

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

**Under** of the Resource Management Act 1991

**In the Matter** of the renotification of two submission on Stage 1 of the Queenstown lakes Proposed District Plan concerning the zoning of land at Arthurs Point by Gertrude's Saddlery Limited and Larchmont Developments Limited

**Memorandum of further submitters **R Wolt**  
and **A Hyland****

Dated: 21 February 2023

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**MAY IT PLEASE THE PANEL**

1. This memorandum is filed by further submitters Rebecca Wolt and Andrew Hyland in response to the memorandum on behalf of the Submitters dated 16 February 2023, providing 'reply information' and in anticipation of a further memorandum to be filed by the Submitters addressing the proposed site visit itinerary.

**Submitters' 'Reply Information'**

2. We have read the Submitters' memorandum dated 16 February enclosing 'reply information'.
3. We object to most of the memorandum.
4. In particular, we object to paragraphs 4; 7 (last sentence); 9-14, and Appendix C, on the bases that these parts of the memorandum:
  - (a) Address matters plainly beyond the ambit of the Commission's directions contained in its minute dated 13 February 2023 granting leave to the Submitters to file certain (and limited) further information;
  - (b) Contain information and submission that has not been tested;
  - (c) Contain information and submission that the further submitters do not have an opportunity to respond to, giving rise to process, fairness and natural justice issues;
  - (d) Contain information and submission tantamount to a reply, in direct conflict with and plainly flouting the Commission's very clear directions as to the same.
5. In furtherance of the above, we note that the Commission granted leave for the Submitters to provide a structure plan and associated planning provisions *only* (Commission's 13 February 2023 Minute, paragraph 8(a)). These directions were made to ensure fairness of process to all parties (13 February 2023 Minute , paragraph 6).

6. The Submitters' 16 February 2023 memorandum does include a revised and a structure plan and provisions (which of themselves, we do not oppose the provision of), however, it also purports to provide a 'short explanation' of the revision to these documents, given their 'technicality'.
7. The Commission did not grant leave for the Submitters to provide explanation as to the changes, and none is required, as, contrary to the Submitters' statement that they are, the changes are not technical but can be readily understood from the tracking provided in Attachment C to the memorandum.
8. Nonetheless, in so far as paragraphs 6, 7 (excluding the last sentence, which is opposed), and 8 of the Submitters' memorandum do nothing more than explain the changes, and do not contain further commentary or submission as to their appropriateness, we do not oppose them.
9. We do oppose the remainder of the memorandum however, in so far as it endeavours to proffer further submission or evidence (through submission) on matters that the Commission has expressly directed it will not allow. As above, these parts of the memorandum are tantamount to a 'reply', which the Commission unequivocally recorded its 13 February 2023 minute would not be appropriate or fair to receive in the circumstances.
10. We submit that the Commission should place no weight whatsoever on these parts of the memorandum, and should disregard them in their entirety, for all the reasons stated relating to fairness and proper process in our previous (10 February 2023) memorandum addressing these same matters.
11. We record our frustration with having to file yet another memorandum on this matter, when the Commission has already considered and made clear directions.

#### **Revised Structure Plan and Provisions**

12. We generally defer to and support APONLS's comments on the revised provisions and structure plan.
13. In addition, we note that the revisions undertaken to the provisions and structure plan since the hearing appear to be mere 'tweaking at the edges', while failing to

engage with the substance of further submitters' (and Council's) concerns, as raised in pre-lodged submissions and evidence.

14. Without derogating from the generality of the above comments, we note that:
- (a) revised Policy 27.3.XX.5 is unduly vague and lacking in direction, with no specificity as the viewpoints outside the zone where visual effects must be mitigated. In any case, this policy cannot be achieved by the proposal in its current form due to the proposed siting of buildings - on a convex landform that is highly visible from well utilised public roads (Gorge Road and Arthurs Point Road for example, as well as Mathis Terrace) and other viewpoints, where the only proposed planting is, in most if not all instances, downslope of the proposed building platforms and of a too low height to provide any appreciable level of screening or softening of future buildings;
  - (b) the proposed lots sizes are too small and the resulting development too dense for the land;
  - (c) the proposed landscaping will do little to mitigate future built form, for the reasons expressed above;
  - (d) there is still real uncertainty around the required access upgrade, and how this upgrade work can managed without impacting neighbours, including by precluding access to and from their properties for extended periods of time during construction (where no alternative access is available), and also precluding emergency vehicle access during this time;
  - (e) the provision of a 'public' walkway through the LDSRZ (proposed Policy 27.3.XX.4 and as shown on the revised structure plan), remains a 'non-benefit', as the link on the structure plan connects to a unformed and unplanned trail on adjacent third party (public) land, which, in any case, provides a link to nowhere, or to our private land, for which we will not grant a further easement (as discussed in our pre-filed submissions).

