

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 (Stage 2, Hearing Stream 15)
AND
IN THE MATTER of submissions and further submissions by
REMARKABLES PARK LIMITED

**SUBMISSIONS ON BEHALF OF REMARKABLES PARK LIMITED
REGARDING STRIKE OUT APPLICATION**

23 July 2018

**BROOKFIELDS
LAWYERS**

J D Young / R S Ward
Telephone No. 09 9792172
Fax No. 09 379 3224
P O Box 240
DX CP24134
AUCKLAND

MAY IT PLEASE THE PANEL:

Introduction

1. Remarkables Park Limited (**RPL**) responds to the application by Queenstown Lakes District Council (**QLDC**) seeking that RPL's submission point #2468.25 (**Submission**) be struck out under section 41D of the Act as not being "on" Stage 2 of the Proposed District Plan (**PDP**).
2. The Submission seeks amendment to Map 30 of the PDP to zone Part Section 131 Block III Shotover Survey District (**Land Parcel**) as 'Community Purposes Zone.' The Submission also seeks that the zone provisions applying to the Land Parcel be amended with respect to height and GFA standards.
3. The QLDC claims that there is no change to the pre-existing status quo of the Land Parcel through notification of Stage 2 of the PDP, and as such the submission is not "on" Stage 2.¹ With specific reference to the Submission, the QLDC provides the following reasons (annotations in [bold] are ours):²

The land was notified Rural in Stage 1. The land is whited out on the Stage 1 decision maps, as it is within the boundaries of the land that was allocated to be considered in the Wakatipu Basin hearing, which is now part of Stage 2. The land was not notified on the plan maps in Stage 2 of the PDP, and therefore did not form part of Stage 2 of the PDP [**Ground 1**]. It is of note that RPL is not just seeking an incidental or consequential extension of the adjoining Community Purposes Zone, but is seeking a bespoke Community Purposes Zone that allows for buildings of 15m height (rather than 10m) and a ground floor area of 1500m² rather than 300m² [**Ground 2**]. It is anticipated that this relief is related to Queenstown Park Limited's Stage 1 submission and appeal, relating to the proposed Queenstown Park Special Zone and Gondola Corridor [**Ground 3**].

Background

4. The Land Parcel is one of three adjoining parcels owned by the QLDC and used for community purposes (the other two being Lot 400 DP445230 and Lot 321 DP379403). All three parcels were zoned Rural Zone in the notified maps on Stage 1 of the PDP and all three parcels were excluded from the Stage 1 Decisions maps and recorded

¹ Memorandum on behalf of QLDC dated 6 July 2018, relying on legal principles and submissions contained in the Memorandum on behalf of the QLDC dated 12 April 2018.

² Memorandum on behalf of QLDC dated 6 July 2018, Appendix 1.

as being subject to Stage 2 of the PDP. Curiously, the notified Stage 2 planning maps zoned two of the parcels (Lot 400 DP445230 and Lot 321 DP379403) as Informal Recreation Zone and excluded the third (the Land Parcel) from Stage 2 altogether.

5. RPL submitted on the Land Parcel as part of its Stage 2 submission because:
 - a. it considered the notified planning maps to have excluded the Land Parcel in error, given the inconsistent zoning of adjoining sites;
 - b. it was not able to submit on the Land Parcel in Stage 1 of the review as the Open Space and Recreation Zone was not notified at that point;
 - c. it considered it appropriate for the Land Parcel to be considered alongside other adjoining Council-owned land and hearings on the Open Space and Recreation Zone; and
 - d. if the Land Parcel was not considered in Stage 2 of the PDP, it was unclear when RPL (and other parties) would have the opportunity to be heard on its zoning.

Legal Principles

6. The Environment Court summarised the leading authorities addressing whether a submission is “on” a plan in the procedural scope hearing for PC50 to the QLDC District Plan.³ The Court recorded that High Court authority⁴ establishes a two-stage test for determining whether a submission is “on” a plan change:
 - a. Is the relief sought in the challenged submission incidental to, consequential upon or (perhaps) directly connected to the plan change (or variation)?
 - b. Have potential submitters been given fair and adequate notice of what is proposed in the submission or has their right to participate been removed?
7. Zoning requests outside the area of a plan change are not automatically outside the scope of a plan change. The High Court in **Motor Machinists** stated:⁵

³ **Well Smart Investment Holding (NZQN) Ltd v Queenstown Lakes District Council** [2015] NZEnvC 214.

⁴ **Clearwater Resort Ltd v Christchurch City Council** High Court, Christchurch AP34/02 William Young J dated 14 March 2003 and **Palmerston North City Council v Motor Machinists Ltd** [2014] NZRMA 519 (HC).

⁵ **Palmerston North City Council v Motor Machinists Ltd** [2014] NZRMA 519 (HC) at [81].

