

Before Queenstown Lakes District Council

In the matter of The Resource Management Act 1991

And The Queenstown Lakes District proposed District Plan Topic 13
Queenstown Mapping

**MEMORANDUM OF COUNSEL IN RESPECT OF EVIDENCE AND HEARING TIME
FOR**

Jacks Point Residents and Owners Association (#1277)

Dated 07 July 2017

Solicitors

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MAY IT PLEASE THE PANEL

- 1 This Memorandum of Counsel (**Memorandum**) is presented on behalf of Jacks Point Residents and Owners Association (**JPROA**) in respect of Hearing Stream 13 Group 1D (Jacks Point Zone Extension).
- 2 JPROA lodged a further submission (1277) on the submission from Jardine Family Trust and Remarkables Station Limited (715) in respect of the proposal to rezone land at Homestead Bay within and adjacent to the notified Jacks Point Zone (**JPZ**).
- 3 This Memorandum addresses the following matters relating to JPROA's further submission and Hearing Stream 13:
 - (a) Seeking waiver of directions and leave for late request for hearing time;
 - (b) Seeking waiver of directions and leave to present rebuttal evidence only, or in the alternative for late provision of evidence
 - (c) Scope and standing for evidence presented by the JPROA.

REQUEST FOR HEARING TIME

- 4 The JPROA further submission was in conditional support of Submission 715. Matters raised in the JPROA further submission are set out below:
- 5 JPROA further submission (1277) contained the following:

The submitter is a person who has an interest in the proposed district plan provisions in respect of Jacks Point that is greater than the interest the general public has. The JPROA was established by the developer of Jacks Point as a vehicle to administer the private open space, communal infrastructure and the internal road network within Jacks Point.

The reasons for support or opposition of each submission are specified in the table below, however the reasons for such further submission are broadly concerned with:

- (a) *The management of the Jacks Point communal facilities*
- (b) *Maintaining the high quality landscape setting of Jacks Point*
- (c) *Maintaining the character and amenity values of the residential environment for its members through adherence to the building design guidelines and design matters in the District Plan.*

| Submission (number/name/address) | Support / oppose | Provision(s) | Reasons | Decision sought from QLDC |
|--|-------------------------|---|--|---|
| 715 Jardine Family Trust and Remarkables Station Limited | Support | 41.2.1.4, 41.2.1.10, 41.2.1.13, 41.2.1.26, 41.4.6.1, 41.4.9.11, 41.4.9.15, 41.4.9.16, 41.5.2.7, 41.5.6.1, | Support the submission, subject to refinements to the JPZ structure plan and provisions provide for: | Allow the submission subject to refinements to the structure plan and |

| | | | | |
|--|--|---|--|--|
| Gallaway Cook Allan, PO Box 143 , Dunedin, 9054, New Zealand (phil.page@gallawa ycookallan.co.nz) | | 41.5.8.1, 41.5.11, 41.5.12.2, 41.5.15.2, 41.5.15.4, 41.7 Structure Plan, Map 13 - Gibbston Valley, Cecil Peak and Wye Creek (Insets), Entire Plan | protection of landscape and amenity values including landscape protection areas, a sensitively designed marina village, additional water transport connections, sensitively designed and limited residential and other activities that complement and do not adversely affect or detract from the wider JPZ activity areas, staged development and overall integration of the Homestead Bay Activity Area with the JPZ. | JPZ provisions to provide for the matters raised in this further submission. |
|--|--|---|--|--|

- 6 The JPROA had assumed that the fundamental issues raised in its further submission would have been addressed by way of evidence in chief by Submitter 715 prior to the hearing, therefore the JPROA did not seek hearing time as a precautionary matter. The JPROA did not consider it necessary to request indicative hearing time in February¹, before it was aware of whether Submitter 715 would be pursuing its submission, or before it was aware that its evidence lodged would be so deficient.
- 7 Having now reviewed the Evidence in Chief of Submitter 715 it has become apparent to the JPROA that substantial matters have not been covered or resolved by Submitter 715 and therefore the JPROA now formally requests hearing time so as to address these matters with the Panel.
- 8 Given the responsibility JPROA has to the community of JPZ, for the private infrastructure servicing that community, and and the integration of Homestead Bay within the JPZ , it will be of assistance to the Panel that the JPROA present evidence relevant to the integrated management of the JPZ, so as to assist it to make informed decisions on the JPZ as a whole.
- 9 Counsel also notes there is no prejudice arising from this request, given that Homestead Bay has a significant period of time between the lodgement of rebuttal evidence and the date of its hearing (one month) in order to enable it to take into account and prepare any response required by way of summary or supplementary evidence at the hearing.
- 10 Counsel notes there are gaps within the hearing timetable for Hearing Stream 13 on the dates of Tuesday 8 August, Wednesday 9 August, and Thursday 10

¹ Minute requesting indication of hearing time requirements dated 7 February 2017

August, which are immediately after the timetabling of a hearing for Submitter 715.

