

**BEFORE THE QUEENSTOWN LAKES
DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act 1991 (the "Act")

AND

IN THE MATTER of the Queenstown Lakes District Proposed District Plan
Hearing Stream 02

AND

IN THE MATTER of Chapter 21 and Chapter 22 provisions relating to
provision for rural living opportunities in the Wakatipu
Basin

**PRESENTATION SUMMARY of LEGAL SUBMISSIONS
on behalf of the Submitters listed below
26 May 2016**

Submitters: Allenby Farms Limited - 502/1254;
Ashford Trust - 1256;
Ayrburn Farm Estate Limited – 430;
Bill & Jan Walker Family Trust - 532/1259;
Byron Ballan - 530;
Crosshill Farms Limited - 531;
G W Stalker Family Trust, Mike Henry, Mark Tylden, Wayne
French, Dave Finlin, Sam Strain - 535/1262/534;
Hansen Family Partnership - 751/1270;
Robert and Elvena Heywood - 523/ 1273;
Roger and Carol Wilkinson - 1292;
Slopehill Joint Venture - 537/ 1295;
Wakatipu Equities - 515/1298.

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MAY IT PLEASE THE PANEL:

- 1 This Presentation Summary assumes the detailed Legal Submissions dated 20 May 2016 have been read. It highlights the primary issues addressed in those Legal Submissions.
- 2 These submissions, with the related detailed Legal Submissions and the evidence to be presented, focus on the extent to which the Wakatipu Basin can accommodate additional rural living development (by way of rezoning and/or resource consent) and consequentially the extent to which Chapters 21 and 22 should recognise and provide for existing and future rural living development in the Wakatipu Basin. That does not necessarily mean that the submissions and evidence may not have relevance in other parts of the District. However the evidence is directed only at the Wakatipu Basin.
- 3 Concerns have been raised about process. The primary issue here is substantive fairness. The submissions on Stage 1 of the PDP lodged by each submitter will be dealt with in three or four separate Hearing Streams. The difficulty raised by separately constituted Hearing Panels for separate Hearing Streams arises from the fact that each submission involves what is effectively both a 'higher to lower' and a 'lower to higher' consideration process.
- 4 The 'higher to lower' aspect involves submissions and evidence which start with higher order Chapters 3 and 6 objectives and policies and then cascade down through middle order Chapters 21 and 22 objectives/policies/rules, Chapter 27 subdivision objectives/policies/rules, to the lower orders individual rezoning requests.
- 5 An example, specifically relevant to this group of submitters, is the planning evidence presented by Messrs Farrell and Brown in relation to Chapters 3 and 6 provisions relevant to rural living, the Rural Landscape Classification ("**RLC**") and the Wakatipu Basin, consequential planning evidence being presented by Messrs Farrell and Brown in this Hearing Stream 02 relating to Chapters 21 and 22, future planning evidence to be presented in relation to Chapter 27 subdivision, and future planning evidence to be presented in relation to individual rezoning requests. Evidence and related submissions presented during each Hearing Stream is relevant to all of the others, and must be considered at the same time as evidence and submissions presented in each of the others.

- 6 The 'lower to higher' aspect relates to necessary factual determinations. Not only has the Council not carried out a first principles landscape analysis in relation to the 96.7% of the District which is ONL/ONF, it has not carried out a first principles landscape analysis of the balance RLC parts of the Rural zone or the RL or RR zones (together comprising somewhat less than 3.3% of the District, once one deducts non rural zones).
- 7 The previous point creates a difficulty for the Panel because detailed evidence as to the absorption capacity of different parts of those areas may not be presented until the rezoning hearings next year. That evidence will have a 'lower to higher' effect because it will be relevant to the middle order objectives/policies/rules and the higher order objectives and policies.
- 8 The point being emphasised here is that evidence and submissions presented in all these Hearing Streams is relevant to each Hearing Stream. The different components of each case must be considered together and be the subject of a combined and consistent recommendations. The concern being expressed is how that will be achieved under the current process.
- 9 The detailed Legal Submissions relating to the existing environment and the future environment should not raise any issue that is not well understood. The 'Building and Building Platform Maps'¹ are directly relevant to this issue as it affects the Wakatipu Basin. I emphasise the guidance of Justice Fogarty, quoted in the Legal Submissions²:
- "...Where some of that land is already the subject of resource consents likely to be implemented, and the plan has not yet been made for that locality, it is natural enough that the territorial authority has to write a plan which accommodates the presence of that activity."*
- 10 Given the emphasis on landscape considerations in this District, the landscape 'starting point' is very important. On that issue I emphasise the very significant acknowledgment by Dr Read that she agrees with the concluding paragraph of Mr Baxter's Hearing Stream 01 evidence which reads:
- "The rural living character I have described above varies throughout the Wakatipu Basin in terms of location, density, and the extent to which it has affected local landscape character. As a consequence there are some areas of the Basin which should be rezoned as rural residential rural lifestyle, some areas where I believe rural living development should be avoided, and other areas which can accommodate the limits to a greater or lesser extent,*

