

**BEFORE THE QUEENSTOWN LAKES DISTRICT
COUNCIL**

IN THE MATTER of the Resource Management Act
1991 (“Act”)

AND in the matter of the Queenstown Lakes Proposed
District Plan, Submissions and Further Submissions on
Chapter 16 Business Mixed Use Zone

**BY HIGH PEAKS LIMITED &
TROJAN HOLDINGS LIMITED**

Submitters

**SYNOPSIS OF SUBMISSIONS OF COUNSEL FOR HIGH PEAKS LIMITED &
TROJAN HOLDINGS LIMITED**

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1. PRELIMINARY LEGAL ISSUES

- **Jurisdiction – is a rule requiring the “opening up” of Horne Creek a matter within the jurisdiction of the District Council?**
 - Regional Councils have control of the use of land for the purposes of (relevantly)¹
 - (a) The maintenance and enhancement of the quality of water in water bodies
 - (b) The maintenance and enhancement of the quantity of water in water bodies
 - (c) The maintenance and enhancement of ecosystems in waterbodies
 - (d) The control of taking, use, damming and diversion of water and the control of the quantity, level and flow of water in any waterbody
 - Mr Church’s evidence at 3.14 supports the submission that plan provisions providing for the daylighting of the stream are a regional council function, noting the environmental benefits as being:
 - (a) storm water attenuation and treatment
 - (b) native planting providing local ecological habitats
 - (c) ecological connectivity with links along environmental gradients for aquatic and terrestrial fauna
 - (d) visual amenity
 - (e) distinctive character feature
 - (f) provision of recreational links along the stream corridor
 - Mr Church’s evidence² refers to daylighting as the “redirection” of a stream into an above ground channel. In the context of the Regional Plan Water for Otago, at the very least resource consent would be required to remove a structure fixed “in, on under or over” the bed of any lake or river³.

¹ Section 30 RMA

² At footnote 69

³ Rule 13.4

- Resource consenting requirements associated with giving effect to the policy⁴ are outside the jurisdiction of the District Council – it rather addresses matters within the realm of the Regional Council.
 - Possibly a vires issue – policy is directive to **require** the daylighting of the creek. But if can't get consent from ORC (a separate consenting process to building development/redevelopment) policy aim is frustrated to point it may not be able to be given effect to. Not integrated planning. Issue of Horne Creek is being considered as a “nice” afterthought, without necessarily invoking the right planning jurisdiction or participants.
- **Rules for the Opening Up of Horne Creek – defacto designation for reserve for open space/public access**
 - Other submitters have addressed the notion of a “defacto” designation in the context of provisions seeking to provide for pedestrian access/linkages in the Town Centre Zone
 - Provision to “open up” Horne Creek and associated enhancement works raise similar issues.
 - Stated in the policy as a “requirement”
 - No financial responsibility on offer or compensation for lost development rights and significant cost to landscape and carry out other enhancement works.
 - Secures an outcome that is for a public benefit – access, ecological enhancement and also contains elements of comprising a “public work”⁵. Effect of plan provisions is to secure such public benefits without any or adequate compensation.

2. EVIDENCE FOR SUBMITTERS

- Mr Freeman explores in his evidence the issues associated with the practicalities of daylighting the creek. Agree with the uncertainty created by

⁴ 16.2.2.9

⁵ Para 9.31 s42A report, Council Property and Infrastructure Team advise daylighting may assist with water attenuation and positive benefit from storm water perspective; para 31.6 and 31.7, Church evidence – creek to provide local amenity and provide for “open space” needs, opening up the creek would also complement Warren Park which is designated as a recreation reserve in the PDP.

the language used in the rule “substantially develop/redevelop” and “where practicable”

Jayne Macdonald

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6 December 2016