

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Hearing Stream 19 - Stage 3b
Proposed District Plan

**OPENING LEGAL SUBMISSIONS ON BEHALF OF QUEENSTOWN LAKES
DISTRICT COUNCIL**

STAGE 3B / HEARING STREAM 19 - WALTER PEAK REZONING

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1. INTRODUCTION

- 1.1 These opening legal submissions are made on behalf of Queenstown Lakes District Council (**Council**) in respect of the submission by Wayfare Group Limited (**Wayfare**) on Stage 3b of the Queenstown Lakes Proposed District Plan (**PDP**).
- 1.2 The Wayfare submission seeks a new “Walter Peak Tourism Zone” (**Tourism Zone**) which applies to land at Walter Peak Station (**Site**).
- 1.3 For efficiency reasons, these submissions do not outline the key issues ‘from scratch’. This is because Council’s earlier legal submissions for Stages 3 and 3b of the PDP have previously addressed wider plan matters, Council’s functions and statutory obligations and relevant legal tests, as well as high order documents (Otago Regional Policy Statement) (dated 29 June 2020)¹ (**Stage 3 legal submissions**).
- 1.4 With reference to those earlier Stage 3 legal submissions, Council provides the following updates for the Panel:
- (a) Since the filing of our Stage 3 legal submissions, the Regional Policy Statement for Otago 1998 has been revoked in full and there is now a single regional policy statement, which was made operative on 15 March 2021 (**RPS**).²
 - (b) Relative to the appeals allocated to Topic 2 – Rural Landscapes, the Environment Court has recently issued its Interim Decision 2.7³ which effectively determines all of the Chapter 3 and 6 PDP provisions, bar a select few where further directions have been issued. A copy of this decision is **attached** to these legal submissions at **Appendix A**, as is a copy of the consolidated Chapter 3 and 6 provisions (and a covering memorandum) at

1 https://www.qldc.govt.nz/media/azvmz0ga/stage-3-hearing_-qldc-legal-submissions-33731947-v-1.pdf.

2 <https://www.orc.govt.nz/plans-policies-reports/regional-plans-and-policies/regional-policy-statement/partially-operative-regional-policy-statement-2019>.

3 [2021] NZEnvC 60.

Appendix B, which were filed with the Court by Council on 16 June 2021.

2. OUTLINE OF LEGAL SUBMISSIONS

2.1 These legal submissions address the following matters:

- (a) The existing Walter Peak tourism operations;
- (b) The Exception Zone framework, as it would apply to the Site if the Tourism Zone were granted;
- (c) Council's position in relation to the most appropriate zoning for the Site;
- (d) The impact of the Rural Visitor Zone (**RVZ**) on existing development rights;
- (e) Hazard provisions.

2.2 The following documents are attached to these legal submissions:

- (a) **Appendix A**: Interim Decision 2.7;
- (b) **Appendix B**: Consolidated Chapters 3 and 6 (and covering memorandum);
- (c) **Appendix C**: Chapter 4 PDP;
- (d) **Appendix D**: Minute of the Environment Court dated 1 June 2021.

3. THE EXISTING WALTER PEAK TOURISM OPERATIONS

3.1 Council does not dispute that the existing Walter Peak tourism operation (including the TSS Earnslaw) has an important place, both economically and culturally, within the Queenstown District. Council acknowledges that putting in place a planning framework that ensures the ongoing economic viability of these operations is important.

3.2 Council also accepts that providing for growth at the Site is preferable to allowing tourism activities to expand into other parts of the District's Outstanding Natural Landscape (**ONL**). There is the potential that this could occur, if the framework precludes

appropriate levels of growth. The challenge is determining what is appropriate, which involves a balancing of landscape and economic matters.

3.3 While Council has not filed any economic evidence of its own, it observes that the evidence filed by Wayfare does not provide an economic cost-benefit analysis in a true section 32 (RMA) sense. Council understands the economic evidence to be of a more commercial / corporate nature, and considers that the economic impact outlined in Mr Bridgman's evidence has not been properly assessed against the rezoning relief sought (or the notified / decision version of the RVZ).

3.4 The RVZ does provide for tourism operations to continue and expand, however Wayfare has not provided a comparison of that benefit against that which arises through the Tourism Zone provisions. It is submitted that economic costs and benefits should be assessed relative to the zoning options for the Site, rather than the effects on the specific operations (ie. the macro, rather than micro).

4. THE EXCEPTION ZONE FRAMEWORK, AS IT WOULD APPLY TO THE SITE IF THE TOURISM ZONE WERE GRANTED

4.1 There is no disagreement that the Site is within an ONL.

4.2 As per the Environment Court's various Topic 2 decisions, the policy direction in Chapter 3 of the Proposed District Plan (**PDP**) is to *protect* landscape values of the District's ONLs.

