

Before the Queenstown Lakes District Council

Under the Resource Management Act 1991

And

In the matter of **the Queenstown Lakes Proposed District Plan Stage 3 -  
Stream 18 – Hāwea**

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**Supplementary legal submissions on behalf of Universal Developments Hawea  
Limited on scope to rezone land**

21 August 2020

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## May it please the Panel

### Introduction

- 1 These legal submissions are made on behalf of Universal Developments Hawea Limited (**Universal**), submitter 3248.
- 2 They are made in accordance with Minute 32 of the Hearings Panel in regards to the legal submissions of Mr Nolan QC regarding the Panel's jurisdiction to recommend rezoning of land in Stage 3 which was zoned in an earlier stage of the Proposed District Plan (**PDP**).
- 3 They do not comment on the fact specific points raised by Mr Nolan in relation to Scope Resources Limited's interests in the Cardrona Cattle Company Limited submission, rather they clarify the reasons that Universal's own submission is within scope.

### Scope – Whether submissions 'on' the proposed plan change

#### *Legal principles*

- 4 The law on whether a submission is 'on' a proposed plan change is set out in *Clearwater*<sup>1</sup> and *Motor Machinists*<sup>2</sup>.
- 5 Young J in *Clearwater* sets out the two limbed test to be applied:<sup>3</sup>
  - (a) A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.
  - (b) If the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation.
- 6 Kós J in *Motor Machinists* expands on this two limbed test:
  - (a) As to the first limb, what is required is a direct connection between the submission and the degree of notified change proposed to the

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<sup>1</sup> *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/03, 14 March 2003.

<sup>2</sup> *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290, [2014] NZRMA 519.

<sup>3</sup> *Clearwater* at [66].

plan<sup>4</sup>. I.e. the submission must reasonably fall within the ambit of the plan change<sup>5</sup>.

- (b) As to the second limb, the question is whether there is a real risk that persons potentially directly affected by the changes proposed in the submission have been denied an effective response to those changes.

*The first limb – Whether the submission is addressed to the extent to which the variation changes the pre-existing status quo.*

- 7 Mr Nolan submits that the council's approach to considering the rezoning of land not notified as Stage 3 land as part of its Stage 3 review is inconsistent with the first limb of the *Motor Machinists* test. Mr Nolan's argument for Scope Resources is fact specific in the context of the CCCL submission, centred around the fact that CCCL did not challenge the zoning of its land in Stage 1 and that zoning is now operative, and is very different to the facts relevant to Universal's submission.
- 8 As discussed in Universal's primary legal submissions<sup>6</sup>, the relief sought by Universal to extend the Hāwea Urban Growth Boundary (**UGB**) was relief originally sought in Stage 1 of the District Plan Review (**DPR**) when the Hāwea UGB was first considered. The parties agreed at mediation on Universal's Stage 1 appeal that this appeal point would be placed on hold until after notification of Stage 3, and that as part of its Stage 3 s 32 evaluation for the Hāwea Township Zone the council would consider the most appropriate location and extent of the Hāwea UGB, including whether the UGB should be extended south of Cemetery Road.
- 9 The rezoning relief sought by Universal is an extension and as a result of the notified rezoning of the ODP Hāwea Township Zone to Low Density Residential Zone (**LDRZ**) in Stage 3. In *Motor Machinists* Kós J considered "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"<sup>7</sup>.

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<sup>4</sup> *Motor Machinists* at [80].

<sup>5</sup> *Motor Machinists* at [81].

<sup>6</sup> Legal submissions on behalf of Universal Developments Hawea Ltd, dated 31 July 2020 at [39].

<sup>7</sup> *Motor Machinists* at [81].

