

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
**REMARKABLES PARK LIMITED AND
QUEENSTOWN PARK LIMITED**

**CLOSING SUBMISSIONS OF COUNSEL FOR REMARKABLES PARK LIMITED AND
QUEENSTOWN PARK LIMITED**

HEARING STREAM 13 – QUEENSTOWN MAPPING

13 SEPTEMBER 2017

**BROOKFIELDS
LAWYERS**

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MAY IT PLEASE THE PANEL:**1. INTRODUCTION**

1.1 These closing submissions are filed for Queenstown Park Limited (QPL) and Remarkables Park Limited (RPL)¹. They address:

- (a) Amendments to site coverage and height rules for RV3;
- (b) Building line restriction;
- (c) Provision for a gondola in zones over which the gondola corridor is proposed to apply;
- (d) The **Southland Fish & Game**² decision;
- (e) Section 6 of the Act;
- (f) Economic benefits; and
- (g) What might the Rural Zone deliver?

2. AMENDMENTS TO SITE COVERAGE AND HEIGHT RULES FOR RV3

2.1 As stated at the hearing, it is desirable from a development perspective to have sufficient flexibility in planning provisions to enable some variety in potential development scenarios. Having said that, the directors of QPL have further considered possible development opportunities and scenarios, and consider that site coverage and height in RV3 can be further limited whilst still enabling the QPL vision³ to be delivered.

2.2 The proposed new site coverage rules in the QPSZ provisions are as follows:

- (a) Building coverage for the lower terrace of RV3 – 25% (reduced from 30%);
and
- (b) Building coverage for the upper terrace of RV3 – 15% (reduced from 20%).

Failure to meet the site coverage rules would trigger discretionary activity status (not restricted discretionary). These amendments would be made to Rule 44.5.4.

2.3 The proposed new height rules are as follows (set out in table form for ease of reference):

¹ Sometimes QPL and RPL are referred to collectively as QPL.

² [2016] NZENVc 220.

³ As described by Mr Porter in written and oral evidence at the hearing.

RV3	Controlled Activity	Restricted Discretionary Activity	Non-complying Activity
Lower Terrace	Up to 8m	15% from 8.01m to 12m 15% from 8.01m to 16m	Additional height beyond Restricted Discretionary Activity Thresholds
Upper Terrace	Up to 8m	30% up to 12m	Additional height beyond Restricted Discretionary Activity Threshold

- 2.4 The Lower Terrace Restricted Discretionary Activity Thresholds are intended to enable up to 30% of the site to be above 8m, but limit that which could go to 16m to 15% of the site. By keeping the lower end of both thresholds at 8.m, the rule doesn't create a development window that requires (or encourages) buildings to be between 12 and 16m.⁴ So, to put it another way, all 30% of the Restricted Discretionary Activity opportunity could be taken up with buildings up to 12m. However, only 15% of the Restricted Discretionary Activity opportunity could comprise development up to 16m.
- 2.5 The inclusion of a percentage limiting additional height is intended to align with the "distribution of height" assessment matter for CDP resource consents under Rule 44.4.8. Rule 44.5.5 would need to be redrafted to reflect the table above.
- 2.6 It is submitted that these revised rules meaningfully respond to the discussions with the Panel regarding the scale of potential development within RV3 and deliver further certainty in terms of potential development outcomes.
- 2.7 No rule amendments are proffered for the RR development pods or RV4. However, as acknowledged at the hearing, it is open to the Panel to, for example, increase lot size, reduce overall yield, or confirm some development pods but not others. Given the significant public benefits of the proposed QPSZ, counsel respectfully submits that if the Panel was to contemplate such refinements it could issue interim findings

⁴ QPL contemplated a rule that provided for 15% of development to be from 12m to 16m.

and directions, and request that QPL respond with a revised set of planning provisions.⁵ The Council would also be involved in that process.

3. BUILDING LINE RESTRICTION

- 3.1 QPL made a submission on the building line restriction at section 8 of its primary submission (which addressed Chapter 21 – Rural). At the bottom of page 33 (item 8.52), the QPL submission states:

Remove the building restriction area from the Kawarau River, and from the rivers edge on Queenstown Park.

