

**BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL HEARING PANEL**

**IN THE MATTER** of the Resource Management Act  
1991

**AND** the renotification of two submissions  
on Stage 1 of the Queenstown Lakes  
Proposed District Plan concerning the  
zoning of land at Arthur's Point by  
Gertrude's Saddlery Limited and  
Larchmont Developments Limited

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**STATEMENT OF EVIDENCE OF THOMAS DERY  
ON BEHALF OF ARTHURS POINT OUTSTANDING NATURAL LANDSCAPE  
SOCIETY INCORPORATED (FURTHER SUBMITTER 48)**

**Dated 26 January 2023**

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## **Introduction**

1. My name is Thomas Dery. I own the property at 3 Watties Track and have been there since 2001.
2. I am Chair of the Arthurs Point Outstanding Natural Landscape Society (**the Society**). I am duly authorised to provide this evidence statement on behalf of the Society in accordance with the Society's Rules and Resolutions.
3. I have been involved with all planning matters the Society has had with 111 and 163 Atley Road from the inception and incorporation of the Society in 2018 including the Society's legal actions in the Environment Court, High Court, and Appeals Court, the Arthurs Point Stage 1 Re-notification, and the Landscape Priority Areas consultation and submission.

## **Summary Statement**

4. In my evidence I explain the purpose of our Society, I provide an overview of our membership, a summary of planning processes involving the Society and an overview of membership concerns with the rezoning proposal advanced by GSL and LE. Additionally I also respond to some of Mr Fairfax's evidence.
5. The Society was incorporated in June 2018 to protect the nationally recognised Outstanding Natural Landscape, Outstanding Natural Features and amenity that the members of the Society enjoy as residents of Arthurs Point. In May 2018, it was discovered that as part of the 2015 QLDC PDP Stage 1 plan change process, the site at 111 and 163 Atley Road had had its ONL classification removed and had been rezoned from 'Rural General' to 'Low Density Residential' without any cognisance or awareness in the local Arthurs Point community. This led to our society being formed to provide a coherent voice for its members.
6. Information was disseminated through member referrals, word-of-mouth, letter box drops, email, local press, and discussions at local community meetings providing factual detail from the PDP hearings or resource consent applications.
7. After the Court of Appeal decision our lawyer told us the rezoning/ONL proposals would be renotified. In preparation for this the Society suggested members lodge their own personal submissions on the Atley Road re-notification and also the Landscape Schedules Variation so their own views could be heard. Many members asked for guidance and this was provided

which they could edit and use as they saw fit. We were very careful to tell them they had to express their own thoughts and opinions on matters such as what it is about the area that they value highly. These processes can be really daunting for people so we did want to make it as accessible as possible by being as helpful as possible but knowing it had to be more than just a numbers game. We tried to get that balance right.

8. The Society does not stand to make any financial gain from being successful. It's driving force is the wish to retain – for this generation and those to come - the values of the Arthurs Point area. Rezoning is irreversible (once acted on) and once those values are lost, they are lost forever.
9. The Society consists of 133 members, 125 of which reside in or own property within a 1km radius of the land at 111 and 163 Atley Road. Of the 71 further submissions in opposition, 38 are Society members and 33 are not.
10. A broad range of issues concern our members should the rezoning succeed, broadly seen as:
  - General protection and concern with the removal of ONL/ONF at Arthurs Point
  - Cultural concerns (including the character of Arthurs point, historical and cultural associations, and village feel)
  - Increased safety risks for pedestrians and bike riders
  - Traffic, parking, noise and increased pressures on infrastructure
  - General environment of area
11. There are numerous references from Mr Fairfax in his evidence relating to claims that APONLS have undertaken a “campaign of opposition and community confusion” and created a “climate of confusion and misinformation” in its dealings leading up to this renotification. I have presented our responses to each of the concerns raised by Mr Fairfax which provide our side of the story. We were very disappointed to read his evidence and these claims. We have done our best and we have had to get, at our personal expense, help to keep up with all the hearings. At the moment we have this, the Variation and a Declaration in the Environment Court (instigated by Gertrude’s Saddlery) that we are trying to participate in.

