

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

**IN THE MATTER** of the Resource Management Act  
1991

**AND** the renotification of two submissions  
on Stage 1 of the Queenstown Lakes  
Proposed District Plan concerning the  
zoning of land at Arthur's Point by  
Gertrude's Saddlery Limited and  
Larchmont Developments Limited

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**MEMORANDUM OF COUNSEL ON BEHALF OF ARTHURS POINT  
OUTSTANDING NATURAL LANDSCAPE SOCIETY INCORPORATED**

**Timetabling Directions and Hearing Dates**

**Dated 19 October 2022**

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## **MAY IT PLEASE THE PANEL**

1. This memorandum is filed on behalf of the Arthurs Point Outstanding Landscape Society Incorporated (**Society**) in respect of:
  - (a) The Notice of Hearing (received under email of 5 October 2022); and
  - (b) The Memorandum of Counsel on behalf of Gertrude's Saddlery Limited and Larchmont Developments Limited (dated 13 October 2022).
2. The Society is a Further Submitter to the submissions filed by Gertrude's Saddlery Limited (**Gertrude**) and Larchmont Developments Limited (**Larchmont**) (together, **Submitters**). The Society opposes the relief sought by the Submitters. As such, the Society supports:
  - (a) The zoning pattern for Arthurs Point, as proposed in the Proposed District Plan; and
  - (b) The position of the Outstanding Natural Landscape/Feature (**ONL/ONF**) boundaries at Arthurs Point, also as proposed in the Proposed District Plan.
3. The content of this memorandum was finalised just prior to the Society receiving Minute 1 of the Commissioners. As such, it is also being tendered in response to that Minute.

## **Context**

4. The Society has pursued several years of litigation (starting in 2018), just to secure the right to be heard on the relief sought by Gertrude and Larchmont. Substantively, this has entailed:
  - (a) Four Environment Court decisions;
  - (b) Two High Court decisions;
  - (c) A Court of Appeal decision addressing two separate applications for leave to appeal each of the High Court decisions.
5. These Court decisions were focussed on procedural matters, including:

*Was a fair process followed when identifying an entirely new inside edge to the outstanding natural landscape around Arthurs Point ...<sup>1</sup>*

6. The Court decisions did not canvas the merits of the relief sought by Gertrude and Larchmont.
7. The Society obtained favourable decisions from the Courts regarding the re-summarising and re-notification of the Gertrude and Larchmont submissions. In doing so, it now has a voice on the requested rezonings and re-positioned ONL boundary.
8. When the Gertrude and Larchmont submissions were first notified (in 2015), there were no Further Submissions in opposition and only one in support (being that of Larchmont, supporting the Gertrude submission). As such, when these submissions were first heard (in 2017), the Panel heard only from Gertrude, Larchmont and the Council's s42A officers.
9. Now, there are some 90 submissions in opposition and approximately 10 in support. The context and frame for consideration of the two submissions has shifted, markedly.
10. The Environment Court decision regarding re-summary and re-notification of the Gertrude and Larchmont submissions was issued in September 2019. This was appealed by the Council, Gertrude and Larchmont. The High Court decision (confirming the Environment Court order) was issued in December 2020. Gertrude and Larchmont sought to lodge a further appeal, this time before the Court of Appeal. Council supported Gertrude and Larchmont's application for leave to appeal. The Society opposed it.
11. The Court of Appeal issued its decision on leave to appeal, in August 2021. From that time, all parties knew the Gertrude and Larchmont submissions were to be re-summarised and re-notified. However – and despite several written and telephone enquiries from the Society – this did not occur until 31 March 2022.
12. The Further Submission period ended on 14 April 2022. Gertrude and Larchmont have had six months to advise of their revised relief, yet did so only 2- (or 3, depending on when parties received the 14 Oct Memorandum) working days before the s42A Reports were due. As is clear from the s42A Report received yesterday, not all reporting officers have had opportunity to

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<sup>1</sup> *Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* [2019] EnvC 150 at [1].

consider and evaluate the revised relief. This is unsurprising and not due to any fault on their part.

13. In addition, Counsel for the Society is instructed the revised relief is materially the same as what the Society has been presented with in the past (as far back as 2019). It is not “brand new”.

