

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Stream 3 –
Historic Heritage and
Protected Trees
chapters

**SYNOPSIS OF LEGAL SUBMISSIONS FOR
QUEENSTOWN LAKES DISTRICT COUNCIL**

**HEARING STREAM 3 –
Historic Heritage and Protected Trees**

17 June 2016

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MAY IT PLEASE THE PANEL:

1. The following is a synopsis of the legal submissions for the Queenstown Lakes District Council (**Council**) that will be presented at the commencement of Hearing Stream 3 of the Proposed District Plan (**PDP**). Full written legal submissions will be tabled, but a synopsis has been filed in advance in accordance with the Panel's directions in its Fourth Procedural Minute dated 8 April 2016, and for the Panel's and submitters' convenience.
2. Council refers to and adopts its opening legal submissions presented at the Strategic Direction hearing, in terms of Council's functions and statutory obligations (section 3), relevant legal considerations (section 4), and whether various submissions are "on" Stage 1 of the PDP (section 7).¹

SCOPE OF HEARING

3. The scope of the hearing is the Historic Heritage and Protected Trees chapters of the PDP,² including any defined terms used within those chapters.³ Submissions on the Historic Heritage chapter that relate to subdivision (and in particular those on rules 26.6.2 and 26.6.21) have been deferred to Hearing Stream 4 on the basis of the Council's position that all rules relating to subdivision will be contained with Chapter 27, Subdivision, of the PDP, and Ms Jones' recommendation to delete rules 26.6.2 and 26.6.21. Submissions made in relation to historic features within the geographic area subject to Plan Change 50 have not been considered. The Council resolved to withdraw all provisions of the PDP that related to the geographic areas covered by Plan Change 50 on 29 October 2015. The effect is that submissions relating to this area, including on any heritage or tree listings, are now out of scope of the PDP.⁴

HISTORIC HERITAGE

4. The Queenstown Lakes District's (**District**) historic heritage (**heritage**) provides significant amenity, cultural and intrinsic values to the District. Part 2 of the Resource Management Act 1991 (**RMA**) provides that the protection of

¹ Opening Representation / Legal Submissions for Queenstown Lakes District Council, Hearing Streams 1A and 1B – Strategic Chapters in Part B of the Proposed District Plan, dated 4 March 2016.

² Chapters 26 and 32 respectively.

³ Ms Jones, s 42A report, paragraphs 7.4, 10.4, 11.6, 13.6, 20.9; Ms Law, s 42A report, Issue 1.

⁴ For other submissions that have been deferred to other hearing streams see Ms Jones' and Ms Law's section 42A reports, Appendix 2.

historic heritage from inappropriate subdivision, use and development, and the recognition and provision for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other Taonga, are matters of national importance that must be recognised and provided for.⁵

5. The key resource management issue identified in Ms Jones' section 42A report for the protection of heritage in the District is the ongoing need to balance the economic use of land and structures with the protection of the District's heritage in order to achieve sustainability.⁶ This involves:
- (a) appropriately identifying heritage aspects of the District;⁷
 - (b) providing policies and rules that effectively protect heritage features without undue restriction on private property rights and the economic use of land and structures;⁸
 - (c) encouraging and enabling the maintenance of historic heritage features in order to avoid demolition by neglect;⁹
 - (d) recognising that the setting of heritage features is important and the historic values of such features in situ is far higher than when relocated;¹⁰ and
 - (e) ensuring that the inventory of protected features contained within the PDP remains current.¹¹

Higher Order Policy and Statutory Direction

6. The relevant higher order policy and statutory direction is detailed in the section 42A report on the Historic Heritage¹² chapter. Key higher order policy and statutory directions are:

⁵ Resource Management Act 1991, ss 6(e) and (f).

⁶ Key resource management issues are set out in section 7 of Ms Jones, s 42A report, Chapter 26.

⁷ Ibid, s 6(f) and 74(2)(b)(iia).

⁸ Ibid, ss 5(2) and 6(f).

⁹ Ibid, s 6(f).

¹⁰ Ibid, s 6(f).

¹¹ Ibid, s 6(f).

¹² Ms Jones, s 42A report, Chapter 26, section 5.

