

Before the 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 – Group 1B (Queenstown
Urban, Frankton and South))

LEGAL SUBMISSIONS

F S Mee Developments Co Limited (425 and 429)

Dated 18 August 2017

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MAY IT PLEASE THE PANEL

Introduction

- 1 These legal submissions are lodged on behalf of F.S. Mee Developments Co Limited (**Submitter**), being the Submitter under Submissions 425 and 429 lodged to the District Plan Review (**DPR**).
- 2 Submissions 425 and 429, in combination, seek the following in respect of different parts of the property known as Deer Park Heights, situated on Peninsula Hill above Kelvin Heights:
 - (a) Rezoning of two identified areas from Low Density Residential (**LDR**) to Medium Density Residential (**MDR**);
 - (b) Rezoning of one identified area from LDR to Local Shopping Centre (**LSC**);
 - (c) Rezoning of one identified area from LDR to High Density Residential (**HDR**);
 - (d) Rezoning of two identified areas from Rural to LDR.
- 3 These legal submissions now address each of those requested rezonings to summarise the Submitter's position in relation to each requested rezoning.

LDR to MDR

- 4 Submission 425 requests rezoning of two areas from LDR to MDR. Council's s.42A Report and related expert evidence support each rezoning to MDR which has been requested. The Submitter's position in relation to these two rezoning requests is:
 - (a) The Submitter relies on Submission 425 which is reasonably detailed, and on the Council s.42A Report, as evidence which supports these rezonings;
 - (b) Mr Baxter will be present at the hearing in order to formally table as evidence the Baxter Design Group Site Assessment and Recommendations dated October 2015 which accompanied Submission 425, and to answer any questions from the Commission;
 - (c) The Submitter does not otherwise seek to present any additional evidence.
- 5 The only concern in relation to these two rezonings raised by the Council experts is a concern raised by Ms Wendy Banks in relation to Site A (the long

narrow site adjoining Peninsula Road). The Bonisch Consultants plan indicates an internal road and three access points. Ms Banks has concerns about two of the access points. Despite that concern, Ms Kimberley Banks recommends that the rezonings be approved.

- 6 If the Panel considers it necessary to address the concern addressed by Ms Wendy Banks about those two access points, I submit that concern can easily be addressed by simply removing the indicative internal roading access. With a single, smallish site adjoining Peninsula Road along its length, there is no need for Structure Plan type indications of the location of internal roading. Removal of that indicative roading will enable the concerns expressed by Ms Banks to be addressed when the land is subdivided and/or developed.
- 7 The MDR rezoning of Site B (Balmoral Drive) is opposed by the Trustees of the Lakeland Park Christian Camp (**Christian Camp**). The Christian Camp Submission records issues which it says have arisen since the Christian Camp became surrounded by LDR zoning and development. Paragraph 10 of the Christian Camp Submission records those concerns as issues over trees restricting views and causing shading, people taking shortcuts through the site and the consequential issue of site security, and reaction to noise generated by users of the Camp.
- 8 The primary point to be made in response to those alleged concerns is obviously the fact that the Christian Camp is already surrounded by LDR zoning. A change to MDR zoning will not change the reality of those issues, or the extent to which those issues may arise.
- 9 The second point to be made is that the expressed issues of concern are part and parcel of any residential neighbourhood. Trees affecting views and causing shading are often an issue between residential neighbours. If people take shortcuts across somebody's private land then the answer is to put up a fence. The noise standards applicable in the residential zones do not change if the zoning changes from LDR to MDR. The noise standards must be complied with. If the noise standards are complied with, then there are no grounds for complaint.
- 10 The third point to be made is to query whether the Christian Camp understands that the proposed maximum density of the LDR zone is one residential unit per 300m² and the proposed maximum density of the MDR zone is one residential unit per 250m². It is difficult to see how the concerns expressed by the Christian Camp, if they are valid, would be significantly different between these two residential zonings.
- 11 If the Panel were minded to address the reverse sensitivity concerns of the Christian Camp, Counsel notes that that could be achieved by adding an

additional matter of discretion in Rule 8.4.11.2 (as notified) applicable just to this proposed MDR zone requiring an assessment of reverse sensitivity considerations relating to the Christian Camp. However Counsel does not consider that this is justified under the circumstances.

MDR to LSC

- 12 The Submitter's position in relation to that part of Submission 425 which requests rezoning of one area from LDR to LSC is exactly the same as described in paragraph 4 above in respect of the two LDR to MDR rezonings addressed above. The Submitter does not otherwise seek to present any additional evidence.
- 13 As a matter of interest Counsel notes that with the original zoning of the Kelvin Heights residential area included a small area of zoning equivalent to the current LSC zoning located towards the eastern end of Kelvin Heights, specifically for the purpose of a small neighbourhood shopping centre comprising perhaps two or three shops. That zoning effectively vanished over time because previous Councils allowed development of that land for residential purposes. The proposed LSC zoning therefore effectively reintroduces something that was originally provided for.
- 14 In case the Panel may consider this information to be of relevance, Counsel notes that:
 - (a) There are apparently about 400 existing houses in the western half of Kelvin Heights;
 - (b) Broadly speaking the undeveloped LDR zoned land of Kelvin Heights is about equal in area to the developed LDR zoned land, which means that the ultimate build-out of Kelvin Heights may be in the order of 800 houses (the increased density in the LDR zone might increase that figure by a small amount, but the land is probably more suitable to a traditional LDR development rather than the new more intensive LDR development);
 - (c) The Fernhill and Sunshine Bay neighbourhoods, which are serviced by a similar small LSC development of about 3 shops, contain about 1,400 houses;
 - (d) The Lake Hayes Estate and Bridesdale areas combined, which are serviced by the Graze restaurant and local dairy, will eventually contain about 730 houses;

(e) The Shotover Country Special Zone enables about 800 houses, and the zone includes a similar small commercial LSC type area to service that neighbourhood in the future.