### Proposed Site Visit Itinerary

15. We are aware that further submitter APONLS has filed a draft memorandum setting out a proposed itinerary for the Commission's site visit and will file a final proposed itinerary shortly.
16. We understand that as a courtesy, and quite appropriately in our view, APONLS has consulted with the Submitters and some further submitters, including ourselves, when preparing the itinerary.
17. We support the proposed itinerary as proposed by APONLS, although we accept that the site visit is ultimately a matter for the Panel.
18. We record we are not opposed to all further submitters being consulted about the proposed itinerary, should the Commission consider that necessary or of assistance to it.
19. We are aware that the Submitters intend to take issue with some of the suggested 'pause points' in the proposed itinerary, and to make yet further submissions as to:
  - (a) the relevance of views from these pause points to the Commission's deliberations;
  - (b) the weight the Commission should afford certain viewpoints/views;
  - (c) the evidence about those viewpoints/views that the Commission should prefer; and
  - (d) the status of some of the viewpoints.
20. Having seen a draft of the Submitters' memorandum, and in anticipation of it being filed, we record our opposition to it in its entirety.
21. In our experience, when providing a decision maker with a suggested site visit itinerary for a proceeding such as this, all that is provided by the parties is the suggested itinerary itself, absent detailed commentary or submission about what the Commission may or may not see, and/or, what they should make of what they may see. In our experience, all parties' suggested view points are usually accommodated, in order to best assist the decision maker and ensure fairness to

all parties. It is then for the decision maker (here, the Commission) to place whatever weight they see fit on the views/perceptions that they experience when undertaking the site visit, informed of course by the evidence and submissions that they have heard.

22. To the extent that the Submitters' anticipated memorandum endeavours to influence the Commission's site visit and its perceptions and experience during the course of that, it is improper in our view, and is opposed.
23. In anticipation of the Submitters making submissions that viewpoints assessed in expert landscape evidence have greater importance than those identified by lay submitters, there is no authority for that proposition, and viewpoints need not comprise only those identified by the experts, as if that were the case, lay submitters/litigants without legal or expert representation would be unduly prejudiced in many instances.
24. We further record our understanding that the landscape is about more than merely views, but also compasses perceptions and experiences of the landscape, this of course being the very purpose (or one of the purposes) of the Commission's site visit – to give meaning/life to the evidence and submissions presented.
25. We further record that we have raised concerns about privacy, which is a very different issue to private views, which we understand the Submitters intend to make further submissions on.
26. In any case, the Submitters have already made submissions on the weight that should be afforded to the various evidence and viewpoints. Further submission has not been sought and would not assist the Commission, the members of which have the necessary experience and can use their own judgement about what they see and perceive on the site visit.
27. We understand the Submitters intend to raise the fact that part of Larkins Way is a private access lot, not a public road. As we traversed in our submissions filed in advance of and presented at the hearing, whilst part of Larkins Way is a private access lot (which we own), it is subject to a pedestrian easement in favour of the Council, and to this extent, is available for use by the public to access the adjacent reserve. We expect the same circumstance applies to Larchmont Close (although

to be clear, we have not checked the relevant records to title to confirm this). Views from these locations are relevant.

- 28. If the Submitters' further submissions on these matters are to be received by the Commission, then it would be only fair to allow further submitters and the Council an opportunity to respond in full. This begs the question – when does this tennis match end?
- 29. From our perspective, the Submitters' continued attempt to file further submissions and present a reply following the hearing is inefficient for all, bordering on an abuse of process, and should not be tolerated by the Commission.

Dated this 21<sup>st</sup> day of February 2023



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R Wolt

For and on behalf of the R Wolt and A Hyland