

Before the Queenstown Lakes District Council

In the Matter of the Resource Management Act 1991

And

In the Matter of the Queenstown Lakes Proposed District Plan

**Chapter 3 (Strategic Direction) and Chapter 6
(Landscape)**

**Summary of Legal Submissions for Trojan
Helmet Limited (Submitter 443, 452
and 1157)**

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Introduction

1. These legal submissions are filed on behalf of Trojan Helmet Limited (**Trojan Helmet**) in respect of its submissions on Chapter 3 (Strategic Direction) and Chapter 6 (Landscape) of the Queenstown Lakes Proposed District Plan (**Proposed Plan**).
2. Trojan Helmet owns approximately 190ha of land located directly southwest of Arrowtown, which extends between Arrowtown-Lake Hayes Road in the west to McDonnell Road in the east, and Hogans Gully Road in the south. The land includes approximately 162ha of golf course ('The Hills'); an approximately 8.4ha block which fronts McDonnell Road and currently contains a driving range associated with the golf course, and an approximately 20ha block adjacent to the intersection of Hogans Gully and the Arrowtown Lakes Hayes Roads, which is currently grazed.
3. Trojan Helmet has made submissions on the Proposed Plan seeking its land be rezoned, which will be addressed at later hearings.

The Hills – An Overview

4. The Hills golf course has a manicured character of high aesthetic quality and designed and maintained to the highest standards. Numerous earthworks have occurred as part of the establishment of the golf course, and have shaped its landscape character.
5. The overall appearance of the property is appropriate for and complements the rural/semi-rural landscape within which it is located, however it does not exhibit rural landscape values relating to productive agricultural land uses.
6. The golf course and its associated activities and buildings demonstrate that sensitively designed and carefully managed development can be appropriate in and enhance the rural landscape, and that appropriate land use within the rural zones is much more diverse than traditional farming and productive uses.
7. The golf course has hosted the New Zealand Open NZ PGA Championship numerous times. These events are large in magnitude and bring a significant number of visitors to the District, as well as generating

significant employment opportunities and media coverage which showcases the local environment.

8. The golf course therefore brings significant economic benefits to the District.
9. It demonstrates that non traditional rural uses can be significantly enabling of people and of communities' economic and social well being.

Trojan Helmet's Submission on Proposed Chapter 3 and 6

10. Through its submissions on Chapters 3 (Strategic Direction) and 6 (Landscape), of the Proposed Plan, Trojan Helmet is concerned to ensure:
 - (a) That appropriate recognition is afforded to and provision made for non-traditional/farming land use in rural landscapes, noting there are numerous activities (e.g. golf courses) which have been legitimately established in and have shaped these landscapes and contribute to its character, and which for functional and other reasons require a rural location;
 - (b) These activities, many of which are associated with tourism, tend to be significant employers in and/or drawcards for the District, and contribute to its attraction for tourists. They are therefore enabling of people and communities' economic and social well-being, and accordingly, should be recognised and provided for the in the higher order objectives and policies of the Proposed Plan.
 - (c) That in rural landscapes, subdivision, use and development is not precluded, provided any adverse effects, particularly on landscape character and visual amenity, are appropriately avoided, remedied or mitigated, noting that unlike ONLs and ONFs, *protection* of such landscapes in not mandated by the Act, and there are parts of the rural landscape that can absorb further development;
 - (d) That the wording of the Proposed Plan is carefully considered, given words mean what they say;
 - (e) That clarification is provided that Chapter 6 only applies to the Rural Zone.

11. Trojan Helmet considers the Proposed Plan is currently weighted too far in the direction of protecting all landscapes, which may frustrate legitimate development proposals, and fails to recognise that lawfully established activities currently exist and operate within these landscapes.
12. Further, it over emphasises the importance of traditional farming activities, when there are other activities that require a rural location (e.g. golf courses and rural lifestyle uses) which may better provide for the economic wellbeing of landowners and the wider community.
13. Trojan Helmet's submission is supported by, amongst other things, the Operative and Proposed Regional Policy Statements for Otago (**ORPS** and **PRPS**), to which the Proposed Plan must respectively 'give effect' and 'have regard' to. Specifically:
 - (i) ORPS, Chapter 5, Land, Policy 5.5.4 which is "*to promote the diversification and use of Otago's land resource to achieve sustainable land use and management systems for future generations*". The explanation and principal reasons for adopting' the policy state: "*While the existing primary productive use of Otago's land resource is an important component of Otago's economy, **promoting and encouraging a diversification of use will assist in the development of sustainable systems to ensure that the needs of future generations are met***"; and
 - (ii) PRPS, Policy 4.3.1 'Managing for rural activities', which seeks to "*manage activities in rural areas, to support the regional's economy and communities, by ...(e) **Providing for other activities that have a functional need to locate in rural areas, including tourism and recreational activities that are of a nature and scale compatible with rural activities.***" The methods stated to implement the policy include '*city and district plans.*'
14. Trojan Helmet is concerned that the potential costs of the Proposed Plan's approach to managing rural landscapes have not been assessed.

