

**BEFORE THE HEARINGS PANEL
APPOINTED BY THE QUEENSTOWN LAKES DISTRICT COUNCIL**

UNDER

the Resource Management Act 1991

IN THE MATTER

of submissions on a Variation to a
Proposed District Plan under schedule 1
of the Act

JOINT MEMORANDUM OF COUNSEL FOR SUBMITTERS

Dated: 22 November 2023

Solicitor acting

G M Todd / B B Gresson
PO Box 124 Queenstown 9348
P: 03 441 2743
graeme@toddandwalker.com
ben@toddandwalker.com

Counsel instructed

B J Matheson
Richmond Chambers
33 Shortland Street
Auckland 1140
matheson@richmondchambers.co.nz

MAY IT PLEASE THE PANEL:

Introduction

- [1] The counsel who have signed this memorandum act for major landowners who will be adversely affected by, and who oppose, the “Inclusionary Housing Variation” (**Variation**) proposed by the Queenstown Lakes District Council (**QLDC**).
- [2] The purpose of this memorandum is to request a direction from the Chair that the Council circulate what it considers to be the legal basis for the Variation. That advice should be received at least 3 weeks prior to 20 December 2023 so as to allow the submitters’ counsel and their experts to consider it, and to take that into account when finalising their expert evidence.

Reasons to support requested direction

- [3] Counsel have undertaken an initial review of QLDC’s s 42A report prepared by David Mead and received on 16 November 2023 (**s 42A Report**). Evidence is due to be filed by submitters no later than 20 December 2023.
- [4] Counsel have significant concerns about the legality of the Variation, and these concerns have been previously (and repeatedly) conveyed to QLDC. The s 42A Report notes concerns about legality at paras 6.1-6.3. Accordingly, counsel were expecting that, as part of the s 42A Report, QLDC would have provided its detailed legal advice explaining why it considers this very novel approach to be lawful.
- [5] Unfortunately, no such advice was provided, and instead the only reference was at para 6.4: “Council will present detailed legal analysis as part of its opening submissions.”
- [6] The submitters’ expert evidence in opposition to the Variation will need to be developed with an understanding of the competing legal views on the legality of the methods to implement objectives and policies; while Mr Mead, the QLDC’s reporting officer, might have had the benefit of this advice, that advice has not been shared with the submitters. Not

receiving that advice prior to briefing and filing expert evidence puts the submitters at a considerable disadvantage and may result in the need for additional supplementary evidence to be filed after seeing the QLDC's opening submissions.

- [7] Such an approach will likely lead to a protracted, complicated and unduly expensive hearing process for all parties, as well as potentially incomplete evidence which would otherwise assist the Panel in a robust decision.
- [8] For clarification, no legal advice confirming the lawfulness of the variation exists in the public domain. QLDC's memorandum from Meredith Connell regarding "alternative mechanisms" (dated 7 July 2021) forms part of the section 32 documentation and concludes that various alternative mechanisms are unlikely to be lawful. It does not confirm the lawfulness of the Variation, specifically, whether it is vires the RMA. Counsel at Anderson Lloyd had made successive LGOIMA requests for the QLDC's legal advice supporting the lawfulness of the Variation, however such requests were refused. The Variation is therefore, effectively, an expensive way to 'test' the legality of the proposed contributions methods.
- [9] The Variation is of significant public interest which further supports the requested direction. In granting leave to appeal the High Court's decision on Plan Change (PC) 24 (being a similar proposal to the Variation) to the Court of Appeal, the High Court noted that the questions as to lawfulness of the PC 24 regime are of high public interest:¹

... the lawfulness or otherwise of PC 24, especially to the extent that it involves financial contributions (and I am using that terminology in a loose sense rather than in the technical sense under the RMA), will be of considerable interest to other Territorial Authorities. They are likely to be interested in how far they can go. In other words, the Court of Appeal decision is likely to be of considerable significance well beyond the Queenstown Lakes District (The public interest in

¹ *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council* [2012] NZHC 750, at [23].

the Variation, and its legality, therefore remains and supports the need for an open approach to Council's legal position informing its expert evidence).

[10] This request is made in reliance on s 39(1) of the Resource Management Act 1991, and on the basis it is appropriate and fair for submitters to understand QLDC's legal basis for its variation in advance of being required to provide its expert evidence.

Dated: 22 November 2023



.....
B J Matheson / B B Gresson
Counsel for Willowridge Developments Limited and Universal Developments Limited



.....
G M Todd / B B Gresson
Counsel for Trojan Holdings Limited, Roger & Marliese Donaldson, Ernest John Guthrie, Banco Trustees Limited, Richard Newman and McCulloch Trustees 2004 Limited, Exclusive Developments Limited, Classic Developments NZ Limited, Gibbston Valley Station, Lattitude 45 Development Limited, Pembroke Terrace Limited, Tussock Rise Limited, Quianlong Limited

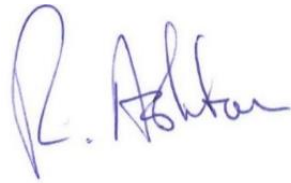


.....
I M Gordon
Counsel for Queenstown Central Ltd., Millbrook Country Club Ltd., Homestead Bay Trust Ltd



.....
M Baker-Galloway / R Hill

Counsel for Darby Planning LP, Mount Cardrona Station Village Limited,
Glenpanel Development Limited, Maryhill Limited, The Station at Waitiri
Limited, Silverlight Studios, Gibbston Highway Limited, MacFarlane
Investments Limited



.....
J Young / R Ashton

Counsel for Remarkables Park Limited