...the Clearwater approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change...

8. It is submitted that in a staged plan review, as opposed to a discrete plan change, there is even greater ability for incidental and consequential zoning amendments because the entire district is subject to zoning changes. In a sense, all landowners are 'on guard' for potential changes. The High Court in **Albany North Landowners v Auckland Council** drew a distinction between the Auckland Unitary Plan planning process and the "relatively discrete variations or plan changes" considered in *Clearwater* and *Motor Machinists*, finding that the scope for a coherent submission being "on" the PAUP was "very wide."⁶
9. Finally, the High Court has said that there is no clear line when it comes to determining whether a submission is "on" a plan change, the question is a matter of fact and degree and each case must be determined on its own merits.⁷

The Submission is an incidental and consequential extension of Stage 2 zonings

10. It is submitted, in the absence of any explanation from QLDC, that the Land Parcel was excluded from Stage 2 of the PDP through error, and that rezoning it is incidental and consequential to rezoning the adjoining land parcels.
11. The notified Chapter 38 Open Space and Recreation Zone sought to entirely recast the planning framework for QLDC-owned open spaces and reserves because of the disjointed and complex planning framework that applied under the Operative Plan. This is recorded in the section 32 report for Chapter 38:⁸

...

Further, given the demand for these areas to be provided for the community, Council initiated a review of the existing provisions to manage the variety of activities that occur on reserves, recreation and open spaces within the District. The review has included the preparation of the proposed Open Space and Recreation Zone chapter

⁶ **Albany North Landowners v Auckland Council** [2016] NZHC 138 at [129].

⁷ **Well Smart Investment Holding (NZQN) Ltd v Queenstown Lakes District Council** [2015] NZEnvC 214 at [16].

⁸ Queenstown Lakes District Proposed District Plan, Section 32 Evaluation, Stage 2 Components October 2017 for Open Space and Recreation Zones, 14 September 2017, page 4.

within Stage 2 of the Proposed District Plan. The scope of the proposed Open Space and Recreation Zone chapter is to:

- a) Provide a framework of objectives, policies, zones and rules that support the provision of a network of open space and recreation facilities;
- b) Manage use and development and provide for changing recreational needs; and
- c) Provide for the conservation and enhancement of the qualities of the natural environment, waterbodies and their margins.

It is noted, for completeness, that the proposed Open Space and Recreation Zone chapter is to be considered a variation to several chapters that were notified in Stage 1 of the Proposed District Plan. **This is because the proposed Open Space and Recreation Zone chapter proposes to rezone all Council administered open space and recreation areas to five zones and three sub-zones....**

12. While the report goes on to discuss Chapter 38 applying to areas included in the notified maps, it is clear when reading the report as a whole that Chapter 38 was intended to apply to the entire network of Council owned open space. Therefore, no further s32 analysis was necessary to address the Submission, meeting the scope test in **Motor Machinist**.⁹
13. As a discrete, relatively small parcel of QLDC-owned land, with adjoining land zoned Informal Recreation Zone, there is no logical reason for the Land Parcel to have been excluded from Stage 2 of the PDP. The extension of zoning to the Land Parcel is logical and consequential in the circumstances of overall Stage 2 zoning and this history of use of the Land Parcel. RPL and other submitters are entitled to be heard on the zoning of the Land Parcel as part of these hearings.

Potential submitters have been given fair and adequate notice of what is proposed in the Submission

14. The wide scope of potential re-zoning of QLDC-owned land through the introduction of Chapter 38 was reasonably and fairly raised through the QLDC's section 32 report. As noted, the report was cast broadly. It is submitted all landowners and potential submitters were made aware of the extent of potential zoning changes.
15. Further, the Council's summary of submissions referred in detail to the relief sought by RPL. Any person with an interest in the zoning of the Land Parcel had the right to lodge a further submission and be heard on the Submission.

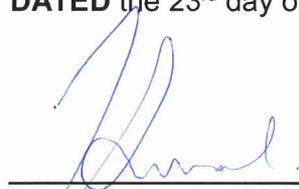
⁹ **Palmerston North City Council v Motor Machinists Ltd** [2014] NZRMA 519 (HC) at [81].

Grounds 2 and 3 of QLDC application

16. In response to Ground 2, it is submitted that the relief sought by RPL for additional height and GFA are not connected to whether RPL may be heard on the zoning of the Land Parcel. The amendments to the standards sought can legitimately be argued later during hearings on the zone provisions. This aspect of relief sought by RPL should not limit its ability to argue the merits of re-zoning the Land Parcel.

17. Finally, it is submitted that Ground 3 has no relevance to whether the Submission is “on” Stage 2 of the PDP.

DATED the 23rd day of July 2018



J D Young / R S Ward
Counsel for Remarkables Park Limited