### **Procedural directions**

14. On 5 October the Society received directions as to evidence exchange and hearing dates (**Directions**). Counsel for the Society was on leave at the time, returning to the office on Wednesday 12 October. The Directions were discussed between Counsel and representatives of the Society at the earliest opportunity thereafter.
15. On 14 October the Panel received a request for amended Directions from Gertrude and Larchmont. On Monday 17 October, Counsel for the Society advised the Hearings Administrator that a memorandum as to these matters would be filed shortly. This constitutes the foreshadowed memorandum.
16. The 14 October request includes a suggestion of expert conferencing for landscape witnesses. Conceptually, the Society supports this suggestion as being orthodox and appropriate. However, it considers the expert planners should also conference - especially given this is a hearing about plan provisions – and that the timetable proposed should allow for meaningful consideration of the outcomes of any conferencing.
17. In combination then, the Society has grave concerns about the fairness and appropriateness of the Directions already in place and the amendments sought by Gertrude and Larchmont, including for the following reasons:
  - (a) The Gertrude and Larchmont submissions are seeking alteration to the status quo by way of rezoning and repositioning an ONL boundary. Evidence supporting these significant changes ought to *precede* opposition evidence, not be filed at the same time. It is for Gertrude and Larchmont to clearly state what they are seeking (including lucid explanation of the revised relief) and on what grounds, first. Opposing parties can then respond in their evidence-in-chief. This will make for a more efficient, focussed and robust hearing;
  - (b) The Directions do not provide further submitters with any right to file rebuttal evidence. It is quite possible that after reviewing the Gertrude

and/or Larchmont evidence, further submitters identify the need for additional and/or other expert input. Without the right to call rebuttal evidence, their ability to run the case they consider ought to be run, may be significantly compromised;

(c) In addition, the s42A Report circulated yesterday advises its assessment of the revised relief will be available when the rebuttal s42A Report is circulated. As presently directed, this is a mere 4-working days before commencement of the hearing. This timeframe is wholly inadequate for those further submitters who (by opposing the Gertrude and Larchmont submissions) are supporting the Proposed Plan;

(d) The Submitters propose an expert conference in respect of landscape matters on 16 November, with a Joint Witness Statement (**JWS**) to be prepared, executed and circulated that same day. This:

(i) Is both unrealistic and oppressive on the witnesses involved;

(ii) Affords legal counsel a very short amount of time with all evidence to hand, which is crucial to finalising legal submissions (currently due by midday the next day);

(iii) Is proposed only for landscape experts, which is inappropriate given the nature of the proceedings – being consideration of provisions for the Queenstown Lakes District Plan. At the very least, conferencing of planning witnesses should also be scheduled and, logically, should follow production of a JWS by landscape experts;

(iv) Is too close to the hearing to provide any meaningful assistance to the Panel. The Society agrees that conferencing can be an extremely useful tool in focussing debate at a hearing. In these circumstances, however, the Society severely doubts the utility of this exercise because of the rushed timeframes being suggested.

18. Accordingly, the Society respectfully suggests a revised timetable be issued which includes the following steps at the following intervals (or similar):

(a) Gertrude and Larchmont circulate their expert evidence in support of the revised relief, as scheduled;

- (b) Any expert evidence from further submitters *supporting* the Gertrude and Larchmont relief, to be circulated 5-working days after (a) above;
- (c) Any expert evidence from further submitters *opposing* the relief, to be circulated 10-working days after step (b) above;
- (d) Any rebuttal s42A Reports to be circulated 10-working days after (c) above;
- (e) Expert conferencing of planners and landscape experts to be held after evidence exchange *and* in enough time to allow experts at least 5-working days to draft and finalise a JWS;
- (f) All JWS's to be available no less than 15-working days before commencement of the hearing;
- (g) Legal submissions for all parties to be filed 5-working days before commencement of the hearing.

### **Unavailability of Counsel for the Society**

- 19. In addition to the above considerations, Counsel for the Society is unavailable over the dates 22 – 24 November due to a two-week trial in the District Court, which commences on 14 November.
- 20. The Society has already had to change legal representatives, when Prudence Steven QC (as she was then) was appointed to the Environment Court in January 2021. Counsel has represented the Society since that time, including through the Court of Appeal process. It would be onerous to require the Society to brief alternate counsel again, especially given the long and complex history of the Gertrude and Larchmont submissions.

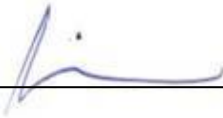
### **Conclusion**

- 21. The Society has fought long and hard and out of its individual members' pockets for the right to be heard on the Gertrude and Larchmont submissions. There are a large number of further submitters involved. It is proper that all parties are given fulsome opportunity to participate.
- 22. The Council, Gertrude and Larchmont displayed no haste in having the two submissions re-summarised and re-notified. Gertrude and Larchmont also displayed no haste in notifying parties of the revised relief. In contrast and with respect, the Directions and the recent request for amendments create the

distinct risk of favouring haste over a robust and thoroughly considered outcome.

23. The Act anticipates and embraces public participation in all facets of its application. It relies on participation to fulfil its sustainable management purpose. This is particularly so when dealing with district planning instruments, which are intended to be living documents that reflect the aspirations and values of the community that will be most affected by them.
24. In the circumstances it is submitted a revised timetable is warranted. The timetable suggested by the Society would give all parties (including the Panel) adequate time to consider and/or provide evidence and to obtain meaningful outcomes from expert conferencing.
25. Counsel for the Society is available for a pre-hearing telephone (or audio-visual) conference at short notice, if that would assist the Panel.

Dated this 19<sup>th</sup> day of October 2022



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**Alanya Limmer**  
Counsel for Arthurs Point Outstanding Natural  
Landscape Society Incorporated