

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL HEARINGS PANEL

UNDER

the Resource Management Act 1991

IN THE MATTER

of the review of parts of the Queenstown Lakes District Council's District Plan under the First Schedule of the Act

AND

IN THE MATTER

of submissions and further submissions by
QUEENSTOWN PARK LIMITED and
QUEENSTOWN WHARVES (GP) LIMITED

**SUBMISSIONS ON BEHALF OF QUEENSTOWN PARK LIMITED AND QUEENSTOWN
WHARVES (GP) LIMITED**

CHAPTER 21 – RURAL, CHAPTER 33 – INDIGENOUS VEGETATION

27 MAY 2016

**BROOKFIELDS
LAWYERS**

J D Young
Telephone No. 09 379 9350
Fax No. 09 379 3224
P O Box 240
DX CP24134
AUCKLAND

MAY IT PLEASE THE PANEL

1. INTRODUCTION

1.1 These submissions are made on behalf of Queenstown Park Limited and Queenstown Wharves (GP) Limited (collectively **QPL**).

1.2 QPL's case, based on its evidence, can be summarised as follows:

- (a) Tourism and recreation activities are better than farming from an ecological perspective;
- (b) Farming may contribute to landscape values and rural character, but that contribution is not limited to pastoral grazing or "openness". It can include, for example, shelter belts and vine;
- (c) The landscape values and rural character of the district are widely variable and in some locations farming makes no contribution to landscape values and rural character;
- (d) Farming makes an insignificant direct contribution to the district's economic wellbeing and its indirect contribution as an activity that maintains rural character is not as significant as the Council claims (for the reasons set out above);
- (e) Tourism and recreation activities make a significant contribution to the district's economic and social wellbeing, and the agglomeration and expansion of tourism activities is important to ensuring that contribution continues; and
- (f) Given the above, the proposed District Plan should provide for tourism and commercial activities in positive terms whilst also addressing potential adverse environmental effects. QPL considers its revised provisions achieve this.

1.3 As a preliminary observation, it appears to counsel that the Council and QPL are not that far apart in terms of intended resource management outcomes. In fact, the opening submissions of counsel for the Council confirm that the Council agrees that

non-farming activities should be able to establish in the Rural zone¹, which is also QPL's intended outcome.

1.4 However, counsel for the Council:

- (a) Is critical of the "incorrect factual premise" underlying the case for QPL and, in particular, its witness Professor Hazledine; and
- (b) Asserts that QPL's case is being advanced in "somewhat of a vacuum" because its witness has not considered the Council's high level strategic approach.

1.5 QPL does not accept that its evidence is based on an incorrect factual premise. It considers that the Rural objectives and policies do not encourage non-farming activities (either directly or by reasonable inference) and the evidence for the Council is unfavourable in relation to non-farming activities (in particular Mr Osborne and Dr Read). QPL also considers that its provisions better "align" with the strategic directions chapter than the Council's because they expressly provide for development of a prosperous, resilient and equitable economy² and diversification of rural land use³.

1.6 In my submission, an important question for the Panel is whether there is a risk that a council officer will interpret the Council's version as expressing a tepid or even negative attitude toward tourism and commercial activities in the Rural zone. QPL considers that the answer is "yes" and that this impression will discourage potential applicants, significantly increase consenting costs and increase the prospect of consent applications being declined. In short, diversification and economic growth will be inhibited.

1.7 QPL's case focuses on economic wellbeing under section 5(2) and costs and benefits (including opportunities for economic growth) under section 32. Its evidence also addresses sections 6(b) and (c), and sections 7(b),(c) and (f). I return to these sections later in my submissions.

¹ Paragraphs 3.4 ad 3.5 of the Opening Representations/Legal Submissions for the Council (dated 2 May 2016).

² Goal 3.2.1.

³ Being the stated outcome in Objective 3.2.1.4.

2. QPL's REVISIONS

2.1 QPL's revisions are set out in Jeff Brown's evidence.

2.2 As a general statement, QPL's revisions are based on a preference for the rural zone planning regime found in the Operative District Plan (ODP) over the Council's proposed regime. In particular, the change in the default activity status from permitted to non-complying for activities not specifically listed has a significant bearing on the flow and overall thrust of the Rural chapter (which Mr Brown describes as a shift toward regulation on the "regulate – enable continuum"). In conjunction with the content and scheme of the objectives and policies, this change is the catalyst for QPL's view that Chapter 21 is not sufficiently enabling of non-farming activities.