- 11 Any of the above dates are suitable for Counsel (with the 10th being preferred) and the experts presenting on behalf of the JPROA. Or alternatively, Counsel is in the hands of the Panel as to potential other alternative suitable dates.
- 12 Counsel therefore respectfully requests that the Hearing Panel allocate approximately 2 hours hearing time to the JPROA to be heard, and any associated waiver of directions required.

Waiver of Directions for Evidence Timetable

- 13 Counsel acknowledges the Eighth, Ninth, and Tenth procedural Minutes in respect of timetabling requirements for hearings including Hearing Stream 13.
- 14 Counsel notes that the Hearing Panel has interpreted that 'further submitters are still submitters' and as such should file evidence in chief in respect of the original submission that further submission relates to. Further submitters have the ability to file rebuttal evidence:

Rebuttal evidence should cover the matters that the further submitter was not able to anticipate would be raised by the primary submitter. The Hearing Panel expects further submitters to take a realistic and common sense view when applying these considerations. It does not intend to undertake a forensic analysis on a point by point basis as to what further submitters might or might not have been able to reasonably foresee the primary submitter would say in evidence.²

- 15 Counsel takes guidance from the Panel's above direction, and accordingly does not wish to forensically analyse the evidence lodged for the JPROA on 7 July, but rather provides the following overview:
 - (a) **Mike Coburn** – provides evidence as representative of the JPROA, an overview of JPROA concerns and issues, and how those are potentially affected by the Homestead Bay proposal, which are not addressed adequately in evidence in chief;
 - (b) **Christopher Ferguson** - analyses key omissions from the evidence package prepared which are inconsistent or otherwise not complementary to the JPZ provisions and the integrated management of the Zone and effects;

² Eighth Procedural Minute at Para 13

- (c) **Andy Carr** – provides analysis on the functioning of the proposed new access points and integrated road network in response to Mr Bartlett's evidence;
 - (d) **Ken Gousmett** – rebuts Mr Hansen's evidence in chief insofar as it raises key concerns or omits potentially relevant matters for the integrated functioning of JPZ infrastructure.
- 16 Counsel submits that each of the above evidence briefs are clearly 'rebuttal' evidence which respond to matters raised in Submitter 715's evidence in chief, and which could not have been presented as evidence in chief as there was nothing of substance in the Submission to in respect of which any helpful evidence could have been provided beyond what was stated in the Further Submission. The JPROA was not able to provide evidence that would have assisted the panel in the absence of any detail at all from Submitter 715. Moreover it had expected that, given the size and importance of the requested rezoning, these matters would have been carefully and thoroughly addressed in evidence in chief. That is not the case, and therefore the JPROA is now providing rebuttal evidence to assist the Commission in understanding key matters of concern to the residents of Jack's Point.
- 17 If, in the alternative, the Commission considers the nature of the evidence lodged by the JPROA is beyond that of 'rebuttal' evidence, then Counsel formally applies for a waiver of directions to the timetabling for evidence exchange, such that the JPROA be granted an extension to lodge evidence in chief on 07 July 2017.
- 18 Counsel notes that there would be no prejudice to Submitter 715 as a result of the above request given that there is at least four weeks between submission of this evidence and the Submitter's appearance at the hearing. A formal direction allowing Submitter 715 to present further rebuttal evidence (on the JPROA rebuttal evidence) would be within the Panel's discretionary powers to regulate its own procedure, and accordingly may be appropriate if the panel considers fit. Conversely, if the above request is not allowed, the PDP process will be adversely affected by not being able to have regard to materially relevant matters from the primary affected party (and its associated membership).

Scope and standing

- 19 For the avoidance of any doubt as to the admissibility of the above evidence presented by the JPROA, Counsel makes the following initial submissions in respect of scope and standing.
- 20 The matters raised in evidence are all matters clearly raised as concerns within the wording of the JPROA Further Submission.

