

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**

MEMORANDUM OF COUNSEL ON BEHALF OF QUEENSTOWN PARK LIMITED

15 JUNE 2016

BROOKFIELDS

LAWYERS

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MAY IT PLEASE THE PANEL:

Ms Smetham's Viewpoints

1. This memorandum is filed on behalf of Queenstown Park Limited (**QPL**) in response to a request of the Panel at the hearing dated 27 May 2016.
2. **Attached** and marked "**A**" is a map identifying the photoviewpoints contained in Ms Smetham's landscape evidence dated 21 April 2016. The map legend corresponds with photographs 1 to 11 in Ms Smetham's evidence.¹ We note that viewpoint 3 is shown on the lake. However, the photo is actually taken from Glenorchy Road, which is beyond the extent of the aerial photo used. The direction of the photo is accurate.

Restricted Discretionary Activities

3. At the hearing the Panel raised a question in respect of restricted discretionary activities in Chapter 21.
4. Section 87A of the Resource Management Act 1991 (**Act**) specifies classes of activities. Section 87A(3) of the Act states:

“(3) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a restricted discretionary activity, a resource consent is required for the activity and—

- (a) the consent authority's power to decline a consent, or to grant a consent and to impose conditions on the consent, **is restricted to the matters over which discretion is restricted** (whether in its plan or proposed plan, a national environmental standard, or otherwise); and
- (b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

5. In **Lambton Quay Properties Nominee Ltd v Wellington City Council** the High Court summarised the judicial and statutory development of restricted discretionary activities. It stated:

Section 87A of the Resource Management Act: restricted discretionary activities

[29] Section 87A was passed in 2009 and replaced s 77B, which had been enacted in 1993. Section 77B introduced the concept of restricted discretionary activities and required a consent authority to specify in its District Plan matters to which it had restricted its discretion when declining a resource consent application.

¹ Ms Smethams evidence dated 21 April at pages 12-21.

[30] In *Woolley*, Randerson J had to consider the relationship between Part 2 of the Resource Management Act which sets out the purposes and principles of the Resource Management Act, and the restricted discretionary activity provisions of the Resource Management Act. Randerson J said that the provisions of Part 2 could not be:

... used effectively to override the specific provisions of s 77B(3) ... To permit Part 2 matters to be taken into account as additional grounds to decline consent for a restricted discretionary activity would be inimical to the very nature of such an activity and the strictly confined powers available to the consent authority.

Randerson J held, however, that the provisions of Part 2 of the Resource Management Act could be taken into account in deciding to grant a restricted discretionary activity.

[31] The legislation now refers to a consent authority's power to grant consent in addition to declining consent. Section 87A(3) provides:

(3) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a restricted discretionary activity, a resource consent is required for the activity and—

(a) the consent authority's power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted (whether in its plan or proposed plan, a national environmental standard, or otherwise); and

(b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

6. The salient point in respect of the Panel's query is the statutory requirement to state the matters over which discretion is restricted because a decision to grant or decline is limited to those matters.

7. Rule 21.3.3.6 in Chapter 21 of the proposed District Plan provides the following:

For controlled or restricted discretionary activities, the Council shall restrict the exercise of its discretion to the matters listed in the rule.

8. We consider that Rule 21.3.3.6 is not sufficiently clear because it doesn't itemise and limit the specific rules that are applicable, and it addresses controlled and restricted discretionary activities collectively. We suggest the following in substitution for 21.3.3.6:

Rule 21.3.3.6 For controlled activities, the Council shall restrict its control to the matters listed specifically listed in Activity Table 1 under Rule 21.4 and the relevant standards that are not complied with in Tables 7, 9 and 10 under Rule 21.5.

New Rule 21.3.3.7 For restricted discretionary activities, the Council shall restrict the exercise of its discretion to the standards that are not complied with and which trigger restricted discretionary activity status in Tables 2, 3, 4, 5, 8 and 9 under Rule 21.5.

9. We note that:

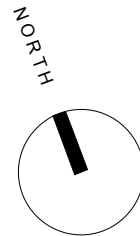
- (a) Table 1 under Rule 21.5 does not contain any standards and, as Commissioner St Clair pointed out, does not contain any restricted discretionary activities;
- (b) Matters for control for some controlled activities are specifically stated under Table 1;
- (c) Only Tables 2, 3, 4, 5, 8 and 9 contain standards that trigger restricted discretionary activity status if they are not complied with; and
- (d) Only Tables 7, 9 and 10 contain standards that trigger controlled activity status if they are not complied with.

DATED the 15th day of June 2016

J D Young

Counsel for Queenstown Park Limited

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LEGEND

VIEWPOINTS

- 1. Remarkables Ski Field
- 2. SH6 Kingston Road
- 3. The Remarkables Range
- 4. Kawarau River Terrace.
- 5. Littles Road
- 6. Chard Farm
- 7. Millbrook (The Ave - Butel Road)
- 8. Dalefield - Hunter Road
- 9. Lot 2 and 3 /548 Speargrass Flat Road looking east
- 10. Ladies Mile
- 11. Eastern Access Road

Aerial - Wakatipu Basin - Queenstown - Arrowtown - Gibbston Valley

Scale 1:60,000 @ A3
Map/Aerial Photo Source: Linz.govt.nz