12. There seems to be a sense that the removal of the ONL should be a given (see para 22 of Mr Fairfax’s submission on the landscape schedules Variation made in late 2022):

*“Given the renotification process is a formality to rectify perceived issues with the notification, rather than fundamental issues with the merits of Council decision, it is highly likely this LDR zoning (or an equivalent residential zoning / bespoke zone) will be confirmed operative under the PDP soon.”*

13. Our lawyer tells me that is an entirely incorrect statement.
14. The Society respectfully requests that we are given a fair hearing and this landscape of national importance is given the protection it requires so it is not lost forever. It has taken about 4 years for us to get to this hearing. We are pleased to finally be here.

### **Scope of this evidence**

15. In this evidence I look to provide:
- (a) a description of the Society’s reason for existing and what its purpose is;
  - (b) an overview of the Society’s membership, both in terms of numbers and geographical relationship to the Gertrude Saddlery Limited (**GSL**) and Larchmont Enterprises Limited (**LEL**) land and Arthurs Point;
  - (c) an overview of the planning processes the Society has been, and is currently, involved in;
  - (d) an overview of the membership’s concerns with the rezoning proposal advanced by GSL and LEL.
16. I also respond to some of Mr Fairfax’s evidence.

### **Why does the Society exist? What is its purpose?**

17. The Society was incorporated in June 2018 to protect the nationally recognised Outstanding Natural Landscape, Outstanding Natural Features and amenity that the members of the Society enjoy as residents of Arthurs Point. The Society’s members are concerned that, if left unchecked, insensitive development in Arthurs Point will not only ruin the outstanding landscape and compromise the Shotover River (as an Outstanding Natural

Feature) but will severely compound the problems we already see with our over-stretched local transport network and infrastructure.

18. The purposes of the Society are to:
  - (a) pursue and protect the landscape values generally and in particular within the vicinity of the Wakatipu Basin and address matters arising as a consequence of the Resource Management Act 1991 and all matters incidental thereto;
  - (b) do anything necessary or helpful to the above purposes.
19. In May 2018, it was discovered that as part of the 2015 QLDC PDP Stage 1 plan change process, the site at 111 and 163 Atley Road had its ONL classification removed and had been rezoned from 'Rural General' to 'Low Density Residential' without any cognisance or awareness in the local Arthurs Point community. Members of the local community believed the notification process to be seriously deficient which resulted in many members of the public being excluded from the plan change process in circumstances where they were directly affected and wished to be involved. The Society was formed to give local residents the right to be heard and have a say on the future of sensitive sites in Arthurs Point, like 111 and 163 Atley Road where the ONL and ONF could be adversely impacted by inappropriate subdivision and development.
20. Once the wider local community became aware that a Society had formed and that prominent ONLs and ONFs in Arthurs Point were subject to development pressure, the Society membership base grew organically. This was mainly through word of mouth, member referrals, a letterbox drop, email, local press, and discussions at local community meetings. In all cases, the Society simply asked people if they were aware of various development pressures on the landscapes in Arthurs Point and then presented factual detail from the PDP hearings or resource consent applications if requested. Once people became aware, that in the case of 111 and 163 Atley Road, QLDC had *already* adopted the rezoning and removed the ONL, local people were keen to join the Society. This was because it was the only avenue left for locals to retrospectively have a say on this.
21. Separate to this re-notification, the Society has also submitted on further stages of the PDP and in relation to other sites subject to development pressures in Arthurs Point.