Statutory Framework

15. The Proposed Plan and any submissions made must be considered within the framework of the Act, as set out in detail in counsel's pre-lodged legal submissions.

Sections 32 and 32AA

16. Under section 32, an evaluation report on a proposed plan must examine whether proposed objectives are the most appropriate way to achieve the purpose of the Act, and whether the provisions are the most appropriate way of achieving the objectives. To do that, a council must identify other reasonably practicable options to and assess the efficiency and effectiveness of the proposed provisions through identifying the benefits and costs of the environmental, economic, social and cultural effects, including opportunities for economic growth and employment.
17. Section 32AA requires a further evaluation to be undertaken for any changes made or proposed to a proposed plan since the section 32 evaluation was completed. This further evaluation must either be published as a separate report, or referred to in the decision making record in sufficient detail to demonstrate it was carried out.

Case Law

18. A comprehensive summary of the mandatory requirements for the preparation of district plans, incorporating the changes made to section 32 by the 2013 amendment to the Act, is set out in **Appendix B** of counsel's pre-lodged legal submissions.
19. A summary of the legal principles relevant to the implementation of section 32 as set out in the Act and derived from the case law includes the following:
 - (a) The proposed plan should achieve integrated management of the effects of the use, development and protection of land and associated natural and physical resources of the district.
 - (b) The decision maker does not start with any particular presumption as to the appropriate zone, rule, policy or objective.

- (c) No onus lies with a submitter to establish that the subject provisions should be deleted, nor is there a presumption that the provisions of a proposed plan are correct or appropriate. The proceedings are more in the nature of an inquiry into the merits in accordance with the statutory objectives and existing provisions of policy statements and plans;
- (d) The decision maker's task is to seek to obtain the optimum planning solution within the scope of the matters before it based on an evaluation of the totality of the evidence given at the hearing, without imposing a burden of proof on any party.
- (e) The provisions in all plans do not always fit neatly together and where that is the case consideration should be had through the filter of Part 2 of the Act.
- (f) Section 32 requires a value judgment as to what, on balance, is the 'most appropriate' when measured against the relevant objectives. 'Appropriate' means 'suitable'; there is no need to place any gloss upon that word by incorporating that is to be superior.
- (g) The words 'most appropriate' in section 32 allow ample room for the Council (or its officers) to report that it considers one approach 'appropriate' and for the decision maker to take an entirely different view, on the basis of the accepted evidence and other information it has received.
- (h) Section 32 is there primarily to ensure that any restrictions on the complete freedom to develop are justified rather than the converse. To put it more succinctly, it is the 'noes' in the plan which must be justified, not the 'ayes'. This accords with the policy direction of section 9 (the use of land is permitted unless a district rule says otherwise) and the Act's enabling purpose.

Conclusion

20. The Proposed Plan must, in achieving the purpose of the Act, strike an appropriate balance between all relevant resource management issues relating to the use, development and protection of the District's natural and physical resources.
21. As notified, and with the section 42A reporting officers' recommended amendments, the Proposed Plan is weighted too far in the direction of protection of all landscapes, and this will frustrate appropriate development proposals.
22. It over-emphasises the importance of farming activities. Other activities that require a rural location, such as rural residential and rural lifestyle uses, and golf courses, may better provide for the economic wellbeing of landowners and the wider community in the face of rapid growth, and therefore should also be enabled, depending on location and managing potential adverse effects on landscape and other values. If activities such as golf courses are not enabled in rural areas, where are they to locate?
23. A district plan regime that balances protection and use and development of *all* resources, taking into account sections 6 and 7 matters (but not conflating them) is the most appropriate regime to achieve the purpose of the Act.

R Wolt

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