BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL HEARINGS PANEL

UNDER	the Resource Management Act 1991
IN THE MATTER	of the review of parts of the Queenstown Lakes District Council's District Plan under the First Schedule of the Act
AND	
IN THE MATTER	of submissions and further submissions by **QUEENSTOWN PARK LIMITED**

SUBMISSIONS OF COUNSEL FOR QUEENSTOWN PARK LIMITED

CHAPTER 21 – RURAL, CHAPTER 22 – RURAL RESIDENTIAL AND RURAL LIFESTYLE, AND CHAPTER 33 – INDIGENOUS VEGETATION

21 APRIL 2016

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1. INTRODUCTION

1.1 These submissions are made on behalf of Queenstown Park Limited (**QPL**) and Queenstown Wharves GP Limited (**QWL**).

1.2 QPL seeks the inclusion of a specific objective and policies in Chapter 21 that recognise and provide for non-farming activities in the Rural Zone. It also seeks that Rule 21.4.5 be amended to provide for a wider range of commercial activities in the Rural Zone. Those amendments are set out in the evidence of Jeffrey Andrew Brown[1].

1.3 In summary, QPL considers that:

(a) The Council's focus on promoting farming to the exclusion of other activities is not necessary to maintain rural character and repeats the acknowledged error in the Operative Plan of attempting to apply a uniform character to the widely varied rural environment[2];

(b) The Council's focus on solely promoting farming is not sustainable because farming "…has shrunk to marginal status, both as a source of employment and in terms of economic viability…[3]";

(c) Tourist activities are essential to Queenstown's economy and should be provided for in the Rural zone;

(d) The fear that the proliferation of non-farming activities in the Rural zone is a threat to tourism in Queenstown cannot be supported evidentially or by reference to recent history; and

(e) The Council's focus on farming fails to consider or provide for ecological enhancement in the Rural zone.

1.4 Given the above, it is submitted that QPL's version of Chapter 21 is better than the Council's version of Chapter 21. In particular, it is submitted that QPL's version of Chapter 21 strikes an appropriate balance between encouraging farming activities and enabling other activities, whereas the Councils version does not. It bears

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1 For completeness, it is nted that Mr Brown is providing evidence for multiple parties.
2 In the case of the Operative Plan it was the identification of "arcadian" landscapes.
3 Evidence of Professor Tim Hazledine dated 21 April 2015 at paragraph 4.1.

emphasis that the desirability of achieving such a balance is implicit in the "Purpose" of the Rural Zone[4]:

> "The purpose of the Rural zone **is to enable farming activities** while protecting, maintaining and enhancing landscape values, nature conservation values, the soil and water resource and rural amenity.
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> A wide range of productive activities occur in the Rural Zone and because the majority of the District's distinctive landscapes comprising open spaces, lakes and rivers with high visual quality and cultural value are located in the Rural Zone, **there also exists the desire for rural living, recreation, commercial and tourism activities**."

1.5 QPL seeks that Chapter 33 be amended to acknowledge that identified non-farming activities can be appropriate in and around SNAs. The evidence of Mr Beale is called in support of QPL's position.

1.6 QWL seeks amendments to objective 21.2.12 and its associated policies. Those amendments are also set out in the evidence of Jeffrey Andrew Brown. The focus of those amendments is on enabling water based transport and recreational activities on lakes and rivers.

2. STATUTORY FRAMEWORK

2.1 The panel will be familiar with the legal requirements of the Resource Management Act 1991 (**Act**) in relation to plans. These submissions focus on:

(a) Enabling "economic wellbeing" under section 5(2); and

(b) Costs and benefits, including opportunities for economic growth (section 32(2)(a)).

2.2 It is acknowledged that the Panel must consider all relevant aspects of the statutory framework (Part 2 and sections 31, 32, 72, 74, 75, and 76). However, it is QPL's and QWL's position that the Council's evidence and analysis has significant shortcomings in relation to economic costs and benefits. The evidence to be called for QPL and QWL also addresses other related issues, such as rural character and environmental enhancement, as well as specifically addressing indigenous vegetation.