22. Since its inception in 2018 the Society has provided the following information in relation to 111 and 163 Atley Road to its members:
- (a) Explanation of the 2015 PDP Stage 1 landowner submissions, the 2017 hearings, and the 2018 QLDC decision to delete the ONL classification and rezone the site as Low density residential.
  - (b) Confirmation that the rezoning was part of the PDP plan change process and not a result of the better understood Resource Consent process.
  - (c) Explanation that the first battle was a legal one to obtain the right to be heard and that this was the only route.
  - (d) Explanation that the process related to the submitter's rural zoned land, and that the owner was seeking the new zoning to be Low density Residential (as stated in their submissions).
  - (e) Confirmation that if rezoned to Low Density Residential an 89 lot yield figure had been provided to the 2017 hearing commissioners. Under Low Density Residential rules this could allow a potential circa 160+ dwelling units as each house permitted an additional flat. New PDP Low Density Residential zone rules now allow for lot sizes smaller than 450sqm which could allow for an even higher yield.
  - (f) Various legal updates and decisions issued by the Court(s)
  - (g) Provided links to information concerning the QLDC re-notification process, and QLDC website links to where submissions and documentation could be found.
  - (h) Suggested members lodge their own personal submissions on the Atley Road re-notification and Landscape Schedules so their own views could be heard. Many members asked for guidelines and these were provided which they could edit and use as they saw fit.
23. The Society continues to grow with people keen to join either for the specific purpose of having a say in relation to the re-notification, landscape schedules, or the general purpose of ensuring that ONL landscapes in this special part of the world are protected.

## Who is the Society?

24. Of the 133 society members, 125 reside in or own property at Arthurs Point and are within a 1km radius of the land at 111 and 163 Atley Road. Two additional Society members own and live 2.7km from 111 and 163 Atley Road. The remaining six Society members are family or relatives who live elsewhere but spend some time each year at the Arthurs Point residences in question. We all have an interest in the hearing and it is greater than the general public as we will all be directly affected if the land at 111 and 163 Atley Road is rezoned from Rural and the current landscape classification is removed. The Society has prepared a map showing the locations of the properties of the Society members in Arthurs Point marked as “**Appendix 1**”.
25. Of the 100 further submissions that were made on this rezoning proposal: 28 are in support, 1 neither supporting or opposing, and 71 in opposition.
26. Of the 71 in opposition, 33 are not Society members, and the remaining 38 are Society members. Please see the attached map the Society has prepared marked as “**Appendix 2**” showing the property locations of individual submitters in Arthurs Point.

## Involvement of the Society in relevant planning processes

27. To date, the Society has been involved in many hearings regarding 111 and 163 Atley Road. It has been an exhausting and expensive journey to this point just to get involvement in the process.
28. The Society does not stand to make any financial gain from being successful. It's driving force is the wish to retain – for this generation and those to come - the values of the Arthurs Point area. Rezoning is irreversible (once acted on) and once those values are lost, they are lost forever.
29. Right now, the Society is also a submitter on the Landscapes Schedule Variation and is in general support of the values and landscape attributes that the Council landscape experts identified for the s6 landscape of national importance at the Shotover Loop.
30. In addition, the Society has also asked for the right to join (and be heard) on an Environment Court Declaration Application by Gertrude Saddlery Limited (**GSL**). The Declaration Application relates specifically to the Landscapes Schedule variation.

## What are the Society's concerns?

31. General concerns of the Society members include the following<sup>1</sup>:
- (a) Protection of visually prominent ONL's and ONF's at 111 and 163 Atley Road.
  - (b) Protection of remaining ONL and ONF and its margins in Arthurs Point
  - (c) Insensitive and inappropriate development that will adversely impact the ONL's and ONF at Arthurs Point, including the users enjoyment of them.
  - (d) Increase access and amenity opportunities into public ONLs and ONF's.
  - (e) Rezoning and removal of ONL resulting in irreversible change to the landscape.
  - (f) Urban development exceeds the capacity of the landscape to absorb change.
  - (g) Increased traffic safety risks to pedestrians and bike users.
  - (h) Increased vehicle parking pressure
  - (i) Traffic congestion
  - (j) Preservation of highly desirable alpine village feel
  - (k) Loss of the peaceful rural character of Arthurs Point
  - (l) Night light spill
  - (m) Loss of vegetation
  - (n) Pressure on local infrastructure
  - (o) Preservation of historical and cultural associations
  - (p) Increased noise
  - (q) Increased domesticity of the landscape.
  - (r) Care and protection of the environment
  - (s) Reduction in air and water quality

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<sup>1</sup> These points were taken from submissions from members of the Society.