- 6.1 sections 6(e) and (f) of the RMA¹³ which set out the matters of national importance that shall be recognised and provided for;
- 6.2 sections 7(b), (c), (f) and (g) of the RMA which set out other matters to which particular regard shall be had;¹⁴
- 6.3 the relevant objectives and policies in the operative Otago Regional Policy Statement (**RPS**), which must be given effect to. These provisions highlight the importance of recognising and protecting Otago's heritage values;¹⁵
- 6.4 the Proposed Otago Regional Policy Statement (**pRPS**), which provides for the recognition of the importance of historic heritage to the region's character and sense of identity¹⁶ and the promotion of Kai Tahu values;¹⁷ and
- 6.5 the objectives and policies of Chapter 3 Strategic Direction, Chapter 4 Urban Development and Chapter 5 Tangata Whenua. Of particular relevance are objective 3.2.3.2 and policy 3.2.3.2.1, which recognise the need to identify and protect heritage items, and to ensure that development is sympathetic to the District's cultural heritage values.¹⁸

Relevance of the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA)

7. The purpose of the HNZPTA is the promotion of the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.¹⁹ Section 5 of the HNZPTA provides that Heritage New Zealand must maintain the New Zealand Heritage List / Rārangī Kōrero (**List**),

¹³ Resource Management Act 1991, s 6(e), the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other Taonga; and Resource Management Act 1991 s 6(f), the protection of historic heritage from inappropriate subdivision, use and development.

¹⁴ Resource Management Act 1991, section 7(b), the efficient use and development of natural and physical resources; section 7(c), the maintenance and enhancement of amenity values; section 7(f), maintenance and enhancement of the quality of the environment; and section 7(g), any finite characteristics of natural and physical resources.

¹⁵ Otago Regional Policy Statement, policy 9.5.1, 9.5.4 and 9.5.6.

¹⁶ Otago Regional Policy Statement, objective 4.2; Ms Jones, s 42A report, Chapter 26, paragraph 5.6.

¹⁷ Proposed, Otago Regional Policy Statement, objective 1.2; Ms Jones, s 42A report, Chapter 26, paragraph 5.7.

¹⁸ Recommended Chapter 3 contained within Appendix 1 of Schedule 2 (Reply of Mr Paetz) of the Council's Right of Reply in relation to Hearing Streams 1A and 1B, 7 April 2016 .

¹⁹ Heritage New Zealand Pouhere Taonga Act 2014, s 3.

previously called the Historic Places Register.²⁰ The List contains historic places, historic areas, wāhi tapu, wāhi tapu areas and wāhi tupuna.²¹

8. Section 74 of the RMA specifically addresses the relationship between the List and plans prepared by territorial authorities under the RMA. Subsection 74(2)(b)(iia) of the RMA provides, that when preparing a district plan, a territorial authority shall have regard to any:

(iia) relevant entry on the New Zealand Heritage List / Rārangi Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014.

Historic Heritage Chapter 26

9. The Historic Heritage chapter promotes the sustainable management of the District's historic heritage features. The chapter includes an inventory of protected features, sites and landscapes (**Inventory**) and proposed objectives, policies and rules relating to the protection of the items contained within the Inventory.
10. A considerable number of changes to the provisions of the Historic Heritage Chapter have been recommended in response to the issues raised in submissions. The focus of the changes has been on:
- (a) providing stronger, more directive policies;
 - (b) reducing ambiguity and improving the enforceability and certainty of the rules;
 - (c) defining the various heritage categories;
 - (d) providing evaluation criteria; and
 - (e) amending the Inventory.
11. The key issues considered to be resolved through the recommendations made in the section 42A report are listed below, followed by the key matters of disagreement that are currently understood to be outstanding:
- (a) the management of setting and curtilage areas (Issue 1):²² managing activity within the setting of a heritage feature is more clearly defined and where possible 'extents of place' are included in the Inventory;²³

²⁰ Ibid, s 65.

²¹ Ibid, s 65.

- (b) the management of internal and external alterations (Issue 2):²⁴ rule 26.6.5 continues to enable and encourage repairs and maintenance but has been amended to increase its clarity and workability.²⁵
- (c) archaeological sites (Issue 3):²⁶ the rules relating to archaeological sites are more workable, applying only to those sites listed in the PDP and no longer relying on obtaining an authority prior to applying for resource consent.²⁷ Clause 26.3.1 has been amended to clarify the relevance that the Archaeological Alert Layer has to District Plan users;²⁸
- (d) the management of demolition and relocation within and beyond the site (Issue 4):²⁹ total and substantial demolition have been separated out into two rules with different activity statuses.³⁰ The activity status of the relocation of Category 1 items within the site is recommended to be non-complying;³¹
- (e) the management of heritage precincts (Issue 6):³² the rules relating to heritage precincts have been reformatted to be clearer, and it has been made clear that these rules only apply to items that are not listed in the Inventory.³³ The statements of significance and key features are tied back to rules and policies,³⁴ and the all-encompassing development rule has been deleted;³⁵
- (f) the management of heritage landscapes (Issue 7):³⁶ rule 26.6.21 has been refined;³⁷ and an advice note has been included in Table 5 to notify users of the PDP of the potential need to obtain an Authority