[4] 21.1, Zone Purpose, Proposed District Plan (page 21-2).

Economic Wellbeing

2.3 QPL does not oppose the recognition and encouragement of farming in the Rural Zone, as proposed by the Council. It does, however, oppose the implicit relegation or discouragement of non-farming activities that is at the very least implicit in the Council's objectives and policies (in particular 21.2.1).

2.4 QPL will call evidence from Professors Milne and Hazledine.

2.5 Professor Milne has specific expertise in tourism research. His evidence considers the potentially significant benefits of a gondola from Remarkables Park to the Remarkables Ski Area. In the context of this case, this activity is presented as an example of a tourist, recreation or commercial activity that should not be foreclosed or discouraged in the Rural Zone.

2.6 Professor Milne concludes that[5]:

(a) The gondola "is well placed to meet critical shifts in demand for New Zealand from international tourism source markets and from the domestic market"; and

(b) Will generate significant economic benefits for the Queenstown area.

Similarly, Mr Greenaway considers that the gondola "responds to emerging Asian markets which are less likely to seek independent road transport to the ski area"[6]. Mr Greenaway also considers that "there is a range of compatible tourism activities which can occur in this zone – and to a large extent can only occur in this zone – and which should be enabled by the PDP, rather than discouraged or foreclosed".[7]

2.7 Professor Hazledine is an expert in economics. His evidence responds directly to the evidence of Phillip Osborne. Professor Hazledine considers that Mr Osborne has overstated the role that "pastoral" or farmed rural landscapes play in Queenstown's tourism appeal, and has underestimated that contribution that tourism operators and employees make to the number of visitors to Queenstown. It is submitted that it is undeniable that tourism activities such as skiing, jet boating and bungy jumping contribute significantly to the "sense of place" and "glamour"[8] of Queenstown and the wider district.

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5 Paragraphs 7.2 and 7.3.
6 Paragraph 4.2(e).
7 Paragraph 5.1.
8 To use Professor Hazledine's language.

2.8 Professor Hazledine also expresses concerns about the viability of farming in the Wakatipu Basin.

2.9 The evidence for QPL and QWL is not called to argue for reduced emphasis on farming in the Rural Zone. It is called to support a clear acknowledgement of, and provision for, other non-farming activities such as tourist, recreational and commercial activities.

Costs and Benefits, and Economic Growth

2.10 Section 32(2) requires that an evaluation under the Act assess costs and benefits, and opportunities for economic growth.

2.11 The Council's policy position of promoting and emphasising farming in the Rural Zone appears to be advanced on two grounds. First, farming will maintain landscape and rural character. Second, the existing landscape and rural character is the single most important factor in maintaining Queenstown's competitive advantage as a tourist destination.

2.12 I address landscape and rural character below, but note at this point that QPL considers the Council's approach to be flawed because the character of the Rural Zone varies widely.

2.13 As to the second point, it is submitted that there is a dearth of quantitative evidence to support the assertion that existing landscape and rural character must be maintained in order for tourism to continue to thrive. It is noted that:

(a) There appears to be no raw data that identifies the extent of Rural zoned land that has been converted to non-farming uses under the Operative District Plan;

(b) The 2009 "Rural Monitoring Report" which is referred to in the Section 32 Report[9] mentions concerns about managing cumulative effects, but this is linked to the shortcomings in the description of the desired landscape outcome in the Operative Plan (in particular the "arcadian" and poetically "pastoral" references); and

(c) To the extent that there is pressure for non-farming uses in the Rural Zone (which Professor Hazledine appropriately acknowledges must be the case), the establishment of those uses where resource consent has been granted

[9] Undated, but attached as Appendix 3 to the Section 42 Report.

does not appear to have adversely affected Queenstown's tourism industry. In fact, it is accepted that tourism is growing (both nationally and domestically).

2.14 In summary, the Council's approach imposes a significant cost on a private landowner for no demonstrated benefit. Mr Osborne acknowledges that the economic value he subscribes to the Rural Zone would in many cases warrant public ownership[10], however the Council is proposing to impose this obligation on private landowners.