- (t) Preserving natural beauty for future generations
  - (u) Access road to 111 Atley road is too narrow and is already very badly maintained.
  - (v) Mixing vehicular traffic and bike traffic is dangerous
  - (w) Rubbish collection causes congestion and traffic chaos
32. Over the last 4 years we have had many conversations with members of the Society at; community and association meetings, AGMs, phone conversations. These are the repeated themes that come up again and again.

### **The Genesis of the Society**

33. This diminution of ONL at Arthurs Point was the genesis that drove the establishment of the Arthurs Point Outstanding Natural Landscape Society.
34. Much has been said of the fact that there was no community opposition to the 2015 submissions under the PDP Stage 1 to change the zoning of Rural land at Arthurs Point to Low Density Residential and remove the Outstanding Natural Landscape (**ONL**) classification over the land.
35. The various Courts (through to the Court of Appeal) have already found that the process that the Council undertook to summarise the submission was flawed and meant that members of the public would not have been aware of the rezoning proposal. This was the feedback that we had from a large number of members of the community when they were made aware of the rezoning. In its decision C150/2019 the Environment Court found the summary of decisions requested to be “illogical (and therefore unreasonable) and misleading (and therefor unfair).”
36. The sheer number of people voicing concern over the rezoning and removal of the ONL led to a society being formed to provide a coherent voice for its members.
37. The fact that the renotification drew a large number of submissions in opposition (71) was because the submission was summarised and notified correctly such that the community was able to determine whether they wish to submit in support or opposition to the proposal, or not bother with making a submission at all.

## Response to Mr Fairfax's Evidence

38. There are numerous references from Mr Fairfax in his evidence relating to claims that APONLS have undertaken a "campaign of opposition and community confusion" and created a "climate of confusion and misinformation" in its dealings leading up to this renotification. On behalf of the Society, I would like to respectfully respond to these allegations to correct the record.
39. Paragraphs 10 and 15 of Mr Fairfax's evidence make general reference to a misleading campaign unfair to him. The Court cases were public processes, and this (and the media interest leading up to them) generated a lot of community awareness of Mr Fairfax's proposal. The Society engaged with members of the local community throughout to understand what the local issues were and the values that mattered most to them. The Society did not advance any campaign against Mr Fairfax or his development.
40. Paragraph 20 of Mr Fairfax's evidence (part thereof) suggests a lack of opposition in the initial submission implied approval for "the rural part of my (Fairfax) land rezoned for housing". This statement overlooks that the fact that this stemmed from a process that the Court found to be *"illogical, unreasonable misleading and therefore unfair"*. There was no opposition (or interestingly no support) because no one was aware of the rezoning request. Judge Jackson in the Environment Court case made the observation that looking for information *"in the online form was difficult. Finding it in the hard copy would be like searching for a contact lens in a scatter of confetti"*.
41. Paragraph 20 of Mr Fairfax's evidence (part thereof) suggests that "many more would be in support if they were in full possession of all the facts" regarding this renotification. The proposal that was re-notified was the proposal of Mr Fairfax's as set out in his submission – that was to rezone his land in its entirety to low density residential. It is difficult to reconcile how the Society could have impacted that as his submission was clear that he wanted the entirety of the land for urban development. Society members only learned of his updated plans immediately before the developers evidence was submitted as part of the re-notification schedule in late October 2022. The plan that was provided to the Society a week or so earlier was provided on the basis it was not distributed.
42. There was no attempt, during the period of extended litigation (concluding in High Court support for Renotification) by Mr Fairfax to explain or brief the Society on any amended proposal or make any contact. In any event, the

pressing issue for APONLS has always been to have the merits of the land properly reviewed and a determination made as to whether the ONL classification of the land should be protected as a matter of national importance. Any development plans are secondary to that.