- 3.2 It is submitted that the jurisdiction to delete the building line restriction from QPL's land is provided by the above submission point. It is noted that no expert opposed the deletion on the merits.

4. PROVISION FOR A GONDOLA IN ZONES OVER WHICH THE GONDOLA CORRIDOR IS PROPOSED TO APPLY

- 4.1 As identified by Chairman Nugent, the gondola corridor overlay extends beyond the boundary of the proposed QPSZ. As such, the proposed QPSZ provisions would not apply to those portions of a gondola outside the QPSZ.

- 4.2 The other zones over which the gondola corridor overlay extends are:

- (a) Rural Zone;
- (b) Ski Area Subzone; and
- (c) Remarkables Park Zone (RPZ).

While the gondola cable and cabins would pass over the Kawarau River, no structures or gondola pylons are proposed within the river. All proposed stations are within the QPSZ, with the exception of the possible Lakes Hayes station (the establishment of which would need to be pursued in conjunction with the Council as landowner).

- 4.3 It is proposed that provision be made for the passenger lift systems in both the Rural Zone⁶ and the Ski Area Subzone. Mr Serjeant's evidence explained that a passenger lift system can also be established in the RPZ.

⁵ Counsel does not have a copy of the specific delegation to the Panel. It is assumed that the delegation enables recommendations to be made to the Council. If that is so, there is nothing preventing the Panel recommending the course of action set out above.

⁶ As a restricted discretionary activity under proposed Rule 21.4.19, which reads:

- 4.4 It is acknowledged that the proposed assessment criteria for the gondola within the QPSZ are more detailed than those currently proposed under the other relevant zones (noting that the RPZ is not an ONL). An application for resource consent for the gondola will need to be assessed against all relevant criteria of each applicable zone.
- 4.5 In my submission, it would be open to the Panel to include a standard or assessment matter in the Rural Zone and the Ski Area Subzone along the following lines:
- "Passenger lift system within the corridor shown on planning maps X – Rules 44.4.12, 44.5.5.1 and 44.5.9 apply."
- 4.6 The jurisdiction for such an addition arises from:
- (a) The QPL submission seeking and showing the location of a gondola corridor;⁷
 - (b) The QPL submission seeking that the proposed amendments apply across the district;⁸ and
 - (c) The QPL submission seeking amendments to the Rural Zone and the Remarkables alpine recreation area, in particular item 8.3 (page 25) and item 8.49 (page 32).
- 4.7 However, it is submitted that such an addition is not necessary. Any application for a resource consent for a gondola will need to address the relevant provisions of any zone over which the gondola passes. The most onerous provisions will determine overall activity status, but the specific provisions of each zone will inform the overall outcome. It may be possible to "unbundle" parts of the application, although it is counsel's preliminary view that this is unlikely to be a preferred approach.
- 4.8 It is submitted that the fact that the corridor traverses different zones is not an impediment to the proper assessment of a resource consent application for the

b. Passenger Lift Systems not located within a Ski Area Sub Zone shall be a restricted discretionary activity.

Discretion is reserved to all of the following:

- The route of the passenger lift system and the extent to which the passenger lift system breaks the line and form of the landscapes with special regard to skylines, ridges, hills and prominent slopes.
- Whether the materials and colours to be used are consistent with the rural landscape of which the passenger lift system will form a part.
- Whether the geotechnical conditions are suitable for the passenger lift system and the extent to which they are relevant to the route.
- Lighting.
- The ecological values of the land affected by structures and activities.
- Balancing environmental considerations with operational requirements.
- The positive effects arising from directly linking settlements with ski area sub zones and providing alternative non-vehicular access.

⁷ Re-notified structure plan (dated 4 November 2016).
⁸ QPL submission, Page 2, C.1 at 1.1(c).

establishment of the gondola. The QPSZ provisions will apply to the vast majority of the gondola line.