²² Various submitters; Ms Jones s 42A report, paragraphs 10.1 to 10.11.
²³ Ms Jones s 42A report, paragraph 10.5.
²⁴ Various submitters; Ms Jones s 42A report, paragraphs 11.1 to 11.10.
²⁵ Ms Jones s 42A report, paragraph 11.6.
²⁶ Submitter 426 (Heritage New Zealand), 604 (Jackie Gillies and Associates), 621 (Real Journeys Limited), various other submitters; Ms Jones s 42A report, paragraphs 12.1 to 12.14.
²⁷ Ms Jones s 42A report, paragraphs 12.10 to 12.14.
²⁸ Ms Jones s 42A report, paragraph 12.6.
²⁹ Various submitters; Ms Jones s 42A report, paragraphs 13.1 to 13.17.
³⁰ Ms Jones s 42A report, paragraphs 13.8 to 13.17.
³¹ Ms Jones s 42A report, paragraph 13.16(b).
³² Various submitters; Ms Jones s 42A report, paragraphs 15.1 to 15.19.
³³ Ms Jones s 42A report, paragraph 15.12
³⁴ Ms Jones s 42A report, paragraph 15.16.
³⁵ Ms Jones s 42A report, paragraph 15.19.
³⁶ Ms Jones s 42A report, paragraphs 16.1 to 16.18.
³⁷ Ms Jones s 42A report, paragraph 16.16.

pursuant to the HNZPTA prior to carrying out works in relation to an archaeological site;³⁸

- (g) the appropriateness of objectives and policies (Issue 10):³⁹ the objectives are now phrased as outcome statements and a number of new policies provide stronger and more detailed direction.

12. Key outstanding issues are understood to be:

- (a) the management of setting and curtilage areas (Issue 1): whether the amended definition of 'setting' provides the appropriate degree of leniency;⁴⁰
- (b) the management of internal and external alterations (Issue 2): whether the definition of 'heritage fabric' is sufficient;⁴¹
- (c) archaeological sites (Issue 3): whether it is appropriate to include rules relating to archaeological sites in the Historic Heritage chapter,⁴² and whether a rule that makes any activity in breach of the HNZPTA a prohibited activity is appropriate;⁴³
- (d) the management of demolition and relocation within and beyond the site (issue 4): the appropriate activity status for various activities (total demolition or relocation of Category 1 and 2 items beyond the site, partial demolition of Category 2 items, relocation of Category 2 buildings within the site and relocation of Category 3 items and buildings located within a heritage precinct, within a site);⁴⁴
- (e) the management of heritage precincts (Issue 6): whether the removal of rule 26.6.15 is appropriate,⁴⁵ whether a Park Street Heritage Precinct is appropriate,⁴⁶ whether it is appropriate to remove the Pig and Whistle building from the Queenstown Courthouse Heritage

³⁸ Ms Jones s 42A report, paragraph 16.16.

³⁹ Ms Jones s 42A report, paragraphs 19.1 to 19.17.

⁴⁰ Ms Jones s 42A report, paragraphs 10.1 to 10.11.

⁴¹ Ms Jones s 42A report, paragraph 11.6.

⁴² Ms Jones s 42A report, paragraph 12.7(b).

⁴³ Ms Jones s 42A report, paragraph 12.7(d).

⁴⁴ Ms Jones s 42A report, paragraphs 13.1 to 13.17.

⁴⁵ Ms Jones s 42A report, paragraph 15.19.

⁴⁶ Ms Jones s 42A report, paragraph 15.6.