¹ Refer Memorandum lodged by the Council dated 29 April 2016 with the three attached maps

² *Shotover Park Limited v Queenstown Lakes District Council* [2013] NZHC 1712 at [112]

potentially including urban development. I have not been briefed to address this level of detail as I understand that will be dealt with during later hearings".³

- 11 There has been no expert landscape evidence presented which challenges that conclusion agreed between Dr Read and Mr Baxter. When addressing this issue, the detailed Legal Submissions omitted to refer to the evidence of Yvonne Pfluger⁴. Part 4 of that evidence, under the heading "*Review of Landscape Character of Wakatipu Basin*", addressed that issue, specifically referred to, and agreed with, Mr Baxter's evidence, and arrived at a conclusion almost identical to the conclusion agreed between Dr Read and Mr Baxter.
- 12 There is no expert evidentiary dispute about the proposition that the Wakatipu Basin can absorb additional rural living development. The only questions which remain are the interrelated questions of how that should be recognised and provided for in the District Plan and where it should be located.
- 13 The Council's case for Hearing Stream 02 hardly mentions rural living in the Wakatipu Basin. This appears to be because of a fundamental assumption that the only relevant considerations are landscape considerations, and therefore that the only relevant objectives and policies are in Chapter 6. I submit that any such assumption is fundamentally incorrect and leads to a significant flaw in Chapter 21 which is that it does not address rural living in the Wakatipu Basin.
- 14 I submit that the Council's case is flawed in (at least) the following respects:
 - (a) The apparent assumption that the only relevant considerations are landscape considerations, as referred to above;
 - (b) The failure to even consider presenting economic evidence for Hearing Stream 01;
 - (c) Now that economic evidence has belatedly been presented for the purpose of Hearing Stream 01 and Hearing Stream 02, the very generic nature of that evidence, the fact that that evidence acknowledges that it is not a full quantitative or qualitative cost and benefit analysis under s32, and the fact that it fails to address rural living at all.

³ Evidence of Paddy Baxter, Hearing Stream 02, at paras 7 and 14

⁴ Statement of Evidence of Yvonne Pfluger dated 21 April 2006

- 15 I submit that the Council's planning evidence is significantly undermined by the failures detailed above. In addition it fails to even attempt to carry out the assessment required under s32(2).
- 16 It follows from the submissions above, and the case to be presented for the submitters, that Chapter 21 should address existing and future rural living development in the Wakatipu Basin. Evidence to be presented informs the required s32 assessment and supports the amendments proposed by Mr Farrell and Mr Brown. The extent of those amendments is constrained by the lack of any landscape analysis by the Council and by the fact that detailed evidence relating to specific areas will not be presented until the rezoning hearings. Those hearings may lead to further refinement of the Chapter 21 policies.
- 17 Two minor legal issues not addressed in the Legal Submissions:
- (a) Rule 21.7.2.1: "*The assessment matters shall be stringently applied to the effect that successful applications are, on balance, consistent with the criteria.*"
 - (b) Rule 21.7.3.1: "*In the case of a proposed residential activity or specific development, whether a specific building design, rather than nominating a building platform, helps demonstrate whether the proposed development is appropriate.*"
- 18 Economic, landscape and planning evidence is presented to assist the Panel with consideration of those Rural Lifestyle zone rules which are challenged, particularly the 2ha density requirement.

26 May 2016



W P Goldsmith/R E Hill

Counsel for the Submitters listed on the front page