2.15 Finally, it is submitted that the provisions supported by QPL better provide for economic growth. The evidence of Professors Milne and Hazledine, complemented by Mr Greenaway, support that submission.

3. LANDSCAPE AND RURAL CHARACTER

3.1 The substance and pith of QPL's opposition to the Council's proposed provisions is its unerring focus on farming activities as delivering desirable landscape outcomes. The evidence of Ms Smetham illustrates that the character of the Rural Zone is not uniform and is not entirely dictated by farming activity. That being so, the Council's approach suffers a similar flaw to the Operative Plan in that it endeavours to apply a singularly definable character to the Rural Zone. Under the Operative Plan, this issue arose in respect of the arcadian aspiration for the "VAL" areas. In the **Staufenberg Family Trust** decision[11] Judge Jackson stated:

> "[52]…Two points about that passage should be made. First, "pastoral" does not, in this context, mean simply paddocks of introduced grasses (and weeds). Utilitarian farmers might be relieved to know the majority of working farms of much of New Zealand are not 'pastoral' in the poetic and picturesque senses, nor are they 'Arcadian'. Pastoral and Arcadian areas in the Wanaka basin are to be found southwest of the Wanaka Airport, e.g. the Feint property. Other examples are dotted across the landscape towards and around the north side of Mt Barker. The word "Arcadian" was introduced to reinforce that "pastoral" is not meant in the utilitarian pastoral lease sense. In effect "pastoral" and "Arcadian" are nearly synonyms in the district plan. Second, visual amenity landscapes may be categorised as such for their own characteristics or because they are adjacent to an outstanding natural landscape or feature.
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> …
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> [58] I find that the site is not "arcadian" at all: rough introduced pasture close-grazed by rabbits and surrounded on two sides by pines and roads has minimal arcadian character. The site has a pastoral character, that is pastoral with a small "p" (as in, it

[10] Pararaph 5.10.

[11] **Staufenberg Family Trust No. 2 v Queenstown Lakes District Council** Decision No. [2013] NZEnvC 100.

> grows pasture in the "pastoral lease" sense familiar in the high country), not "Pastoral" as in bucolic."

3.2 The Council has moved from arcadian or bucolic to "pastoral with a small 'p'". The desire now is for open pasture, not arcadian pasture. However, I my submission what is needed is a policy framework that enables an assessment of landscape and rural character, rather than objectives and policies that assume farming will always or is most likely deliver the best outcome. That is precisely what occurred in the **Staufenberg Family Trust** decision and consent for a non-farming activity was declined.

3.3 In terms of ONL's, Ms Smetham considers that the mountainous parts of the ONL largely protected from development by their sheer scale, inaccessibility, public conservation estate ownership, operational constraints of development and lack of appropriate development options[12]. This is an accurate and pragmatic observation. Furthermore, the ONL's are also protected by the applicable planning regime. This is a practical consideration that does not appear to have been considered by Mr Osborne and must be relevant to the percieved threat of development within ONLs.

3.4 It is noted that Mr Beale's evidence (addressed in detail below under section 4) identifies the potential adverse effects of farming on indigenous vegetation. The environmental issues relating to specific farming practices are well known and are particularly relevant to water quality. Mr Beale states that "farming activities such as fire, grazing and tracking an accelerate the spread of weeds" and adversely affect the productive capacity of pasture[13]. In short, there are potentially significant adverse effects arising from farming that are not present in relation to recreation or commercial activities.

4. INDIGENOUS VEGETATION AND SNAs

Summary

4.1 QPL supports the identification of Significant Natural Areas (**SNAs**) in the planning maps where they are accurately mapped and possess the qualities of SNAs. QPL accepts that there are areas of its land that warrant recognition as a SNA in accordance with the criteria outlined in the evidence of Glenn Davis.

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12 Paragraph 5.17.

13 Paragarph 7.2.

4.2 However, QPL's submission does raise concerns with the extent of the SNAs identified on its land. These matters will be addressed at the hearing on map changes to be held at a later date[14].