5. THE SOUTHLAND FISH & GAME DECISION

5.1 Chairman Nugent referred to the **Southland Fish & Game New Zealand v Southland District Council**⁹ decision in the context of Water Conservation Orders. The decision concerned an application for resource consent to authorise a 22.5 km cycle trail along the Upper Oreti Valley. The Oreti River is subject to a Water Conservation Order (Water Conservation (Oreti River) Order 2008). The Order is principally concerned with trout habitat and angling amenity. It prohibits damming. It requires maintenance of fish passsge and water quality.

5.2 Despite the application for resource consent not seeking to establish structure(s) or activities within the Oreti River, the Environment Court does refer to the Order in the decision. In particular, the Court:

- (a) Refers to the Order recognising the Oreti River as a nationally outstanding habitat for brown trout and having outstanding angling amenity (described at paragraph [117] as a brown trout fishery that is rated among the best anywhere in the world);
- (b) Emphasised the significance of the angling amenity (paragraphs [145] and [146]);
- (c) Reviewed potential conflicts with the Conservation Management Strategy and the Order (pages 46 to 49); and
- (d) Concludes that the level of access enabled by the cycle trail “is incommensurate with maintaining the area's outstanding angling amenity and would undermine the characteristics sought to be protected under the Order”.

5.3 It is noted that it appears that no party argued that the Order was irrelevant. Further, no party disputed the characteristics described in the Order. The issue was the level and type of activity that could be undertaken while maintaining those characteristics, in particular “angling amenity”. A key aspect of that amenity that was emphasized in evidence was “remoteness” created by limited access.¹⁰ The Court stated:

[142] The walk-only access to the 22 km long upper Oreti fishery is subject to an additional management tool of restricting anglers to one of four fishing beats. Anglers are restricted to the use of fly and spin methods and to a bag limit of one fish per day,

⁹ [2016] NZEnvC 220.

¹⁰ See, for example, paragraphs [124].

with many practising catch and release (although we assume the latter is a voluntary measure and not an enforceable policy).¹⁰² The catch and release policy was introduced in the reach 15 km downstream of Mt Nicholas bridge because of concerns about angling pressure on the river. Fishing beats are another management strategy designed to enhance the attributes of the fishery, including the experience of remoteness in an area of high natural character and access to trophy sized fish which are typically associated with more remote headwater fisheries. Observance of the beat system is voluntary and depends on angler co-operation. Mr Rodway's evidence that the system is "adhered to by most anglers" was uncontroverted.

- 5.4 In my submission, the above description is quite different to the part of the Kawarau River Valley included within or adjacent to the QPSZ. The Kawarau River Valley is near to urban areas, with residential development at Lakes Hayes, Bridesdale and Shotver Country. The river is used or enjoyed for a multitude of recreation activities ranging from jet boating to angling, walking to biking. Ms Mellsop only used the word "remote" once in written evidence and coupled it with the qualifier "relatively".¹¹ It is submitted that no expert sought to emphasise remoteness and a key or critical characteristic of the Kawarau River Valley or the northern Remarkables.
- 5.5 An issue of concern for the Court in relation to the Order, was the deterioration of "angling amenity" due to the introduction of a significant number of cyclists on the trail. It was anticipated that some cyclists would swim in the Oreti River. In short, the trail would have a direct impact on activities within the Oreti River (angling) and the amenity associated with those activities, which the Order sought to protect.
- 5.6 It is noted that the **Southland Fish & Game New Zealand** decision concerned an application for resource consent (as opposed to a plan review). However, it is accepted that, on its face, the approach of the Court is inconsistent with the commentary that Water Conservation Orders do not protect land (see paragraph 9.5 of the Submissions of Counsel presented at the hearing). The subtle difference in the **Southland** case relates to evidence that adjoining land use would affect the use of the water for angling. Therefore, the link to the water is made.
- 5.7 However, in this case there is no evidence of the ilk adduced in the **Southland** case as to impact on recreational users of the Kawarau River. To the contrary, as noted in opening submissions:¹²

"...the WCKO as it relates to the Kawarau River in the vicinity of the QPL land is ensuring recreation activities can continue in and on the Kawarau River (noting that one of the outstanding characteristics recorded in the WCKO is the use of the Kawarau River for recreational purposes). In that context, jetties, bridges and other infrastructure that enhance recreational use of the Kawarau River are unlikely to offend the WCKO. Furthermore, the reduction of nutrient discharges by