43. If Mr Fairfax considers that any part of his proposal has been misunderstood by the community, it is his responsibility to address that.
44. Paragraph 23 of Mr. Fairfax's evidence suggests that his efforts to bring some efficiencies to this process "have been unsuccessful". During the three year period of litigation there were three hearings in the Environment Court, two in the High Court and an appeal to the Court of Appeal. At no stage did Mr Fairfax attempt to make contact with the Society and the litigious nature of the legal approach added significantly to costs with no opportunities for 'efficiencies'.
45. Paragraph 26 of Mr. Fairfax's evidence claims "a small subset of submitters are opposed to all development on my land". This statement is not factual and the record of submission provides an accurate account of the parties in support or opposition to his proposal.
46. Paragraph 15 of Mr Fairfax's evidence he claims that "unless the Site is comprehensively rezoned and master-planned at this stage, I am unlikely to be able to use my land for any reasonable purpose in the future". Numerous comments like this are made throughout his evidence.
47. Mr Fairfax owns a large landholding that is split zoned low density residential and rural. His own expert evidence suggests that the residential zoned portion of his land can yield 15 or so lots. His land therefore is capable of reasonable use.
48. It is disingenuous for Mr Fairfax to now 'split' his land from its zonings and say that his rural balance land has no reasonable use when he made a speculative purchase of land knowing that the Rural portion was within an ONL.
49. Paragraphs 24, 27, and 14 of Mr. Fairfax's evidence suggest specific actions by APONLS as examples of misinformation provided to community and society members. I address these as follows:

(a) *Misleading media articles*

Nothing in the copy of this article contains any mis-information. The

illustration depicts an interpretation of what the site could look like if developed to the full potential of the initial approval by QLDC. The inclusion of the postage stamp was to depict the cultural importance of the whole area and vista in question (of which Mr Fairfax's land is part of), not singling out his land. The Society did not write the article, that was solely at the hands of a journalist.

(b) *Renotification Template*

The "potentially" misleading reference relates to what possibly could be done in development terms. At the stage of those submissions the 'revised' development plans had not been submitted. Mr Fairfax has overlooked here that his proposal was to rezone the entire of his land low density residential which enables units down to 300m<sup>2</sup> net lot area.

(c) *Appearing at Arthurs Point Community Association meetings to garner support for renotification*

Indeed, many questions of process and requirements to participate in the renotification hearing were answered. Many members of the community looked for updates on progress and process.

(d) *APONLS' support for the Atley Road site to be included in the Landscape Priority areas as part of the Landscape Schedules process.*

The Charter of the Society dictates to actively protect the ONL. Our view is that being involved in this process aligns with the purpose of the Society. The Council requested informal public feedback into the values of the district's landscapes and the Society and many members of the Arthurs Point community participated in that process, as it was entitled to do. The Council notified Mr Fairfax's property within the landscape priority area as a section 6 landscape of national importance, and I am unsure why he sees this as an issue resulting from the Society. Interestingly, Mr Fairfax has taken an action with the Environment Court to ensure exclusion from this review without advising the Society in spite of our relevance to proceedings.

