

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Queenstown Lakes Proposed
District Plan

AND

IN THE MATTER of Hearing Stream 12 – Upper Clutha
Mapping

SUPPLEMENTARY SUBMISSIONS FOR M BERESFORD (SUBMITTER 149)

Dated 21 June 2017

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MAY IT PLEASE THE PANEL:

1. These submissions address the Panel's question in relation to the implications of paragraph [61] of the Court of Appeal (**CA**) decision in *Man O'War*.¹ The significance of the decision and its implications in this context relates to the proposal for an LLR development in a small part of the land that, on a factual landscape assessment, contains Outstanding Natural Landscape (**ONL**) values.
2. It is accepted that in light of the *King Salmon* and *Man O'War* decisions, the ONL classification should not follow a s85 assessment of whether (with an ONL) the land would be capable of any reasonable use. However, that does *not* lead to the result that this part of Mr Beresford's case ought to be rejected.
3. As discussed by the CA in *Man O'War*, the focus of the Supreme Court decision was on the effect of Policy 13(1)(a) of the New Zealand Coastal Policy Statement (**NZCPS**) and its requirements stemming from s6(a) RMA to preserve the natural character of the coastal environment and to protect it from "inappropriate subdivision, use and development".
4. The policy achieved this preservation and protection by avoiding the adverse effects on natural character in areas of the coastal environment with Outstanding Natural Character.
5. As the Court in *Man O'War* observed, the Supreme Court held that reference to the word 'avoid' in the NZCPS meant "not allow" or "prevent the occurrence of". However, it should be noted that neither s6(a) or s6(b) requires the avoidance of all development. What is required is the protection of Outstanding Natural Features and Landscapes from *inappropriate* subdivision, use and development.
6. Moreover, with reference to the Supreme Court decision in *King Salmon*, the CA in *Man O'War* also observed that 'inappropriate' in the context of s6(a) and (b) has to be considered against the backdrop of what is sought to be protected or preserved, whilst also drawing attention to the significance of the Board's finding that as a starting point, the effects of the proposed salmon farming on the Outstanding Natural Character of the area would be high and there would be a "very high adverse visual effect".

¹ *Man O'War Station Limited v CC* [2017] NZCA 24

7. In *Man O'War*, it had also been agreed that on a factual assessment, the areas of land to which the ONLs were applied were sufficiently natural for the purposes of s6(b) of the Act, although it was equally clear to all parties that whilst natural, the land was not pristine or remote.
8. Importantly, the CA observed that it was in that context that the question of whether any new activity or development would amount to an adverse effect, would need to be assessed.
9. The same approach must be taken in this context.
10. In this case, and consistent with the purely factual assessment discussed by the CA in para [61] of *Man O'War*, the two landscape architects are agreed that the land sought to be developed qualifies as an ONL. However, Mr Field has also acknowledged that the natural values of the land are compromised to an extent by the existing exotic forestry planting and the bike trails that have been carved through the forest.
11. In Mr Field's opinion, it is the existence of these compromising elements together with the topographical features of this part of the ONL land that enables some development to occur in a manner that protects the ONL land from *inappropriate* development for s6(b) RMA purposes.

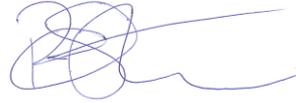
District Plan Treatment in light of *Man O'War*

12. Whether or not a factual finding of ONL values leads to the result that the land in question has to be formally identified as being within an ONL by a line on the map, is a different question. In my submission, that is not an inevitable consequence of either the *King Salmon* or *Man O'War* decisions and as stated in each case this will result from a contextual assessment as to what is inappropriate development and how to prevent that from occurring (or the corollary to that). What is important is that the plan provisions achieve the protection required by the s6(b) direction.
13. The proposal promoted by the Submitter is for this area of land to be given an LLR zoning and depicted on the planning map as lying outside the ONL line on the planning maps, **but** with a clear policy and rule framework that:
 - 13.1 Recognises the factual assessment that the land has ONL values; and

13.2 Will ensure that the ONL values pertaining to the land will be protected from inappropriate development.

14. In my submission the CA decision in *Man O'War* does not stand in the way of these methods achieving the firm s6(b) RMA obligation.

Dated this 21st day June 2017.



P A Steven QC
Counsel for M Beresford (Submitter 149)