¹¹ See paragraph [41] of Ms Mellsop's rebuttal evidence.
¹² See paragraph 9.3.

diversification of land uses must also contribute favourably to the WCKO's stated intent of managing water quality"

6. SECTION 6 OF THE ACT

Sections 6(a) and (b)

- 6.1 Sections 6(a) and (b) require that river margins and ONLs be protected from inappropriate subdivision, use and development.
- 6.2 The panel heard expert landscape and design evidence from Stephen Brown, Rebecca Skidmore and Helen Mellsop. They all considered that the QPL land could absorb some development. All witnesses accepted that the Kawarau River Valley is a modified and cultural landscape.
- 6.3 Mr Brown and Ms Skidmore supported the development enabled within the QPSZ. Mr Brown concluded that the ONL values would be protected. He emphasised the scale and grandeur of the northern face of the Remarkables, and distinguished it from the western face.
- 6.4 Ms Skidmore accepted that there would be change, but that such change would not be unexpected or contrary to retaining rural character in the Kawarau River Valley. She was confident that the landscaping criteria would deliver a development outcome that would maintain landscape values and rural character. She concluded that the development would sit comfortably and would be "subservient to its spectacular landscape setting".¹³
- 6.5 Ms Mellsop concluded that some development could be absorbed. Her evidence stated:

"...I have noted in my evidence that I consider the following elements could be absorbed without degradation of the landscape character and values:

- (a) walking trails;
- (b) appropriately located and designed mountain bike tracks;
- (c) one additional pedestrian bridge and one jetty/landing on the Kawarau River; and
- (d) a glamping site in the upper Owens Creek catchment.

I also consider that a limited amount of additional development could be appropriate where topography and vegetation facilitate absorption of buildings and associated activities. The landscape and visual effects of any such development would depend on the specific details of each proposal.

¹³

Paragraph 6.1 of her Summary Statement of Evidence (4 September 2017).

[Emphasis added.]

- 6.6 Ms Mellsop agreed that under the CDP process there was potential to ensure RV3 “could appear as a large rural visitor village within the rural environment rather than as an urban area”.¹⁴ She relied on the proposed building coverage rules¹⁵ and design and planting requirements to conclude that careful planting and design would be required to ensure that development “did not appear as a urban node”.¹⁶ Ms Mellsop also mentioned potential height in this section of her evidence, which is now proposed to be further limited.
- 6.7 It is submitted that the evidence discloses that the essential issue in relation to sections 6(a) and 6(b) is the scale, design and location of development. The rule revisions set out above further respond to that issue and provide the Panel with a further level of comfort in respect the landscape evidence. It is submitted that the CDP process addresses the design and planting concerns raised by Ms Mellsop.
- 6.8 Further, it is submitted that Mr Brown’s analysis was the most comprehensive of any landscape witness. Despite careful and probing questions from the Panel, he did not demur from his conclusions. During questions of Ms Skidmore it appeared that the Panel may have gained the impressions that Mr Brown considered development on either side of the Kawarau would be perceived as similar. In discussions with counsel, Mr Brown has confirmed that development within the QPSZ would be quite distinct from that within Lake Hayes, Bridesdale or Shotover Country. However the urban settlements such as Lake Hayes frame some views and, as a consequence, some form of development within the QPSZ land would not be an unexpected part of the river valley landscape.
- 6.9 In terms of evaluating effects on public views, it is submitted that an overall evaluation of various view points is required. In **Rangitikei Guardians Soc Inc v Manawatu –Wanganui Regional Council**¹⁷ the Court reached the following comments regarding views:

Visual Amenity overall

[199] We find that effects on visual amenity values brought about by Project Central Wind are not sufficient to categorise them as significantly adverse overall. However, we accept that a small number of people would experience a change in views from their properties in that the wind farm turbines would now be a significant feature of those views.

¹⁴ Paragraph 4.6 of her rebuttal evidence .

¹⁵ Noting that these are now proposed to be further reduced (paragraph 2.2 above).

¹⁶ Paragraph 4.7 of her rebuttal evidence.

¹⁷ [2010] NZEnvC 14.