4.3 The Chapter 33 provisions clearly envisage some development within SNAs and this is supported by QPL. QPL remains concerned, however, with the preference for farming activities in or near SNAs when farming activities, typically, do not protect, maintain, or enhance SNAs. Rather, they pose a far greater threat to ecology values than other activities such as passive recreation.

4.4 It is QPL's submission that there are other recreation and/or tourist activities which typically establish in rural zones as they benefit from a rural setting, that are better placed to protect, maintain, or enhance SNAs. QPL is concerned that these activities are not enabled in the provisions to the same or similar extent as farming activities.

4.5 The relief QPL seeks is essentially to ensure there is a balance in the policy framework acknowledging that significant restrictions are placed on landowners when portions of their landholding(s) are identified as SNAs. QPL seeks that the PDP include provisions to enable development where proposals are able to achieve a biodiversity gain or landholders are required to protect SNAs.

4.6 To this end, QPL seeks amendments to the Chapter 33 provisions to better reflect this need for balancing the management of SNAs and the limitations on development opportunities for private land in or near SNAs that generate a public benefit and the need for landowners to be able to use and develop their land. Mr Brown's evidence proposes additional policies to achieve a better balance and, in particular, include policies that promote incentives to protect, maintain, or enhance indigenous biodiversity through the enablement of some form of development right as a means to compensate a landowner.

4.7 QPL supports the provisions acknowledging biodiversity offsetting as an appropriate mechanism to manage residual effects.

Balance of farming and non-farming activities

4.9 Chapter 33 provides for certain activities to occur in SNAs to a limited extent. QPL supports the Council's approach to enabling some development, rather than a complete prohibition, but remains concerned that the provisions wrongly focus on pastoral activities which have a greater adverse impact on indigenous vegetation

[14] Fifth Procedural Minute – Submissions concerning Significant Natural Areas, dated 19 April 2016.

than other activities. Mr Davis' evidence acknowledges the effect past and present agricultural land use has had on the indigenous vegetation and habitats[15].

4.10 As outlined in the evidence of Mr Beale, farming activities in areas of indigenous vegetation create "suitable conditions for the establishment of exotic weed species, many invasive in nature". Mr Beale's evidence notes that farming activities such as "fire, grazing and tracking can accelerate the spread of weeds". Proposed policy 33.2.2.3, however, states "[t]he majority of Significant Natural Areas are located within land used for farming activity and provide for small scale, low impact indigenous vegetation removal, stock grazing, the construction of fences and small scale farm tracks, and the maintenance of existing fences and tracks".

4.11 The section 42A report states that the intent of this policy "is to acknowledge that many of the SNAs are located within working farms and cover expansive areas". The officer considers it "reasonable to allow the continuation of established farming activities provided the activities and any changes in intensity maintain the values of the SNA…The policy informs the lower order rule framework and also helps inform why there is a permitted clearance and exemptions for specific activities"[16].

4.12 Mr Beale, however, considers that there are opportunities for low impact recreation and tourism activities in the shrubland contained in the Rastus Burn and Owen Creek catchments that are compatible with his suggested measures for maintaining and enhancing the shrubland.

4.13 Mr Beale has also turned his mind to the proposed gondola. He considers that the proposed gondola in conjunction with low impact recreational activities such as walking and mountain biking are compatible with the maintenance and enhancement of SNAs. The alignment of the proposed gondola and the construction access tracks do not encroach on the SNA proposed in the Rastus Burn End Fragment.[17]

Provisions to incentivise the protection, maintenance and enhancement of indigenous biodiversity

4.13 It is submitted that the Chapter 33 should provide for other non-farming, recreation and/or tourist activities. In particular, QPL seeks that the policy framework be amended to achieve a better balance and, in particular, include policies that promote incentives to protect, maintain, or enhance indigenous biodiversity through the enablement of some form of development right as a means to compensate a

15 Mr Davis' evidence at paragraph 4.5.
16 Section 42A Report – Chapter 33 Indigenous Vegetation, paragraph 11.62.
17 Paragraph 1.4.

landowner for, or offset the effect of, the restrictions imposed on the use of their land through the identification of an SNA.