4.3 Wayfare has sought its Tourism Zone on the basis that it be listed as an Exception Zone in Chapter 3 of the PDP.⁴ This new zone, which will be applied to land within an ONL, must measure up and achieve the Chapter 3 policy direction for ONLs.

4.4 The policy consequence of being listed as an Exception Zone is that the ONL (and ONF) related objectives and policies in

⁴ We have previously traversed the premise of the Exception Zone Framework in 8.7 to 8.11 of our opening legal submissions.

Chapters 3 and 6 will not apply to applications for subdivision, use and development within the Tourism Zone, *unless* the proposed activity is not provided for in the Tourism Zone. In the latter case, any application will need to demonstrate that it will *protect* landscape values.

4.5 The rationale underpinning this framework is that an Exception Zone accounts for the section 6(b) RMA environmental outcomes, and therefore the Chapter 3 and 6 provisions relating to ONLs do not need to apply. This is unless an activity is not provided for by the Exception Zone, in which case the zone may not have been designed to account for that activity, in that location.

4.6 Further to the above, if an activity within an Exception Zone is assessed as part of a receiving environment which includes an ONF or ONL, the strategic objectives and strategic policies listed in 3.1B.6 will be engaged. Those strategic objectives and policies will, collectively, require evaluation of any application against the requirement to *protect* landscape values.

4.7 As required by Chapter 3, before the proposed Tourism Zone can be approved as an Exception Zone, the Panel must be satisfied that its provisions will achieve the relevant 'protect' policy direction. On the basis of the amended Tourism Zone provisions appended to Mr Farrell's evidence, Council's experts are not satisfied that the amended Tourism Zone qualifies as an Exception Zone. This has informed Council's position on the most appropriate zone for the Site.

5. COUNCIL'S POSITION ON THE MOST APPROPRIATE ZONING FOR THE SITE

5.1 The Panel will be familiar with the purpose and application of the RVZ.

5.2 As per Council's earlier submissions, the purpose of the RVZ is to enable visitor industry activities within ONLs (and RCLs). It is a

zone developed and applied to recognise and respond to different levels of landscape sensitivity, and direct development to areas with lower sensitivity.

5.3 The Panel, in Report 20.1,⁵ set out a number of principles for the determination of what the most appropriate zone is for a given area of land. With reference to the Wayfare relief, several of the more relevant principles are:

- (a) Whether the change is consistent with PDP Strategic Directions Chapters (Chapters 3 - 6);
- (b) The overall impact of the rezoning gives effect to the RPS;
- (c) Changes should take into account the location and environmental features of the site (e.g. the existing and consented environment, existing buildings, significant features and infrastructure);
- (d) Zone changes recognise the availability or lack of major infrastructure (e.g. water, wastewater, roads), and that changes to zoning do not result in unmeetable expectations from landowners to the Council for provision of infrastructure and/or management of natural hazards; and
- (e) Zoning is not determined by existing resource consents and existing use rights, but these will be taken into account.

5.4 While Council has considered all of the principles outlined in Report 20.1, the above are considered particularly relevant to the Wayfare submission. Council's position on those principles is:

- (a) That the RVZ provisions, as accepted by the Panel in Report 20.7,⁶ implement the Chapter 3 policy direction for ONLs;⁷
- (b) That the RVZ provisions determined through Stage 3 give effect to the RPS;

5 QLDC PDP Stage 3 Report 20.1 (Introduction), Section 2.9: <https://www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/decisions-of-council/#independent-panel>.

6 <https://www.qldc.govt.nz/media/2wcfkler/qldc-stage-3-report-20-7-rvz-with-appendices.pdf> at [190].

7 At [195].

- (c) That the design of the RVZ appropriately takes into account the location and environmental features of the Site, by responding to areas with differing sensitivities;
- (d) With reference to the Council's proposed site-specific hazard provisions, achieves proper management of natural hazards; and
- (e) Provides an appropriate framework for the continuation and growth of the Walter Peak tourism operations, while also giving effect to the Chapter 3 policy direction.

5.5 In directly comparing the two zones at issue, and as noted above, the key concern that Council's witnesses have with the Tourism Zone is that the varying landscape sensitivities at the Site have not been appropriately recognised (and responded to) by the proposed provisions. Further, the proposed Tourism Zone has not used the notified landscape sensitivity mapping as a tool to guide the management of landscape values.⁸ Instead, built development is provided for across the Site without any response to, or recognition of, differing levels of sensitivity.⁹

5.6 This is an important distinction. Given the relevant strategic directions in Chapter 3, it is Council's submission that any zoning framework for the Site locates development where it can be appropriately absorbed.¹⁰ As Ms Mellsop explains in paragraph 4.17 of her rebuttal evidence, this will ensure that the character and quality of more sensitive areas is maintained, and that the landscape values of the ONL are protected.