[200] We do not seek to downplay the adverse effects people foresee from a change in the present rural landscape with the addition of moving turbines, particularly where these are in line with their views of Mt Ruapehu. There is no doubt that some residents with presently uncluttered views of the mountain would experience the loss of what they have had due to the presence of the distant turbines between themselves and the mountain. All of the landscape witnesses agree on that.

[201] However, this is not a situation where residents' properties would be dominated or overwhelmed by the proposed turbines. Nor would the turbines dominate the mountain itself from these viewpoints. Although the turbines will be a clear presence, the sheer scale of Mt Ruapehu ensures that it would continue to be the dominating feature in the landscape. We do not consider that the turbines would obstruct peoples' views of the mountain, rather, we consider that the turbines would become a part of those views.

While public views near the QPSZ may change, it is submitted that the proposed development would not overwhelm the grandeur of The Remarkables or the elegance of the Kowarau River.

Section 6(c)

- 6.10 Section 6(c) is directly relevant to this QPL submission and the identified SNAs.¹⁸ The identified SNAs are large, occupying approximately 198 hectares of the site (an area that is almost twice the size of the proposed development pods).
- 6.11 In my submission, the evidence is clear. The QPSZ better achieves the "protection of areas of significant indigenous vegetation".
- 6.12 Commissioner Crawford sought clarification about securing the limited grazing requirement.¹⁹ In my submission, the limited grazing requirement could be imposed as a condition on a CDP resource consent and, if considered necessary, could be included as a matter for discretion in relation to a CDP resource consent application.

Section 6(d)

- 6.13 Section 6(d) is also directly relevant. The QPSZ will deliver "maintenance and enhancement of public access to and along...lakes and rivers".
- 6.14 Commissioner Mountfort explored the potential impacts of development on the river terraces on the users of the existing trail. While acknowledging that there would be change, Ms Skidmore did not consider this potential impact to be significant. Mr Greenaway expressed similar views. The submissions in respect of public views at 6.8 and 6.9 above are also relevant.

¹⁸ The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
¹⁹ Rules 44.5.12 and 44.5.13.

- 6.15 It is submitted that any impact potential impact on users of the existing trail must be considered in the context of the benefits of the additional trail that is proposed as part of the QPSZ (some 7km in length initially, and up to 10.5km when extended to RV4).

7. ECONOMIC BENEFITS

- 7.1 Mr Ballingall gave detailed evidence on the economic benefits of the QPSZ. He described the gondola as “transformational infrastructure”. The gondola alone was estimated to generate:

- (a) \$29.9 million of additional real GDP across the economy²⁰ during the construction phase; and
- (b) \$20.4 million of additional real GDP across the economy once it is operational and bringing in tourists and when the visitor accommodation is constructed.

Item (b) equated to an approximately 5% increase in Queenstown’s real GDP.

- 7.2 Mr Ballingall explained that this type of infrastructure investment (in the order of \$85 million) allows the economy to expand - the “pie gets bigger”. The benefits of economic growth “trickle down” through, for example, job creation and spending. The community as a whole benefits.

- 7.3 Both Mr Hamilton and Mr Greenaway opined the benefits of new and different tourism development. While they had slightly different views on aspects of the Chinese market,²¹ the overall tenor of their evidence was entirely consistent – the gondola and associated commercial and recreation would be hugely appealing. Mr Anderson provided insight into the opportunities that would be “unlocked” within and around The Remarkables ski field if the gondola was built.

- 7.4 It is submitted that this evidence is relevant to:

- (a) Enabling people and communities to provide for their social, economic, and cultural well-being (section 5(2));
- (b) The efficient use and development of natural and physical resources (section 7(b));
- (c) Identifying and assessing the opportunities for economic growth and employment (section 32(2)); and

²⁰ Note that my GDP estimates are for the economy as a whole, not just tourism sector GDP.

²¹ An implication was drawn from Mr Greenaway’s evidence that the “reward” tourist was low value, whereas Mr Hamilton described the same tourist as high value.

- (d) Implementing regional and district objectives and policies related to tourism and economic growth (section 75(1)).

