

**BEFORE THE QUEENSTOWN LAKES
DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act 1991 (the "Act")

AND

IN THE MATTER of the Queenstown Lakes District Proposed District Plan

**MEMORANDUM OF COUNSEL
30 MARCH 2016**

New Zealand Tungsten Mining (#519/#1287)

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1. Introduction

- 1.1 This Memorandum addresses issues raised by the Hearings Panel in relation to the submissions and evidence presented on behalf of New Zealand Tungsten Mining Limited (NZTM) on Wednesday 23 March 2016.

2. General scope issues

- 2.1 As stated in the submissions from Counsel on behalf of Darby Planning Limited, the High Court in *Simons Hill Station Ltd v Royal Forest & Bird Protection Society of New Zealand Inc*¹ provides authority for the proposition that the scope of submissions is collective;

*"What is important is that the applicant is put on notice, **by the submissions in their entirety**, of the issues sought to be raised, so that they can be confronted by that consenting authority. In such situations I am satisfied there is no derogation from principles of natural justice by making all of those issues the subject of further consideration..."*²

- 2.2 That authority for collective scope is equally applicable to a local authority's determination of changes to a planning instrument after notification. The High Court decision above referred to at least one appeal in respect of scope for plan appeals. In *The Church of Jesus Christ of Latter Day Saints Trust Board v Hamilton City Council* [2015] NZEnvC 160 the Environment Court confirms that;

"the test is not about determining whether the policy is named in the submission or appeal documents, but whether the amendments sought are reasonably and fairly raised in the course of the submissions".[40]

- 2.3 As long as those solutions are within scope of all the submissions lodged and the matters generally raised in a submission, a submitter may address the Panel on those matters.

¹ *Simons Hill Station Ltd v Royal Forest & Bird Protection Society of New Zealand Inc* [2014] NZHC 1362

² *Ibid*, at para 30

3. **Specific scope issues for NZTM**

3.1 NZTM submitted seeking certain changes to the DPR. The expert planner called by NZTM, Mr Vivian, subsequently recommended changes to some provisions in his evidence in chief dated 26 February 2016. The Panel questioned whether there was scope to make the changes recommended by Mr Vivian.

3.2 The Panel queried in particular policy 3.2.1.3.1. Mr Vivian recommended that the submissions of NZTM and Cabo Limited be accepted in part, and offered the following amendments to Policy 3.2.1.3.1 be made;

3.2.1.3.1- ~~Provide for~~ Enable a wide variety of activities, and sufficient capacity within commercially zoned land, to accommodate business growth and diversification within the District."

3.3 NZTM did not make an initial submission on the above Policy, but made further submissions on the entirety of chapter 3, and also sought any consequential, relief as necessary or appropriate to give effect to the matters raised in its original and further submissions.

3.4 The following submitters all made submissions on the above Policy;

- (a) Te Anau Developments Limited (#607)
- (b) Darby Planning LP (#608)
- (c) Cardrona Alpine Resort Limited (#615)
- (d) Real Journeys Limited (#621)
- (e) Ngai Tahu Tourism Ltd (#716)
- (f) Queenstown Park Limited (#806)
- (g) Remarkables Park Limited (#807)

3.5 The above submitters sought various amendments to Policy 3.2.1.3.1, including the following from submitter #807;

"Amend policy 3.2.1.3.1 so that it recognises that the policy provisions should enable diversification and a wide variety of activities, not just limited by the zone in which they are located, but managed by the effects that they may have".

- 3.6 The submission from submitter 621 also sought the addition of the word "enable" into the front end of this Policy.
- 3.7 Collectively, these submissions show a wide variety of relief available for amendments to policy 3.2.1.3.1. Those various suggested amendments would put the reasonable submitter on notice that various wording changes and changes in intent of the Policy could be anticipated.
- 3.8 The addition of the words "within the District" to the end of the Policy as proposed by Mr Vivian are expressed for the purposes of clarification of the Policy, and are not considered to go beyond the scope of what is already proposed to change to the Policy, furthermore, the submission from submitter 807 anticipates similar amendments by stating the policy should not be limited to the zone in which particular activities exist.

4. **Further comments**

- 4.1 Counsel has not undertaken the same exercise above for all objectives and policies referred to in the evidence of Mr Vivian, and presented before the Panel on 23 March 2016. The tests of 'collective scope' and 'reasonable foreseeability of outcomes' is considered to extend to all provisions proposed in the submissions of NZTM, and it is submitted that the changes recommended by Mr Vivian are within scope of the Panel's considerations.
- 4.2 However in the event the Panel determines there is no scope to impose the changes recommended by Mr Vivian, NZTM continues to pursue the relief sought in its primary submission.



30 March 2016

R E Hill

Counsel for New Zealand Tungsten Mining (#519/#1287)