Precinct,⁴⁷ and the appropriate activity status for the relocation of non-Inventory contributory buildings;⁴⁸

- (f) the management of heritage landscapes (item 7): whether sufficient provision is made for current day mining activities,⁴⁹ and whether sufficient protection is afforded to the subterranean parts of mining sites;⁵⁰
- (g) enabling and encouraging preservation through permitting repairs and maintenance (Issue 9): whether it is appropriate to encourage the replacement of products other than those containing asbestos;⁵¹
- (h) the appropriateness of objectives and policies (Issue 10): various amendments to objectives and policies;⁵²
- (i) the definition of heritage categories, assessment criteria, information requirements and the process for adding more items (Issue 11); the necessity of obtaining owners' consent prior to nomination of an item to be listed on the Inventory,⁵³ and the necessity of including reference to the ICOMOS Charter within section 26.2.⁵⁴
- (j) inventory of protected features (Issue 12): the appropriateness of including various items in the Inventory (the Kingston Flyer, the historic ski area infrastructure, the Arrowtown irrigation scheme, 13/15 Stanley Street),⁵⁵ and the appropriateness of the categories attributed to various items (Threepwood Stables (242), Antrim Slipway (37), Former Methodist Church (251));⁵⁶ and
- (k) miscellaneous (Issue 13): whether it is appropriate for the rules contained in the Historic Heritage chapter to refer to the Earnslaw.⁵⁷

⁴⁷ Ms Jones s 42A report, paragraph 15.4.
⁴⁸ Ms Jones s 42A report, paragraph 15.13.
⁴⁹ Ms Jones s 42A report, paragraphs 16.13 to 16.14.
⁵⁰ Ms Jones s 42A report, paragraph 16.9.
⁵¹ Ms Jones s 42A report, paragraph 18.4.
⁵² Ms Jones s 42A report, paragraphs 19.1 to 19.17.
⁵³ Ms Jones s 42A report, paragraph 20.2.
⁵⁴ Ms Jones s 42A report, paragraph 20.9.
⁵⁵ Ms Jones s 42A report, paragraph 21.7.
⁵⁶ Ms Jones s 42A report, paragraph 21.15.
⁵⁷ Ms Jones s 42A report, paragraph 22.3.

PROTECTED TREES

13. The purpose of the Protected Trees Chapter is to promote the protection of trees that have been identified as providing significant benefits to the District. The key resource management issues identified by the Council in relation to the Protected Trees Chapter are:⁵⁸
- (a) ensuring that protected trees are appropriately identified within the PDP in accordance with section 76(4A) to section 76(4D) of the RMA; and
 - (b) as with heritage, ensuring that the schedules of protected trees contained within the PDP remain current.⁵⁹

Higher Order Policy and Statutory Direction

14. The relevant higher order policy and statutory direction is detailed in the section 42A report on the Protected Trees⁶⁰ chapter. Key higher order policy and statutory directions are:
- 14.1 sections 6(e) and (f) of the RMA⁶¹ which set out the matters of national importance that shall be recognised and provided for;
 - 14.2 section 7(b), (c), (f) and (g) of the RMA which set out other matters to which particular regard shall be had;⁶²
 - 14.3 the relevant objectives and policies in the RPS, which must be given effect to, highlight the importance of recognising and protecting the region's natural resources;⁶³
 - 14.4 the pRPS recognises the need to identify, and protect or enhance Otago's significant and highly valued natural resources;⁶⁴ and

⁵⁸ Key Resource Management Issues are set out in Ms Law, s 42A report, Chapter 32, section 6.

⁵⁹ Resource Management Act 1991, s 7(c), s 7(f) and s 7(g).

⁶⁰ Ms Law, s 42A report, Chapter 32, section 5.

⁶¹ Resource Management Act 1991, section 6(e), the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other Taonga; and section 6(f), the protection of historic heritage from inappropriate subdivision, use and development.

⁶² Resource Management Act 1991, section 7(b), the efficient use and development of natural and physical resources; section 7(c), the maintenance and enhancement of amenity values; section 7(f), maintenance and enhancement of the quality of the environment; and section 7(g), any finite characteristics of natural and physical resources.

⁶³ Otago Regional Policy Statement, objectives 5.4.2, 9.4.3 and 9.5.4; Ms Law, s 42A report, Chapter 32, paragraph 5.5.