- 21 The wording of the Further Submission provided at para 5 above clearly shows the ambit of the JPROA further submission namely; Communal Facilities, landscape values, and residential amenity. Submission 715 was conditionally supported subject to, inter alia, 'overall integration of the Homestead Bay Activity Area with the JPZ'. The particular provisions identified as being further submitted on include, 41.2.1.4, 41.2.1.10, 41.2.1.13, 41.2.1.26, 41.4.6.1, 41.4.9.11, 41.4.9.15, 41.4.9.16, 41.5.2.7, 41.5.6.1, 41.5.8.1, 41.5.11, 41.5.12.2, 41.5.15.2, 41.5.15.4, 41.7 and the structure plan.
- 22 When read as a whole, the Further Submission clearly addresses the following matters:
- (a) Infrastructure and servicing – policy 41.2.1.26 (ensure provision if integrated servicing and infrastructure, roading and vehicle access) combined with concerns regarding JPROA Communal Facilities;
 - (b) Road network – policy 41.2.1.26 (above) and 41.5.6.1 (access from the State Highway...);
 - (c) Landscape and residential amenity;
 - (d) The Skydive Airstrip (structure plan, residential amenity, amendments to OSL Activity Area).
- 23 Furthermore, scope and standing have been traversed in significant detail in submission from Counsel for submitters³ and in response, in submissions from Counsel for the Council.⁴
- 24 In Counsel for Council's reply legal submissions in respect of Topic 02, Counsel notes that the concept of 'collective scope' is accepted for the purpose of the Panel's decision making, however this does not allow a submitter to appeal a decision or advance relief which it has not specifically raised in its submission (at 2.5), however submitters are entitled to present evidence beyond the relief addressed in their submissions or further submissions, the Panel is entitled to receive that evidence and give it weight at its 'discretion' (at 2.6).
- 25 Counsel does not agree with this position advanced by Counsel for Council, however irrespective of the different interpretations, the commentary above does not apply to further submitters, who are not necessarily advancing relief, but rather putting forward concerns which are either collectively expressed within the ambit of further submissions, or individually raised in that further submitters' own submission.

³ S0608; 610; 613 Darby Planning LP and Others – T01B- Baker Galloway M - Legal Submissions; and S0608; 610; 613 Darby Planning LP and Others – T02- Baker Galloway M - Legal Submissions;

⁴ QLDC 02 Rural Legal Right of Reply

26 Furthermore Counsel for Council's interpretation of limited standing based upon Schedule 1 being a 'code' infers that clause 14 of Schedule 1 has been interpreted so as to also apply to limit standing in Council hearings. Counsel does not agree with this proposition in that clause 14 clearly applies to rights of Environment Court Appeal, whereas clause 8B relates to Council hearings for a plan review. The latter does not limit standing, but rather provides:

*A local authority shall hold a **hearing into submissions** on its proposed policy statement or plan, and any requirements notified under clause 4, and give at least 10 working days notice of the dates, times, and place of the hearings to—*

(a) every person who made a submission or further submission, and who requested to be heard (and has not since withdrawn that request);

27 The construction of Clause 8B is clearly broader than clause 14 and does not limit standing only to those matters raised in a submission. Clause 14 relating to appeal rights should not be read into Clause 8B, and one must assume the parliamentary intention has been clearly expressed through the different drafting of these sections.

28 Collective scope in this particular instance is significantly broad due to the breadth of submitters opposing Submitter 715 on different grounds⁵, including members of the JPROA.

29 From the above, if the Commission were to find that there was not scope to raise issues presented in evidence from within the JPROA Further Submission, there is clearly scope and standing based upon collective scope and the construction of Schedule 1.

30 The role of the JPROA, as a community representative body has relevance to the JPROA's standing and position in this Hearing. The JPROA is the collective voice of all residents at Jacks Point; this is a requirement rather than a voluntary election. Counsel refers to and relies on the evidence of Mike Coburn for the JPROA lodged with this Memorandum and in respect of Hearing Stream 09, which details the significant role of the JPROA in overseeing and providing Jack's Point Community facilities, which will be affected to a degree by the relief put forward in Submission 715.

31 Moreover, other resident submitters have opposed the Homestead Bay on their own volition, it is submitted that in such circumstances, it would be quite appropriate the JPROA be able to act as a voice in support of such submissions / evidence, and that this process is likely to mean its position evolves as the

⁵ Further Submitters 1061, 1073, 1092, 1096, 1103, 1108, 1114, 1145, 1192, 1116, 1218, 1219, 1225, 1227, 1237, 1247, 1250, 1250, 1252, 1283, 1284, 1293, 1299, 1316, 1321

Hearing evolves, so as to continuously take account of and provide for the communal residents' views in a democratic way.

Dated this 07th day of July 2017



Maree Baker-Galloway

Counsel for the JPROA