⁸ Helen Mellsop, Evidence in Chief, paragraph 5.9.
⁹ Elias Matthee Rebuttal Evidence, paragraph 3.6(d).
¹⁰ Paragraph 4.3 Helen Mellsop rebuttal evidence.

5.7 In the absence of further evidence from Wayfare demonstrating that the Tourism Zone provisions appropriately respond to the varying degrees of landscape sensitivity across the Site, or adoption of the modified sensitivity mapping supported by Ms Mellsop (as per appendix A to her rebuttal evidence), it is submitted that the proposed Tourism Zone (and its provisions) do not regulate development in a manner that achieves Chapter 3. For this reason, it is submitted that Council's evidence should be preferred, and the RVZ approved as the zoning which is more appropriate to achieve the Chapter 3 policy directions.

6. IMPACT OF RVZ ON EXISTING DEVELOPMENT RIGHTS AT WALTER PEAK

6.1 Mr Farrell's evidence in chief, at paragraphs 18 and 19, suggests that the RVZ extinguishes development rights at the Site primarily through:

- (a) an outcome that focuses on protecting landscape values rather than enabling development; and
- (b) provisions which constrain development to a small section of the site and removing the permitted activity status for some activities that were previously enabled as permitted or controlled.

6.2 While the consented / existing environment for Walter Peak may be different from what is now proposed, or what has been notified, that is not determinative. Applying zones to land is a policy exercise that needs to draw on the relevant strategic policy context.

6.3 As per the Court's Topic 2 decisions, and with reference to a recent minute of the Court dated 1 June 2021 (**Minute**) (relating to the rural chapters and **attached** to these legal submissions at **Appendix D**), the updated policy framework has undergone substantial amendment. Council's witnesses have drawn on those amendments in reaching their expert view on the appropriate zoning.

- 6.4 In response to Mr Farrell’s first concern, while Exception Zones and the RVZ can indeed enable activities, if they are proposed for land within an ONL they need to do so while also *protecting* landscape values. This can be achieved by locating activities where there is capacity to do so, and regulating the use of land in a manner that achieves the Chapter 3 policy direction.
- 6.5 Secondly, Council does not consider the RVZ provisions to amount to an extinguishment of development rights. The intent of the RVZ is to enable visitor industry development, and it uses a combination of permitted and controlled activity status to do this. For example, controlled activity status will apply to a not insignificant part of the Site (approximately 17ha in total). While not as enabling as aspects of the proposed Tourism Zone, the RVZ is more enabling of visitor industry activities and buildings than all other PDP zones, including the Rural Zone.¹¹

7. THE DRAFT HAZARD PROVISIONS SUPPORTED BY COUNCIL’S PLANNING EVIDENCE

- 7.1 Mr Matthee, at paragraph 3.11 of his rebuttal evidence has recommended draft hazard risk provisions that he considers appropriate for inclusion in the PDP. Mr Matthee considers these provisions appropriate in response to the evidence of Mr Bond, irrespective of the zoning applied to the site.
- 7.2 The Wayfare submission provides scope to include such provisions within the Tourism Zone (if granted). Council has also considered whether the recommended provisions can be included in the RVZ for the Site, if that zoning is confirmed.
- 7.3 It is submitted that the inclusion of the proposed hazard provisions is within scope due to the reference in paragraph 18(b)(xx) of Wayfare’s revised submission to “*[e]xclude/exempt activities within the Walter Peak Tourism Zone from having to confirm to the standards in the District Wide Chapters. Include*

11 Elias Matthee Rebuttal Evidence, paragraph 3.18.

appropriate bespoke provisions to the Walter Peak Tourism Zone where necessary.”

7.4 Council’s understanding of this relief is that Wayfare is seeking a self-regulating chapter for Walter Peak that does not engage with the District Wide provisions (which includes Chapter 28 – Hazards). As a result, Council considers there to be scope for inclusion of new provisions that will regulate risk for Walter Peak, either in Chapter 28 or Chapter 46. The only proviso here is that the provisions will need to be site-specific, as has been drafted by Council’s planning witness.

8. COUNCIL WITNESSES

8.1 Council will call the following expert witnesses in relation to the relief sought by the Wayfare submission:

- (a) Helen Mellsop – Landscape Architect;
- (b) Robert Bond – Hazards; and
- (c) Elias Matthee – Planner.

DATED this 18th day of June 2020



M G Wakefield
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APPENDIX A
ENVIRONMENT COURT, TOPIC 2 – RURAL LANDSCAPES
INTERIM DECISION 2.7

APPENDIX B

**CONSOLIDATED CHAPTERS 3 AND 6 AND COVERING MEMORANDUM FILED
BY COUNCIL ON 16 JUNE 2021**

APPENDIX C

CHAPTER 4 – URBAN DEVELOPMENT (POST TOPIC 3 CONSENT ORDER)

APPENDIX D

MINUTE OF THE ENVIRONMENT COURT DATED 1 JUNE 2021