**This process is a mere formality**

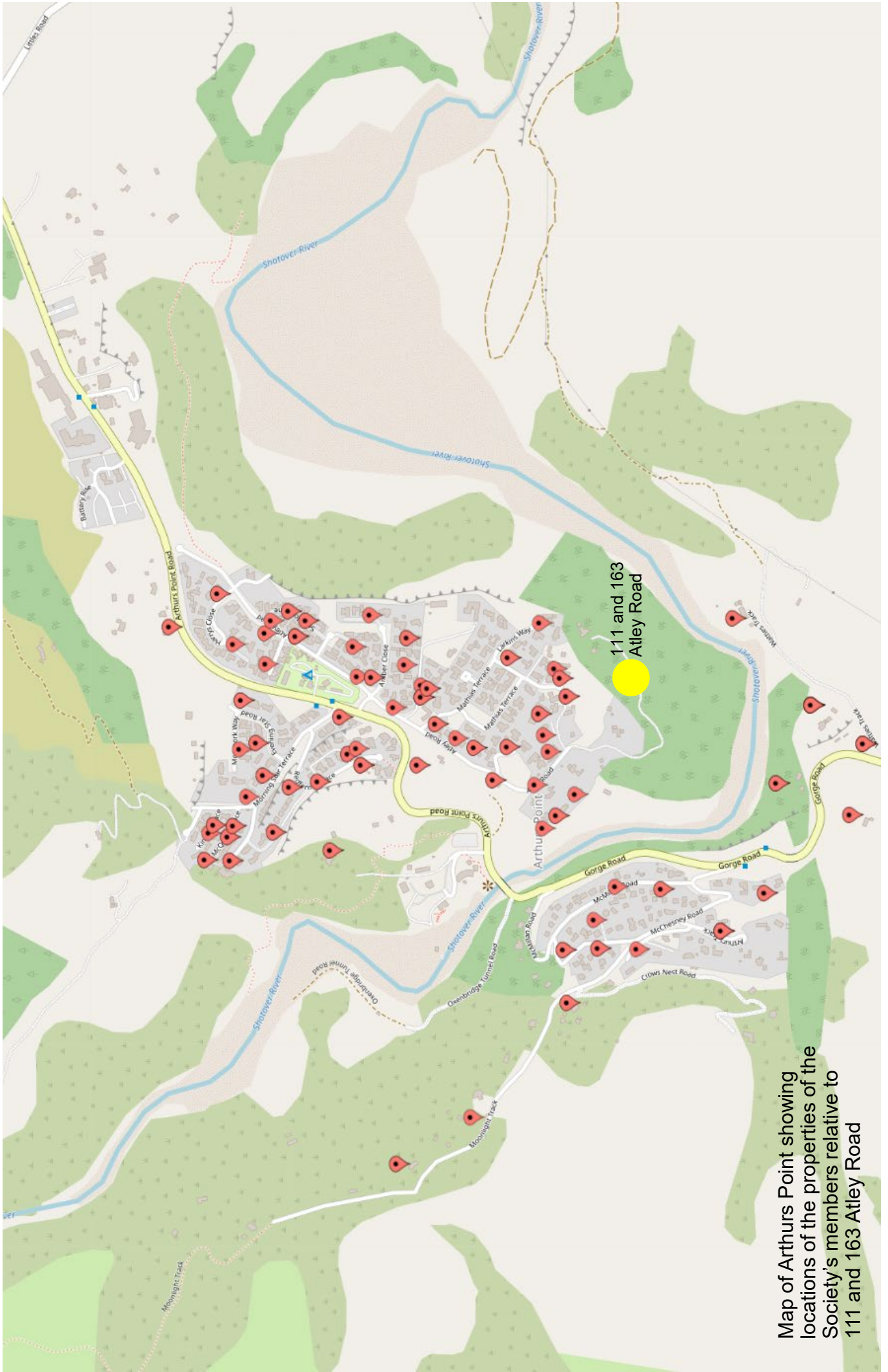
50. On a final note, one matter that has very much upset myself and the Society is the assertion that the removal of the ONL and replacement with urban rezoning is give-in. Below is a statement from paragraph 22 of Mr Fairfax's legal submission on the landscape schedules made in late 2022:

*“Given the renotification process is a formality to rectify perceived issues with the notification, rather than fundamental issues with the merits of Council decision, it is highly likely this LDR zoning (or an equivalent residential zoning / bespoke zone) will be confirmed operative under the PDP soon.”*

51. This statement reflects the attitude that has been taken to this process from the start and the Society can't help but feel on the backfoot with every step we take.
52. The Society respectfully requests that we are given a fair hearing and this landscape of national importance is given the protection it requires so it is not lost forever.

