BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL HEARING PANEL

IN THE MATTER	of the Resource Management Act 1991
AND	the renotification of two submissions on Stage 1 of the Queenstown Lakes Proposed District Plan concerning the zoning of land at Arthur's Point by Gertrude's Saddlery Limited and Larchmont Developments Limited

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MEMORANDUM OF COUNSEL ON BEHALF OF ARTHURS POINT OUTSTANDING NATURAL LANDSCAPE SOCIETY INCORPORATED IN RELATION TO MEMORANDUM FILED BY GERTRUDE'S SADDLERY LIMITED AND LARCHMONT ENTERPRISES LIMITED DATED 8 FEBRUARY 2023

Dated 10 February 2023

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MAY IT PLEASE THE PANEL

1. This memorandum is filed on behalf of the Arthurs Point Outstanding Natural Landscape Society Incorporated (**Society**) in relation to the Memorandum filed on 8 February 2023, by Gertrude's Saddlery Limited (**GSL**) and Larchmont Enterprises Limited (**LEL**) (together, the **Submitters**) seeking leave to file *supplementary relevant material/explanation* and suggesting a potential exchange timetable for the same (**Submitters' Memo**).

2. The Society does not oppose introduction of the additional material listed at paragraph 5(f) of the Submitters' Memo. However, this is all the Society expected to be filed by the Submitters post-hearing and it is otherwise opposed to the additional material suggested at paragraphs 5(a) to (e).

3. The reasons for the Society's opposition are expanded on below. In short, the Society's concerns are fairness and prejudice – central tenets of natural justice.

Matters in Reply

4. There is a distinction between new evidence and matters in reply.

5. The Council quite properly holds the right to reply in this hearing and is capable of addressing all or any of the matters listed at paragraphs 5(b) to (e) of the Submitters' Memo, to the extent it considers necessary. The Society understands this is entirely consistent with how hearings in Stage 1 of the Proposed District Plan have proceeded to-date. As such, it would be most unorthodox for a submitter to file additional material of the kind proposed, save for perhaps Item 5(f).

6. A reply will ordinarily include, via argument/legal submissions:

    (a) Corrections to misunderstandings and incorrect statements of fact or evidence (although the decision-maker will ultimately decide who/what is correct);

    (b) Clarifications (again, this will be a party's view only and the decision-maker will be the final arbiter);

    (c) Responses;

    (d) Revised planning provisions (although this, in particular, can quite easily become new evidence depending on what changes are proposed).

7. The list above coincides with the topic areas outlined in paragraphs 5(b) to (e) of the Submitters' Memo. As such, the Society submits the Submitters are effectively seeking a right of reply, intermingled with the opportunity to present new evidence.

8. To the extent the Submitters propose to "remind" the Panel of the traffic evidence it has heard – this evidence is already on the record and, with respect, the Panel's comprehension of it was made clear through the thorough questioning of all witnesses who spoke to that topic.

9. In addition, the matters listed at paragraphs 5(b) to (e) were raised in pre-circulated evidence and statements. The Submitters responded in their pre-circulated legal submissions and/or again at the hearing. For example:

   (a) In respect of paragraph 5(b), traffic was a concern common to many parties and was comprehensively raised in much of the pre-circulated material – including the material provided by Ms Wolt and the evidence of Mr Giddens (for example, paragraphs 9.38, 10.30 and 10.31). The Submitters had plenty of opportunity to address traffic effects at the hearing (most particularly, via legal argument and expert evidence from the Submitters' traffic expert). Paragraphs 116 to 118 of the Submitters' original legal submissions speak directly to traffic matters, as do paragraphs 48 to 50 of the synopsis presented at the hearing. At paragraph 50 of the synopsis the Submitters' assert *The Council and Submitters' experts are entirely aligned* on this matter. Council is, of course, entitled to file a reply. Given the parties are *entirely aligned* an additional reply from the Submitters on this same topic, would be unnecessary in any event.

   (b) With regard to paragraph 5(c) and lawful/unlawful building works – this was raised in the pre-filed material of Ms Wolt's and also Mr Giddens' expert planning evidence. It was subsequently addressed in both the Submitters' pre-filed legal submissions (paragraphs 100 to 104) and the synopsis submissions presented at the hearing (paragraphs 36 and 37). The Submitters have "had their go" at this issue and it is now for the Commissioners to determine.

   (c) As to paragraph 5(d), the fact that different experts were assuming different yields was obvious from the pre-circulated evidence. It is a matter that could have been addressed by the Submitters at the hearing. As it is, Council is well-positioned to address this in Reply based on the

rules and densities allowed for under the Plan. This can be an objective evaluation. There is no need for the Submitters to also address yields.

(d) Paragraph 5(e) proposes a *response* on Restricted Discretionary status. Again, the appropriate activity status was raised in pre-circulated material – for example, paragraphs 10.5 and 10.54 of Mr Giddens' evidence. It was also responded to (at some length) in the pre-filed legal submissions for the Submitters (paragraphs 124 to 128). Activity status is another matter the Council is well-suited to address in its reply if it considers this necessary, without needing the Submitters to have another "bite at the cherry" first.

New evidence

10. The visual simulations sought to be introduced (and already provided to the Panel) constitute new evidence and, it is submitted, should not be admitted. In seeking to adduce this new evidence the Submitters' Memo does not provide any explanation as to why they were not produced earlier. It is submitted there can be no reasonable explanation for the delay.

11. The GSL and LEL Submissions have been on foot for more than seven years now. It has been almost 18 months since the Court of Appeal released its decision confirming re-notification must occur, thereby signalling a hearing was inevitable. Consequently, the Submitters have had more than ample opportunity to obtain and produce these very simulations before now. For whatever reason the Submitters did not provide the simulations prior to the hearing and, with respect, it is simply too late to do that now.

12. If the Panel decides to allow the new simulations to be admitted as evidence, the Society respectfully requests appropriate opportunity to provide comment on their relevance, accuracy and importance in these proceedings. This would include expert input from Mr S Brown, who does not return to work until the week of 17 February.

13. It is submitted there is a distinct prospect that matters 5(b) to (e) may also morph into providing new evidence. If that were to occur, the Society would also request the ability to respond in order to maintain fairness.

Concluding comments

14. Procedural matters – such as the order of proceedings and which party gets to reply at the end – are fundamental to ensuring fairness. The Society is very concerned that allowing the Submitters to file the additional material proposed will create significant unfairness and prejudice.

15. In this hearing the Submitters are no more important than the Further Submitters. This is not the Submitters' process; it is the Council's. To allow the Submitters what is effectively a right of reply, would be to advantage the Submitters. Even a right of reply has to be exercised appropriately and within certain strictures – it is not a chance to "patch up" a relevant party's case.

16. Similarly, to allow the late introduction of new evidence which was available and could have been adduced at the hearing, would be unfair. If new evidence is allowed in, the appropriate redress would be to allow all other parties a reasonable opportunity to comment. This invites the kind of "tennis match" Commissioner Munro commented on at the conclusion of the hearing and will inevitably entail other parties expending further resource (namely, time and money) on what has already been an exhaustive and thoroughgoing process.

Dated this 10th day of February 2023

Alanya Limmer
Counsel for Arthurs Point Outstanding Natural Landscape Society Incorporated