- 10 The potential extension of the Hāwea UGB and rezoning of the land south of the Hāwea Township are both live issues which have been discussed between the council and Universal since its Stage 1 submission was filed. The s 32 evaluation for the Hāwea Township zone contemplated both rezoning of the Township and extension of the UGB and urban development to the south. As a result of (i.e. incidental to) the rezoning of Hāwea Township Zone to LDRZ, the Universal submission sought extension of that zoning.
- 11 The common meaning of "incidental" means happening or found in connection with<sup>8</sup>. Universal's relief to rezone its land to a combination of Stage 3 and Stage 1 zones falls under this definition. Given that the location of the Hāwea UGB and the zoning of the Hāwea Township have been considered under Stage 3, it would have been illogical to consider rezoning Universal's site at a previous stage, when the assessment of an extended Hāwea urban area must be made with consideration to the existing Hāwea Township.
- 12 For these reasons, the Universal submission passes the first limb of the *Clearwater* test. The subject matter of the Universal submission is directly connected to, and as a result of, the changes proposed for the Hāwea Township Zone in Stage 3, being a logical extension of the proposed LDR zoning. Potentially affected persons, upon reviewing the s 32 report for the Hāwea Township Zone, would have been on notice that an extension of the Hāwea urban area was being considered.

*Second limb – Whether real opportunity for participation by those potentially affected*

- 13 The essence of the second limb, as discussed by the High Court in both *Clearwater* and *Motor Machinists*, is that where a submission seeks a change to the proposed plan that was not reasonably contemplated in the notified plan, potentially affected persons may not be live to the fact that the change is sought and may miss the opportunity to be heard on the submission.
- 14 Mr Nolan's submissions on this point are again specific to the CCCL submission and should not be applied to other submissions.
- 15 As already discussed, the relief sought by Universal in its Stage 3 submission had already been raised in Stage 1 of the DPR, and was a live issue agreed with council to be deferred to Stage 3 of the DPR. The Stage

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<sup>8</sup> *Collins Concise Dictionary* (5th ed, HarperCollins, Glasgow, 2004).

s 32 report for the Hāwea Township Zone expressly contemplated extending the Hāwea UGB and urban development to the south of the Hāwea Township.

- 16 It is also relevant that the public notice for Stage 3 sufficiently alerted ratepayers that Stage 3 of the DPR included a review of the existing Township Zones, that it may introduce newly zoned land (as compared to the ODP), and that it may affect the zoning of land decided in Stage 1 or 2 of the DPR. It states, relevantly:<sup>9</sup>

Stage 3 includes the review of the following Operative District Plan zones: Industrial A and B zones, Ballantyne Road Mixed Use Special Zone, Three Parks Special Zone and **Township zones**. Stage 3 also introduces sites of significance to Iwi, and design guidelines for various residential zones.

Stage 3 introduces the following new zones: General Industrial Zone, Three Parks Commercial Zone and Settlement Zone into the PDP. **Stage 3 also introduces newly zoned land** and a new (district wide) Wāhi Tāpuna Chapter and Overlay on the plan maps, as well as Design Guidelines for various residential zones, that affect Stage 1, 2 and 3 land.

...

**There may be zoning proposals that affect you, even if the zoning of your land was decided as part of Stage 1 or 2. We invite you to take a look and see what Stage 3 could mean for you. The district wide chapters and provisions notified as part of Stage 3, and variations to Stage 1 and Stage 2 district wide chapters, will apply to all land notified as part of Stages 1, 2 and 3 of the Proposed District Plan.**

[emphasis added]

- 17 Clearly, potentially affected persons, upon reviewing the public notice for Stage 3 and the s 32 report for the Hāwea Township Zone, would have been on notice that an extension of the Hāwea urban area was being considered. What's more, because Universal had lodged a submission in Stage 1 seeking extension of the Hāwea UGB, potentially affected persons were already live to the proposal of an expanded Hāwea urban area. The Hāwea Community Association (**HCA**) were a s 274 party to Universal's Stage 1 appeal and subject to the mediation agreement to defer determination of the appeal until Stage 3. The HCA lodged a further submission on Universal's Stage 3 submission. There was no evidence or complaints from potentially affected people who did not lodge a submission

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<sup>9</sup> Public Notification of Stage 3 of the Proposed Queenstown Lakes District Plan, 19 September 2019.

or further submission. For these reasons, the Universal submission passes the second limb of the *Clearwater* test.

- 18 In summary, the context of the Universal submission is that there was an agreement between council, Universal and HCA that the proposed extension of the Hāwea UGB be considered following notification of Stage 3. What's more, the ODP Hāwea Township Zone is being reviewed as part of Stage 3. While the zoning of the Universal land was originally considered in Stage 1, it is most logical to consider the proposal of extending the Hāwea urban area at the same time the existing Hāwea Township zoning is considered, and there is no legal impediment to do so.

Dated this 21<sup>st</sup> day of August 2020



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