4.14. This type of compensation/offset practice to incentivise landowners is not uncommon. Such a circumstance was referred to by the Environment Court recently in **Royal Forest and Bird Protection Society of New Zealand Incorporated v New Plymouth District Council**[18]. This case related to declaration and enforcement proceedings commenced by Royal Forest and Bird seeking the recognition of and provision for areas of SNAs in the New Plymouth District Plan[19]. In outlining the background to the proceedings, the Court noted that the district plan provisions to which the declaration proceedings related were the result of a consent order (dated 13 July 2005) settling appeals of Royal Forest and Bird and the Director General of Conservation (in respect of SNA provisions). The decision also records that a Memorandum of Understanding (**MoU**) was executed by the parties on 16 May 2005 which established a process to underpin the consent order and "revise and update provisions of the District Plan relating to SNAs"[20].

4.15 Specifically, the MoU "provided for an investigation of provisions whereby affected landowners could "offset" the restrictions that would occur as a consequence of SNA provisions being applied to their land"[21]:

> "'MOU 3': An assessment to consider 'mitigation' opportunities for landowners accruing economic cost as a consequence to owning SNA's [sic] (also within 24 months). **This was to include consideration of transferable development rights, tradeable development/subdivision rights, and bonus opportunities on undertaking development or subdivision. It also required consideration of waivers or reductions in financial and/or development contributions and the possibility of Council confirming a policy that it would levy financial or development contributions for the purposes of protecting significant natural areas**".
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> [Emphasis added.]

4.16 In a similar vein, the Environment Court in **Green & Anor v Rodney District Council**[22] considered the issue of private land being put to a use for a public benefit and how a landowner might be compensated for that. The context for **Green** was slightly different than the present circumstance in that it was site-specific, rather than addressing a whole zone generally, but the Court took a holistic approach to the

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18 [2015] NZEnvC 219
19 Paragraph [3].
20 Paragraph [13].
21 Paragraph [14] citing the affidavit of Mr Carlyon produced as evidence in the **Royal Forest and Bird** declaration proceedings.
22 [2010] NZEnvC 183.

management of the subject land and ensured that an appropriate balance was struck between development and prohibition.

4.17 **Green** concerned the Weiti area in the southern part of the Rodney District Council (of approximately 830 ha), the development of which had been a longstanding issue between the various landowners of the property and the Council. The land in question had a split zoning of Rural and Special Area 8 Limited Residential. There was also an existing consent for a development known as Karepiro for 150 units. The appeals concerned land use and sought:

> [5] …a total of 550 residential units (an additional 400) provided in policy areas 1 and 2 of Weiti zones with significant provisions relating to the balance of the land. In broad terms what is proposed is a comprehensive development plan which involves securing, both in terms of the plan zoning and in terms of restrictive covenants on development, a greenbelt or conservation zone around three policy areas - Weiti Policy Area 1, Weiti Policy Area 2 and the Karepiro Policy Area."

4.18 The Court noted the far greater intensity of the proposal than what would normally be envisaged in rural areas:

> [14] **In broad terms the development is at a significantly higher intensity than would be allowed in rural areas** where with enhancement planting one might achieve, on a full discretionary activity development, one house lot (of' around 1ha) to 6ha. Oh this occasion there is something less than 2ha provided for each house lot…**the area has attributes which make it particularly suitable for** public access, particularly coastal, and **enhancement of significant natural areas. For this reason the District Council has been prepared to agree to a proposal which would allow residential development in this area, notwithstanding that it was not shown in their planning maps as an area for such development**.
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> [Emphasis added.]

4.19 In considering the merits of the proposal, the Court considered the wider public benefits that would be generated against the prohibited activity status for a number of key activities that would severely limit development in certain areas:

> "[19] It is clear that in this case the parties have considered that there are significant public benefits to be achieved by providing for a greater level of residential development in this area… We recognize that the use of the prohibited status for key activities, including residential and retail development, represents a significant bar to further development in those areas. This is an acceptance by the developer that the areas and extent of development is limited.
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> [20] We have considered carefully whether the prohibited status is justified in this case but agree with the parties that the purpose of the prohibition is to justify the level of development provided… Nevertheless, the Court still considers that it is important that there be wider public benefits and has been particularly concerned at access issues."