7.5 In **Federated Farmers of New Zealand (Inc) v Mackenzie District Council**²²

Judge Jackson stated that section 32 must be applied with regard to Part 2 of the RMA:

The exception is the heading which still refers *Consideration of benefits, alternatives and costs*. In addition to that we hold that consideration of alternatives is implicit for three reasons. First, section 32 RMA requires the local authority to assess whether each objective, policy or method provision is the most appropriate. "Most" is a comparative term: it requires that the provision in contention be evaluated against at least one alternative. Second, section 32(4)(b) requires the local authority to take into account the risk of acting (i.e. introducing PC13(pc)) or not acting (e.g. reverting to the status quo). That requires comparing (at least) those alternatives. Third, section 32 is a procedural provision. It must be applied in accordance with the purpose and principles of Part 2 of the RMA. The principles include the requirement in section 7(b) RMA to have particular regard to the efficient use of the relevant natural and physical resources. **We will discuss the efficient use of the resources of the Mackenzie Basin next. It is sufficient to record at this point that economic efficiency involves a comparison of the net social benefits of the objective in question with the social benefits of the best alternative (often but by no means necessarily, the status quo).**

[Emphasis added]

- 7.6 It is accepted that it can be difficult to "put a price" on effects on an ONL. As Judge Jackson went on to state in the **Federated Farmers** case, "what price should be placed on the extinction of a small plant species?"²³ Thankfully the QPSZ doesn't present the risk of plant species extinction (to the contrary, it protects identified SNAs). However, there are divergent expert views on the potential landscape effects of the QPSZ. That is a matter that the Panel must weigh against the other section 6 benefits asserted to arise from the QPSZ, and the irrefutable economic benefits. Mr Ballingal's conclusion that the environmental costs would have to be enormous is relevant to that evaluation.

8. WHAT MIGHT THE RURAL ZONE DELIVER?

- 8.1 The short answer to the above questions is "we don't know"? It was implicit in the Council's evidence (but not expressly stated) that the Rural Zone would enable aspects of the QPSZ proposal. The extent and type of development was not clear.
- 8.2 Mr Porter's evidence confirmed that the development would be unlikely to proceed under the Rural Zone. The QPSZ underwrites the value of the land asset and provides the certainty required to invest in the gondola development.
- 8.3 The proposed trail would not be developed. Mr Serjeant also referred to the absence of a comprehensive approach to land use and management (including requirements

²² [2017] NZEnvC 53.

²³ At [477].

for revegetation), and loss of ecological and water quality benefits.²⁴ He also identified Policy 6.3.1.5 which encourages plan changes in preference to ad-hoc subdivision and development for the Rural Lifestyle and Rural Residential Zone.

8.4 Ms Dewes considers that the Rural Zone might deliver more intensive farming with associated adverse environmental impacts. While any activity would need to comply regional requirements, identifying the source of discharges or the contribution any discharge source is making to water quality is fraught. In that regard, Mr Ralston's evidence, which confirmed the capture and control of wastewater, is important.

8.5 It is submitted that it would be incorrect to assume that the Rural Zone might be sufficiently flexible to enable limited aspects of the proposed QPSZ proposal because fundamental components would most likely be missing (gondola and trail). Ad-hoc development is the most likely outcome.

9. CONCLUSION

9.1 It is submitted that the QPSZ is "better" than the Rural Zone or the QPL land. The two zones may be comparable from a landscape perspective in terms of protecting ONL values, but in all other respects the QPSZ is superior.

9.2 During the course of the hearing there was some discussion about the desirability of a district wide ONL analysis. All parties appeared to accept that such an approach would have been desirable. However, the Council has not gone down that path. The Council is, however, promoting objectives and policies that envisage some development within ONL's and encourage tourism development and growth. The QPSZ responds to those directions.

9.3 Furthermore, it is submitted that private landowners should not be penalised by the Council's failure to undertake a district wide analysis.

9.4 QPL seeks that the QPSZ be included in the district plan with the additional amendments set out in these submissions.

Dated the 13th day of September 2017



J D Young

Counsel for Queenstown Park Limited and Remarkables Park Limited

²⁴ Page 3 of his Summary Statement.