's primary concerns in relation to the relevant Strategic Direction Goals and the Landscape chapter are:
- (a) That the wording of various provisions favours the protection of ONLs at the expense of potential subdivision, use or development in land identified as an ONL; and
 - (b) That there is a disproportionate emphasis on farming activities in rural areas and a lack of recognition of the importance of other activities that typically establish in rural areas, such as tourism and commercial recreation, that provide significant social, economic, and environmental benefits.

Development in ONLs

- 7.2 RPL's submission raised concerns the use of the word "protect" in Policy 3.2.5.1.1 as it places a "dead hand" on land identified as an ONL. It is submitted that there may be subdivision, use and development that could occur in ONLs that delivers an overall environmental benefit through enabling people to experience an ONL rather than simply observe it. The officer's section 42A report proposes that this policy be deleted due to repetition. RPL and QPL support this change, but note that the concerns relating to sterilisation of land identified as an ONL remains.

- 7.3 Mr Brown's evidence proposes some amendments to various provisions of Chapter 6 in relation to subdivision, use and development in rural areas and the protection of ONLs.

Agriculture and farming

- 7.4 QPL and RPL consider that there is too great an emphasis on agricultural use and a failure to appropriately recognise the diverse land uses that occur in rural areas, including but not limited to horticulture, tourism, and recreation activities. QPL's submission takes this further in relation to its land, which will be addressed at a later hearing in relation to Mapping Changes. Mr Brown's evidence identified a number of tourist activities synonymous with Queenstown which are rurally based.

- 7.5 The officer's section 42A report states:⁹

“...a number of submissions sought that the provisions make broader reference to other non-farming land uses, which fundamentally locate in rural areas and are part of rural character. However, I consider this is potentially somewhat of a ‘slippery slope’, and whilst there are other land use activities that are typically located in rural areas, they do not have the same fundamental connection (both historic and current) to the landscape and its character that agricultural land use activities do. I therefore consider that the wording of these provisions as notified is the most appropriate.”

- 7.6 It is submitted that the requirement for a “fundamental connection” between the activity and the landscape as being necessary for recognition in the objectives and policies, and the suggestion that only agricultural activities have such a connection is short sighted and not sustainable.
- 7.7 It is submitted that the quality of the landscape does not result always from continued agricultural use, but can equally arise from activities that retain and potentially enhance the landscape and wider environmental values. Further, it is important that the rural landscape is not kept as a reserve, where no activities other than agriculture can occur. The PDP should recognise and encourage, at a strategic level, diversification of land uses, in particular, tourism opportunities in rural areas with an effects-based approach. The provisions that detail the balancing of agricultural and farming against those other land uses should be left to the Landscape chapter.

8. MAPPING OF ONL LINES

- 8.1 It is not contested that Queenstown's landscapes are critical to Queenstown's image and its reputation and are worthy of recognition and careful management. However, as outlined in RPL's submission, a finer grain analysis of the district's landscapes

⁹ Section 42A Report, Chapters 3 & 4: Strategic Direction and Urban Development, page 33, para 12.108.

and the appropriate use and development within is required. This aspect of RPL' and QPL's submissions is to be addressed at a later stage of the PDP hearings.

9. CONSISTENCY WITH RMA WORDING

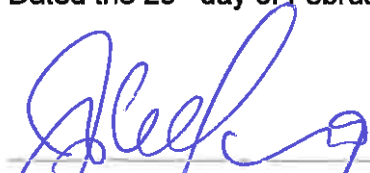
9.1 RPL and QPL sought that the wording of the Landscape chapter be amended in places so as to better align with the wording of the RMA. Mr Brown's evidence also notes that aside from the definitions contained in the RMA there is also a wealth of case law establishing definitions for certain RMA words and phrases. It is submitted that the use of RMA language is a helpful tool to provide certainty as to what the provisions intend.

10. CONCLUSION

10.1 For the reasons outlined in legal submissions and in the evidence of Mr Brown, RPL, QPL, SPL, and QWL seek:

- (a) Mr Brown's amendments to the Frankton Commercial Centre in the Strategic Directions chapter be supported;
- (b) Amendments to the Strategic Directions chapter providing greater recognition of the role of tourism in the district;
- (c) Mr Brown's amendments to the Urban Development chapter outlining criteria for instances where urban development may occur outside UGBs be supported;
- (d) Amendments to the Strategic Directions and Landscape chapters that does not prohibit enables subdivision, use, or development in land identified as an ONL; and
- (e) Greater recognition of other activities that typically establish in rural areas, such as tourism, rural living, and commercial recreation, that provide significant social benefits.

Dated the 29th day of February 2016



J D Young / R A Davidson

Counsel for Remarkables Park Limited, Queenstown Park Limited, Shotover Park Limited, and Queenstown Wharves (GP) Limited