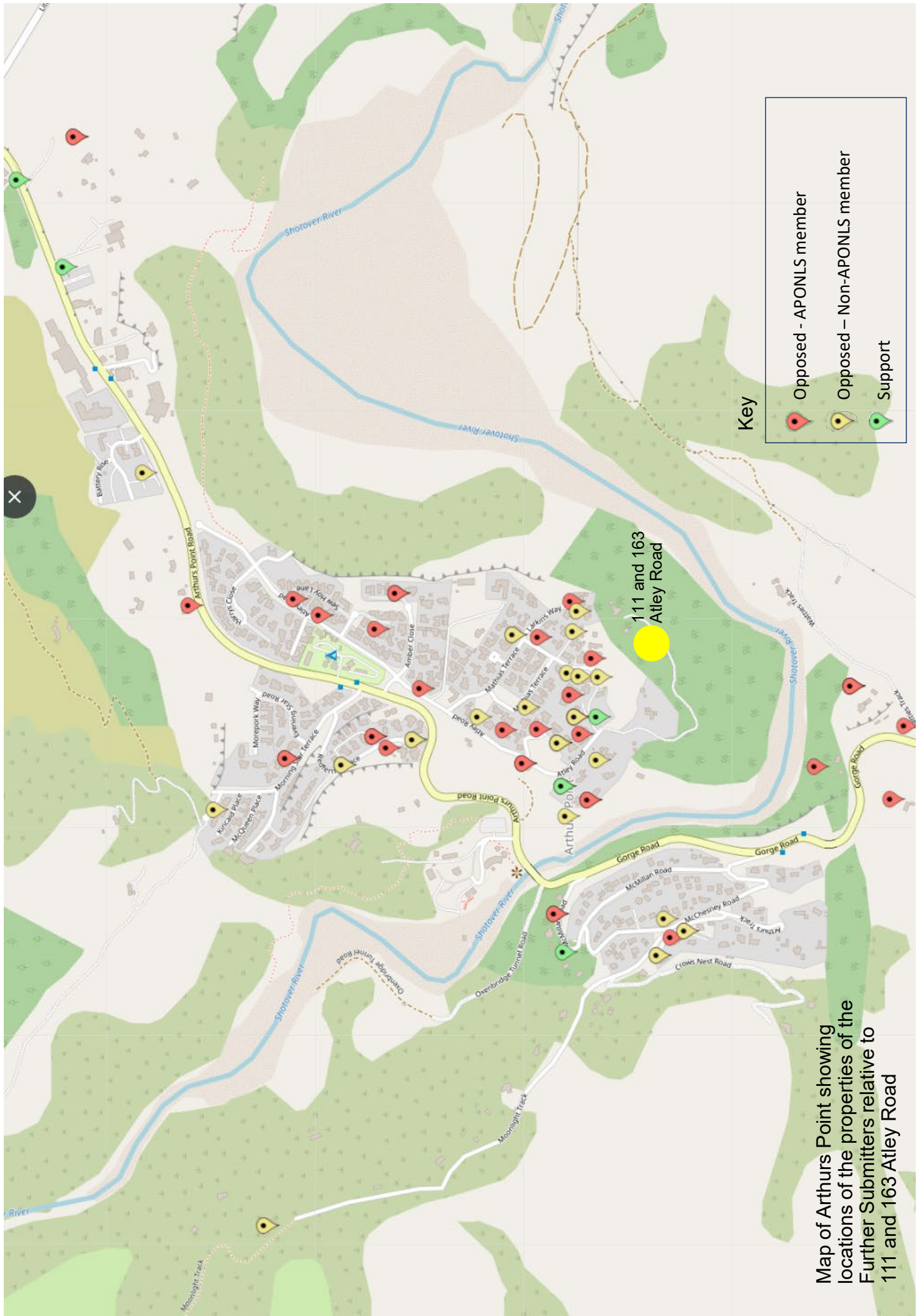
**Thomas Dery**

**26 January 2023**



Map of Arthurs Point showing locations of the properties of the Society's members relative to 111 and 163 Atley Road





Map of Arthurs Point showing locations of the properties of the Further Submitters relative to 111 and 163 Atley Road