

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))

MEMORANDUM OF COUNSEL FOR

F S Mee Developments Co Limited (425)

Dated 14 September 2017

Counsel:

Warwick Goldsmith

Barrister

PO Box 213, Queenstown 9365

m + 64 021 220 8824

warwickgoldsmith@gmail.com

MAY IT PLEASE THE PANEL

Introduction

- 1 This Memorandum of Counsel (**Memorandum**) is lodged on behalf of F.S. Mee Developments Co Limited (**Submitter**), being the Submitter under Submission 425 lodged to the District Plan Review (**DPR**). This Memorandum formally seeks one of the following (if required to achieve the outcome sought as detailed below (**Outcome**)):
 - (a) Leave to amend Submission 425 to achieve the Outcome; OR
 - (b) Leave to lodge a late submission to achieve the Outcome.
- 2 It is possible that leave as detailed above may not be required to achieve the Surrender part of the Outcome on the basis that:
 - (a) The land affected by the Surrender is part of the wider area of land subject to Submission 425;
 - (b) The Surrender could be considered consequential relief arising from the primary part of Submission 425 seeking rezoning of Rural land to LDR;
 - (c) No prejudice to any other party would possibly arise from the proposed Surrender by the Submitter of existing LDR zoning.

This Memorandum leaves consideration of this part of this issue to the Panel and will not address it any further.

- 3 An alternative method of achieving the Surrender part of the Outcome, suggested by a member of the Panel, would be to apply a Building Restriction Area (**BRA**) to the orange Area D on Attachment B. This could be considered preferable to rezoning from LDR to Rural, because the activity status of residential development within the BRA would be noncomplying whereas the activity status of residential development within land zoned Rural is discretionary. The Submitter would be comfortable with either option. The remainder of this Memorandum assumes that either option could be chosen.

Outcome

- 4 Attached to this Memorandum in Schedule A is a copy of **Attachment B** presented by Mr Baxter at the hearing. This Memorandum relates to that part of Submission 425 which seeks the rezoning of certain areas of land zoned Rural to LDR. In the course of preparation for the hearing, and as presented at the hearing, the Submitter now seeks the following aspects of relief not detailed in Submission 425:

- (a) The rezoning from Rural to LDR of two areas of land identified on Attachment B coloured blue, being two areas in addition to the areas originally sought to be rezoned LDR in Submission 425 (**Additional Zoning**);
 - (b) The surrender of an area of existing LDR zoning identified on Attachment B coloured orange, so that the zoning of that land is changed from LDR to Rural (**Surrender**).
- 5 Counsel emphasises that the case now presented for the Submitter is a 'package', on the following basis:
- (a) The Surrender is a voluntary proposal to remove existing LDR zoning and thereby forego development rights which obviously have a multimillion dollar value, taking into account the existing LDR zoning and the obviously stunning location for residential development;
 - (b) The Submitter is willing to proffer the Surrender in exchange for achievement of the additional LDR zoning identified on Attachment B coloured yellow and marked B and C;
 - (c) This is a 'package' proposal to the extent that, if the requested LDR zoning is not confirmed, then the Surrender is not volunteered.

Appropriate Method

- 6 Counsel is unaware of any jurisdictional limitation which prevents an application for leave to amend a submission. If the Panel sees any difficulty with that process, the alternative is to seek leave to lodge a late submission. In either case the primary consideration will be potential prejudice to the DPR process as a whole or to the interests of the public generally or to the interests of particular submitters or further submitters. If any such potential prejudice arises it can be dealt with by the Panel by Direction requiring public notification or limited notification on identified submitters or further submitters. Counsel leaves determination of the appropriate method, and the issue of public or limited notification, to the Panel, following consideration of the Relevant Considerations detailed below.
- 7 The Panel's attention is drawn to the fact that there are a number of Further Submitters to Submission 425 as detailed on page 144 of the relevant s42A Report.