2.3 Mr Brown recommends that there be a positively framed set of objectives and policies for non-farming activities. It is submitted that the Council's objectives and policies cast non-farming activities in a negative light because:

- (a) The non-farming objectives and policies appear toward the end of the full suite of objectives and policies (21.2.9 and 21.2.10);
- (b) Further to (a) above, the non-farming objectives and policies are preceded by many provisions promoting farming uses in the Rural zone;
- (c) 21.2.9 is framed negatively due to the focus on the verb "degrade". This language is quite different to, for example, that which applies to farming in objective 21.2.1.

2.4 The evidence for QPL discloses that commercial uses can have similar or lesser environmental effects than farming activities. Therefore, there is no reason why the objective addressing commercial activities cannot be positively framed. To that end, Mr Brown's provisions:

- (a) Promote non-farming objectives and policies up the "batting order"; and
- (b) Frame the key objective (numbered 21.2.2 in is evidence) in positive language.

It is submitted that Mr Brown's objectives and policies give effect to the Council's strategic direction and its stated intent as communicated by counsel for the Council

(that non-farming activities can establish in the Rural zone⁴). It is also consistent with the generally positive language in 6.3.8.

- 2.5 In my submission Mr Brown's revisions are in the nature of a refinement of the Council's provisions and are by no means an overhaul. He has "aggregated and reconstituted" objectives 21.2.9 and 21.2.10. Policies 21.2.2.5 to 21.2.2.8 remain unscathed.
- 2.6 Amendments are also sought to the Zone Purpose, Objective 21.2.1, Policy 21.2.1.2, 2.1.2.5 (Reverse Sensitivity), Rule 21.4.15 (specific addition of "commercial recreation activities"), and Rule 2.1.7.2 (Assessment Matters – the amendments are largely driven at removing excess verbiage and using orthodox resource management terminology).
- 2.7 Mr Brown also proposes amendments to Objective 21.2.12 to recognise and provide for water based transport. This amendment is supported by Queenstown Wharves (GP) Limited.
- 2.8 Mr Brown addresses Chapter 33 (largely in reliance on Mr Beale's evidence which does not appear to be in dispute). His amendments seek to recognise access to ski area subzones and recreation activities generally, and encourage positive outcomes through the protection and enhancement of indigenous vegetation and wetlands.

3. KEY ASPECTS OF THE EVIDENCE

- 3.1 QPL considers that the Council overstates the contribution that farming makes to rural character and landscape values. Ms Smetham considers that the characteristics of the rural landscape vary widely across Rural zone. She agrees with the evidence of both Ms Pfluger and Mr Baxter that it is the unique rather than generic landscape character that should determine the level of development in the Rural zone.
- 3.2 As a consequence of the above, QPL also considers that the Council overstates the contribution that farming makes to the District's tourism economy. The Panel may have noted that Mr Greenaway has some sympathy for Mr Osborne's primary assertion that landscape values are important to tourism, whereas Professor Hazledine is less enthusiastic about that proposition (whilst accepting that the

⁴ Paragraphs 3.4 ad 3.5 of the Opening Representations/Legal Submissions for the Council (dated 2 May 2016).

popularity of the district to tourists rests in part on the natural landscapes)⁵. However, Mr Greenaway and Professor Hazledine both take issue with Mr Osborne's reliance of farming as significantly contributing to landscape values that are attractive to tourists. Tourists can watch livestock graze and experience rolling pasture in many locations across New Zealand.

- 3.3 It must be the spectacular and memorable ONLs and ONFs that make the greatest contribute to Queenstown's uniqueness and its tourism appeal⁶. These are the mountains, rivers and lakes (as Professor Hazledine acknowledges at paragraph 6.1 of his Statement of Evidence). It is those landscapes that feature on tourism material. In that regard, Ms Smetham makes the refreshingly logical observation that much of the mountainous ONL is protected from development due to its sheer scale and inaccessibility. The ONL's are also protected by the provisions in Chapter 6.
- 3.4 In terms of economic benefits, there seems to be no dispute that tourism is a key economic driver for the district. Professor Hazledine considers that "there is thus a demonstrable need – which may become an urgent need – for provision of additional tourism and visitor services, perhaps especially innovative services which (for example) would diversify the market seasonally and across different tourist types".⁷
- 3.5 Professor Milne's evidence addresses the proposed Remarkables Gondola as an example of significant tourist infrastructure in a Rural zone and in an ONL that will deliver significant tourism benefits. As he describes it:

"The proposed Remarkables Gondola experience will fit well with the deeper experiential dimensions needed to enhance yield from existing and new markets: adding value to the ski field visitor by cutting travel time challenges related to road transport while also deepening the range of all-season travel experiences for non-snow sport visitors"

- 3.6 Mr Beale's evidence addresses farming and tourism from an ecological perspective. He addresses the ecological impacts of farming activity and concludes that traditional farming activities such as fire and tracking can lead to an extensive loss of shrubland cover and consequent loss of habitat for avifauna, lizards and invertebrates, including species of conservation concern. These activities can also accelerate the spread of weeds causing a decline in habitat quality. He considers that recreational

⁵ Paragraph 3.1(i) of the Evidence of Timothy Hazledine.

⁶ It is noted, in that regard, that under 3.1 "Purpose" the ODP identifies "dramatic alpine landscapes free of inappropriate development" and "an innovative and diversifying economy based around a strong visitor industry" as "special qualities" of the district.

⁷ Paragraph 2(ix) of his Summary Statement.

and tourism activities are more compatible with the retention and maintenance of shrublands than traditional farming activities.

- 3.7 It is submitted that the evidence for QPL establishes that the Council has overstated the contribution farming makes directly or indirectly to tourism, which is reflected in the objectives and policies proffered by the Council. Mr Brown's revisions ensure that a reader of the district plan will be left in no doubt that commercial activities are an expected part of the Rural zone, thereby acknowledging their importance to Queenstown's wellbeing.
- 3.8 It bears emphasis that the Council's proposed rules are not significantly altered by Mr Brown. Commercial activities remain a discretionary activity (as compared to permitted activity status for farming). The Council's discretion is not restricted. It can consider a wide range of factors and it can ultimately decline consent. However, it is QPL's view that it is important that the processing officer does not commence an assessment from the point of view that a commercial activity will most likely degrade the Rural zone. Rather, the starting point is that commercial activities may be appropriate in a Rural location but adverse effects must be managed.
- 3.9 Finally, I note that counsel for the Council takes issue with the premise upon which he considers Professor Hazledine's evidence is based. Professor Hazledine was given a very narrow brief, being to review and comment on the evidence of Mr Osborne. Professor Hazledine has done so, and quite fairly noted that farming makes a minor contribution to the district's economy and the Council is imposing a significant financial burden on farmers. More critically to QPL's key contention (that the Council's provisions do not appropriately encourage commercial activity), it is noted that objective 21.2.9 contains the qualifier that non-farming activities not "impinge on farming". That being so, it is submitted that the Council's criticism of Professor Hazledine's evidence is unfounded.

4. OTHER MATTERS

- 4.1 QPL seeks amendments to:
- (i) Objective 12.2.6 (Ski Areas) to provide connections to urban zones (with associated amendments to some policies). Aligned to this is a definition of "Passenger Lift System" and "Ski Area Activities". Mr Brown also proposes a restricted discretionary rule for Passenger Lift Systems;
 - (ii) Objective 21.2.12 (Surface of water activities) to provide for recreational, commercial recreational and public transport activities; and

(iii) Chapter 33 (set out in Mr Brown's evidence at section 5).

These are addressed in evidence.

5. WHICH REGIME IS "BETTER"

5.1 In my submission, it would be unreasonable to suggest that either the Council's or QPL's proposed provisions are contrary to the purpose of the Act. The question for the Panel is which better achieves the purpose of the Act.

5.2 It is submitted that QPL's provisions:

- (a) Better provide for the district's social (health and safety, activity) and economic (tourism) wellbeing (section 5(2));
- (b) Better recognise the variation in landscape and rural character (section 6(b));
- (c) Better protect areas of significant vegetation (section 6(c));
- (d) Better enable the efficient use and development of natural and physical resources (section 7(b));
- (e) Better ensure that amenity values and the quality of the environment are maintained and enhanced (sections 7(c) and (f)); and
- (f) Are based on a more balanced assessment of costs and benefits, and better enable opportunities for economic growth (section 32(2)).

5.3 QPL will call evidence from Professor Hazledine, Robert Greenaway, Nikki Smetham, Simon Beale, Simon Milne and Jeffrey Brown.

Dated the 27th day of May 2016

J D Young

Counsel for Queenstown Park Limited and Queenstown Wharves (GP) Limited