15 The figures detailed in the previous paragraph are approximate but are broadly accurate, and suggest that this small proposed LSC zoning is appropriate for the size of neighbourhood that Kelvin Heights will ultimately become.

LDR to HDR

16 Submission 429 requests the rezoning of an identified area of land zoned LDR, located above that part of Peninsula Road which adjoins the Kawarau Falls Village, to HDR. The only concerns relating to that proposed rezoning identified in the Council expert witness evidence and s.42A Report relate to location (in the traffic evidence), ecological (in relation to lizards) and potential hazards.

17 The Submitter's position in relation to this rezoning request is:

(a) The first two matters of concern detailed above are addressed in these legal submissions below.

(b) The Submitter has lodged a short brief of evidence relating to hazards, relating primarily to potential rockfall hazard. Jeff Bryant will be present at the hearing to answer any questions in relation to that evidence.

(c) Mr Baxter will attend the hearing to formally table, as evidence, the original Baxter Design Group Assessment and Recommendations dated October 2015, which accompanied Submission 429, and to answer any questions from the Commission.

(d) The Submitter will otherwise rely on the information detailed in Submission 429 and the Council's s.42A Report and accompanying expert reports, and will not seek to present any additional evidence.

18 At paragraph 6.68 of her Statement of Evidence Ms Wendy Banks states:

I oppose the rezoning sought, because the local amenities (restaurants and café with small convenience store) at the Hilton opposite the site is not considered to be appropriate to support HDR. The nearest shopping centre is at Remarkables Park and is not considered to be within walking distance (approximately 2km from the site).

19 With respect to Ms Wendy Banks, I submit that the above rationale does not withstand examination. I direct the Commission's attention to the HDR zoning of the Kawarau Falls Station area immediately across the other side of Peninsula Road, and to the long thin strip of HDR zoning which runs along the northern side of the Frankton Arm. Neither of those two HDR zonings would exist under the rationale of Ms Banks quoted above.

- 20 I further highlight the following factors in relation to this proposed HDR zoning:
- (a) It is immediately adjacent to the HDR zoning on the lower side of Frankton Road;
 - (b) That lower HDR zoning does have the restaurants, café and small convenience store referred to in Ms Banks' evidence quoted above;
 - (c) Public transport bus access is immediately adjacent in respect of the bus stops which service the Kawarau Falls Station HDR zoned area;
 - (d) Existing access by boat, and potential future public transport boating services on the Frankton Arm, are immediately adjacent due to the ability to walk down to the Kawarau Falls Station wharf;
 - (e) This small area of land is ideally suited to HDR development;
 - (f) All of the above factors favour the confirmation of this proposed HDR zoning.
- 21 In relation to the concern expressed about the potential effects on lizards on this site, the Submitter's short response is that this site is already zoned for LDR development and therefore such effects are a baseline starting point. HDR zoning will not exacerbate those effects.

Rural to LDR

- 22 Submission 425 requests a rezoning of two identified areas from Rural to LDR. Dr Read for the Council supports part of the rezoning requested but not all of it. None of the other Council expert witnesses raise any concerns about this requested rezoning. It would appear that the only issue under debate in relation to this requested rezoning relates to landscape considerations.
- 23 The Submitter's position in relation to this requested rezoning is:
- (a) The Submitter wishes to pursue this rezoning request, although only in part.
 - (b) Summary evidence will be presented by Mr Paddy Baxter, based upon the Site Assessment and Recommendations dated October 2015 which accompanied Submission 425, but amended to reflect an amended rezoning proposal to be presented to the Commission;
 - (c) The Submitter does not otherwise seek to present any additional evidence.

- 24 What is patently obvious, and is accepted by both Mr Baxter and Dr Read, is that the existing LDR zoned boundary in the general area subject to this rezoning request has no landscape logic or rationale whatsoever. The boundary in question, running from its low point upwards in a south-east direction, is a straight line which terminates at a high and exposed location on Peninsula Hill. The landscape consequences of that existing LDR zoning will be significant, and will increase as the LDR zoning rises up the western flank of Peninsula Hill.
- 25 The Submitter has given careful consideration to this issue following receipt of the s.42A Report, assisted by further consultation with Mr Baxter. The amended LDR rezoning proposal to be presented could be seen as a compromise between the original LDR rezoning requested and the more limited extent of LDR rezoning recommended by Dr Read. However this amended proposal includes one very significant difference in that it involves a proposed voluntary relinquishment of part of the existing LDR zoning which could not otherwise be removed by the Commission as it is not subject to any challenge through submission.
- 26 That existing LDR zoned area to be relinquished is at the upper corner where residential development would have the most significant landscape effects due to being highly visible on the skyline from the Queenstown side and also visible from Lake Wakatipu on the western and southern sides of Peninsula Hill.
- 27 The amended proposal is grounded on a logical landscape basis, as will be explained by Mr Baxter at the hearing.
- 28 This amended proposal does involve a jurisdictional issue in two areas in respect of which the Submitter formally requests leave to amend the original Submission so that relief can be granted which differs slightly from the relief requested in the original Submission.
- 29 The above issues will be explained at the hearing by reference to an amended plan.

Dated this 18th day of August 2017



Warwick Goldsmith

Counsel for F S Mee Developments Co Limited