14.5 the objectives and policies of Chapter 3 Strategic Direction, Chapter 4 Urban Development and Chapter 5 Tangata Whenua.⁶⁵

Protected Trees Chapter 32

15. The Protected Trees chapter includes 32.7 Schedule of Character Trees in the Arrowtown Residential Historic Management Zone (**Character Trees Schedule**), 32.8 Schedule of Protected Trees (**Protected Trees Schedule**), and proposed objectives, policies and rules relating to the protection of the trees identified within those schedules and in public places in the Arrowtown Residential Historic Management Zone (**ARHMZ**).
16. A number of changes to the provisions of the Protected Trees chapter have been recommended in response to the issues raised in submissions. The key issues considered, that are understood to have been resolved through the Council's consideration of submission points are:
- (a) root protection zone spreading canopy: a replacement diagram showing the root protection zone of a tree with a spreading canopy has been recommended;⁶⁶
 - (b) minor trimming: introduction of rule 32.4.13 to allow persons other than the Council to carry out minor trimming, as a permitted activity, on road reserves and public spaces within the ARHMZ;⁶⁷
 - (c) assessment matters: updated assessment matters 32.5.1.2, 32.5.1.4, 32.5.1.7, 32.5.1.9 and new assessment matter 32.5.1.6 have been recommended to increase clarity and workability;⁶⁸ and
 - (d) item 189 of the Protected Tree Schedule: item 189 has been recommended to be removed from the schedule.

⁶⁴ Proposed Otago Regional Policy Statement, objective 2.2; Ms Law, s 42A report, Chapter 32, paragraph 5.6.

⁶⁵ Recommended Chapter 3 contained within Appendix 1 of Schedule 2 (Reply of Mr Paetz) of the Council's Right of Reply in relation to Hearing Streams 1A and 1B, 7 April 2016 .

⁶⁶ Submitter 809 (Parks and Recreation Team at Council), Ms Law, s 42A report, paragraph 8.2.

⁶⁷ Submitters 179, 191, 421, 781, FS1121 (Vodafone New Zealand Limited, Spark New Zealand Trading Limited, Two Degrees Mobile Limited, Chorus New Zealand Limited), Ms Law, s 42A report, paragraph 9.5.

⁶⁸ Submitter 809 (Parks and Recreation Team at Council), Ms Law, s 42A report, paragraphs 13.16 to 13.19.

17. Key outstanding issues are understood to be:
- (a) item 275 of the Protected Trees Schedule: whether it is appropriate to include the avenue of Spruces and Larches in the Protected Trees Schedule;⁶⁹
 - (b) Character Trees Schedule: whether items 4, 6 and 34 should be retained in the Character Trees Schedule;⁷⁰
 - (c) Protected Trees Schedule: whether items 193, 240, 573, 603, 1005 and 1002 should be retained in the Protected Trees Schedule;⁷¹
 - (d) submission #455: whether the submission relates to item 206 or item 209 of the Protected Trees Schedule.⁷²

WITNESSES

18. The Council will call the following evidence:
- (a) Mr Richard Knott, Heritage Specialist, on technical heritage matters;
 - (b) Ms Vicki Jones, Planner, who is the author of the section 42A report on the Historic Heritage chapter;
 - (c) Mr David Spencer, on arboriculture matters related to the Protected Trees Schedule;
 - (d) Dr Philip Blakely, on landscape matters relevant to the Character Trees Schedule; and
 - (e) Ms Rachael Law, Planner, who is the author of the section 42A report on the Protected Trees chapter.

⁶⁹ Submitters 365 (Simon Beale) and FS1258 (Ayrburn Farm Estate Limited); Ms Law, s 42A report, paragraphs 10.36 to 10.41.

⁷⁰ Submitters 49 (Alan Stewart), 560 (Spruce Grove Trust), 1361 (Jim Schmidt); Ms Law, s 42A report, paragraphs 10.4 to 10.10; Mr Philip Blakely, Chapter 32, Supplementary Brief of Evidence dated 15 June 2016.

⁷¹ Submitters 39 (George Frederick Ritchie), 49 (Alan Stewart), 223 (Sam Gent), 329 (Kerry Hapuku), 359 (Manor Holdings Limited & Body Corporate 364937), 579 (Gem Lake Limited) and 607 (Te Anau Developments Limited) Ms Law, s 42A report, paragraphs 10.11 to 10.35.

⁷² Submitters 455 (W & M Grant) Ms Law, s 42A report, paragraphs 10.13 to 10.16.

19. At the time of filing this synopsis, evidence from submitters has not yet been filed. In opening legal submissions, counsel will address key areas of contention raised through submitters' evidence and any legal submissions filed in advance in accordance with the Panel's Fourth Procedural Minute dated 8 April 2016. For responses to specific submissions, the tables in Appendix 2 of the section 42A reports on both chapters set out whether the Council has accepted, accepted in part or rejected each of the submission points.

DATED this 17th day of June 2016

A handwritten signature in blue ink, appearing to be 'S J Scott / K L Hockly', written over a horizontal line.

S J Scott / K L Hockly
Counsel for Queenstown Lakes
District Council