Reasons

- 8 The Panel has previously issued a "*Decision of Commissioner Denis Nugent*" dated 2 February 2016 which dealt with consideration of Late Submissions. Paragraphs 6-10 on pages 2-3 of that Decision address legal considerations arising under Section 37. Counsel adopts that discussion and will not repeat it. Counsel further submits that the same considerations

should apply to a request to amend a submission as are applied to consideration of acceptance of a Late Submission.

Relevant Facts

- 9 Counsel submits that the following facts are relevant to consideration of the Additional Zoning part of the Outcome (land coloured blue on Attachment B):
- (a) The larger contiguous part of the land coloured blue was the consequence of a mapping error. The Submitter's intention and instructions were that that area be included as part of the area proposed to be rezoned LDR. An error was made when that instruction was converted into a plan.
 - (b) The larger contiguous area coloured blue comprises the south-eastern edge of a terrace which includes the yellow coloured land marked A on Attachment B. The relevant viewpoints (as far as the general public is concerned) are from a general north-easterly direction looking across Frankton Arm towards that terrace. The primary effects arising, as far as those viewpoints are concerned, would be caused by rezoning the yellow land marked A. Addition of the larger contiguous area coloured blue would make little difference to those effects from those viewpoints.
 - (c) It would be illogical to rezone the larger part of the terrace (coloured yellow) and not also to rezone the smaller part of the terrace (coloured blue).
 - (d) The smaller separate area coloured blue on Attachment B arises from a recommendation from Dr Read (yellow dotted line on Attachment B) agreed to by Mr Baxter. The resultant LDR/Rural zone boundary in this small area is more logical. This small area of land is largely internal to the site. The zoning of that small area of land cannot possibly have effects more than minor in the context of adjoining LDR zoned areas (both existing and proposed).
- 10 Counsel submits that the following factors are relevant to consideration of the Surrender part of the Outcome:
- (a) This proposed Surrender of existing multimillion dollar value LDR development rights must be considered to be extraordinary and unusual. The Submitter recognises the potential inappropriateness of this original LDR zoning and is willing to take steps to address that issue.
 - (b) The Surrender of an area of existing LDR zoning cannot possibly give rise to adverse environmental effects on its own. The factual issue to be determined is whether the Surrender (in relation the orange Area D on Attachment B), offset by the rezoning LDR

of yellow Areas B and C on Attachment B, results in a net positive outcome in terms of primarily landscape and visual amenity effects.

Relevant Considerations

The interests of any person who may be directly affected by the extension or waiver

- 11 The persons who may be directly affected are either the general public (specifically persons who might have submitted that have not submitted) and/or Further Submitters who have lodged further submissions to Submission 425. The Submitter's position is that no such person would be adversely affected because:
- (a) Potential effects of the Additional Rezoning, particularly when one takes into account the potential effects of the notified LDR rezoning of yellow Area A on Attachment B, would be no more than minor;
 - (b) The Surrender of existing LDR zoning on orange Area D on Attachment B cannot give rise to adverse effects per se;
 - (c) The net outcome of the Surrender (incorporating the 'exchange') is positive.

The interests of the community in achieving an adequate assessment of the effects of the Proposed District Plan

- 12 The Submitter's position is that it is unlikely that public notification or limited notification would result in factual material being put before the Panel which has not already been put before the Panel.

The Council's duty under s.21 to avoid unreasonable delay

- 13 In the context of the overall timetable of Stage 1 of the DPR it seems unlikely that granting leave, whether to amend Submission 425 or to allow a late submission, and whether notified or not, will result in any additional delay in release of decisions on Stage 1 of the DPR (obviously the Panel is in a better position to judge that).

Additional considerations

- 14 The list of factors which must be considered, as detailed in s37A(1), are not exhaustive. In the circumstances of this particular application for leave, Council submits that the potential positive outcomes of the Surrender are such that it is appropriate that leave be granted so that the Panel can make a substantive decision relating to the merits of the Surrender (rather than the Panel being unable to consider the substantive merits, which would be the case if leave is not granted).

Dated this 14th day of September 2017

A handwritten signature in black ink, appearing to read 'Warwick Goldsmith', written in a cursive style.

Warwick Goldsmith
Counsel for F S Mee Developments Co Limited

Schedule A – Mr Baxter's Attachment B