4.20 In terms of Part 2 matters, the Court made the following findings:

> [28] We acknowledge that this area has been identified, both in this Proposed Plan and in previous plans, as suitable for some level of residential development. We also recognize the sensitivity of this area to such development and the existence of a number of moderate level significant natural areas within it. Furthermore, we agree with the parties that the coastal area between Stillwater and Haighs Access Road and the continuation of public access along the DOC walkway is a matter of particular importance.
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> [29] **Although this proposal leads to a level of development which is relatively intense, particularly in Policy Areas 1 and 2, that is to be balanced by the significant areas of conservation and greenbelt around it and the public benefits to the wider public that we have discussed in some detail. The end result is that there is enablement not only of the landowner and the eventual owners of the properties but also of the wider public. Furthermore, we acknowledge the wider benefits to the region**, recognised by Mr Burns for the Regional Council and Mrs Houghton for the DOC.
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> [30] Significant natural areas that can be built into a cohesive unit, such as in this case, will be of increasing importance in the decades to come. The ongoing management of those areas by the people living in that area is also going to become increasingly important. To that extent the relationship of the Policy Areas 1 and 2 and the Karepiro to the surrounding land cannot be underestimated.
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> [31] Overall, we see this as achieving the purposes of Part 2 of the Act not only by enabling both the developer of the community, but by providing for the matters under Section 5(2)(b) and 5(2)(c) in particular, the matters under Section 6(a) of the Act, the preservation of the natural character the coastal environment and their margins, protection of areas of significant indigenous vegetation under Section 6(c) and habitat, and the maintenance and enhancement of public areas to and along the coastal marine area under Section 6(d) of the Act.
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> [32] …We agree with the parties that the benefits of this proposal are significantly better for the following reasons:
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> [a] the preservation and enhancement of large tracts of natural areas and the creation of a conservation greenbelt;
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> [b] public access to and along the coast;
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> [c] public access through the land including the forestry;
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> [d] the provision of public facilities including the mountain bike track and the institute.
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> [33] When we look at benefits and costs the developer is clearly prepared to bear the costs of the prohibition over the greenbelt and conservation areas in recognition of the benefits to be achieved within the development area. In that regard we can see that there are benefits to be achieved for the residents in Policy Areas 1 and 2 and Karepiro from the surrounding greenbelt. So to that extent there is some benefit even to the residents but a wider benefit to the general public and the district as a whole,
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> [Emphasis added.]

4.21 It is submitted that it would be entirely appropriate for the PDP to include provisions similar to those contained in the MoU discussed in **Royal Forest and Bird** to offset the restrictions that would occur as a consequence of SNA provisions being applied to rural land where there is an identified SNA.

4.22 It is further submitted that the Court's reasoning in **Green** which focused on the balance between greater intensity of residential development in one delineated area with the other significant areas of conservation. The Court considered that such an approach gave rise to significant public benefits to the wider public but also conferred a benefit to the landowner which was appropriate.

4.23 Mr Brown's evidence proposes two additional policies intended to recognise for opportunities for proposals that can demonstrate a significant indigenous biodiversity gain, implemented as part of a development. Mr Brown considers that these additional policies are complemented and would be given effect to the proposed assessment matter 21.7.3.3(b). Mr Brown further suggests amendments to policy 33.2.2.3 to include reference to public access and recreation for the reasons outlined above noting that some properties may not be farms and that "small scale low impact" vegetation clearance should also be extended to non-farming purposes.

Balance of Chapter 33 Provisions

4.24 QPL seeks some amendments to the provisions, as outlined in Mr Brown's evidence to recognise access to ski area subzones and the fact that ski area subzones are typically, highly modified.

4.25 QPL supports the provisions that relate to biodiversity offsetting as an appropriate mechanism to manage residual effects. QPL considers that the effects of clearance should also be balanced against the benefits associated with the activity for which clearance is being undertaken.

DATED the 21st day of April 2016

J D Young

Counsel for Queenstown Park Limited