

Before the Hearings Panel For the Queenstown Lakes Proposed District Plan

In the matter Of the Resource Management Act 1991

And

In the matter Of submissions and further submissions on Hearing
Stream 12 – Upper Clutha Mapping Annotations
and Rezoning Requests

**SUMMARY OF EVIDENCE OF DEAN MICHAEL CHRYSAL
ON BEHALF OF MIKE BERESFORD (SUBMITTER 149)**

DATED: 14 JUNE 2017

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Introduction

- 1 My name is Dean Michael Chrystal. I am a Director with Planz Consultants Limited, a planning consultancy based in Christchurch.
- 2 In my substantive evidence I have:
 - 2.1 Described the existing environment, current zoning and history of urban development in the surrounding area;
 - 2.2 Outlined the proposed provisions in the notified plan;
 - 2.3 Discussed potential landuse under the proposed plan;
 - 2.4 Outlined the proposed amendments sought;
 - 2.5 Assessed the relevant effects;
 - 2.6 Undertaken a statutory assessment including under Section 32 of the Resource Management Act (RMA); and
 - 2.7 Provided my conclusions.
- 3 In summary therefore Sticky Forest is currently held by the Crown on trust for descendants (the beneficial owners) of the 57 original intended owners. It is effectively therefore private land which is currently planted primarily in Pinus radiata and Douglas fir trees and contains numerous mountain bike trails.
- 4 The Proposed District Plan (PDP) introduces an Outstanding Natural Landscape (ONL) overlay to approximately half the site at the northern end and makes the planting of Pinus radiata and Douglas fir a prohibited activity. From an economic productive point of view the site has limited potential with the PDP provisions only further limiting that potential.
- 5 The original submission has been refined with the proposal now being for some 20ha of the 50.7ha to be rezoned for residential purposes split between Residential Low Density (RLD) and Large Lot Residential (LLR). The remainder of the land would be retained for recreational purposes including a significant part of the mountain bike trails. The proposal includes a redrawing of the proposed ONL boundary and specific objectives, policies and rules requiring a process of ensuring that a number of significant matters are addressed prior to consent for subdivision being able to be obtained. A further specific revision is provided in the attached Appendix 1.
- 6 The background and context of this proposal are unusual if not unique in terms of planning outcomes. It involves consideration of s6, s7 and s8 matters and ultimately and importantly in my view an overall judgement in terms of s5. Within this framework there are in my opinion competing interests and conflicts between landscape values and the economic and recreational values. A further important consideration is the use to which the land can now be put when weighed against the purpose this land was intended for in terms of the beneficial owners.

- 7 The s32 assessment attached as Appendix 2 to my evidence in chief, considers the rezoning and rules proposed to be a more efficient and effective method of achieving sustainable management than the provisions in the PDP.
- 8 In terms of objectives and policies I accept there is a degree of tension with those related to the maintenance of landscape character, however I consider the provisions proposed adequately address these tensions so that the proposal overall will achieve the relevant strategic objectives and policies. Further, I do not consider the proposal to be at odds with the strategic provisions associated with urban growth noting that it would help in promoting a more compact, well designed and integrated urban form.
- 9 Others provisions directed at Tangata Whenua such as Policy 4.5.1 of the proposed RPS, and Objective 5.4.4 and Policy 5.4.4.1 of the PDP in my view provide support for the proposal. I also note Goal 3.2.7 of the Strategic Directions chapter requires that the *Council will act in accordance with the principles of the Treaty of Waitangi and in partnership with Ngai Tahu*.
- 10 Nevertheless, the uniqueness of the situation is clearly not anticipated by the entire planning framework, in particular the operative RPS, although I do not considered the proposal could be said not to give effect to the operative RPS. In this context therefore, as I understand it, a gap can be said to exist in terms of the *King Salmon* approach that necessitates a broader analysis and balancing in terms of Part 2 which I have undertaken.

Comments on Council Evidence and Hearing Matters

- 11 Mr Barr has suggest that the PDP is perhaps not the most appropriate vehicle for achieving the aspirations of the beneficiaries bearing in mind the interests of the entire community in terms of Part 2 of the RMA and the outcomes identified in the Strategic Directions chapters.
- 12 I'm not sure what other vehicle Mr Barr considers there might be but certainly further substitute land is not one of those vehicles. This land is a substitute block and as I understand it there is no ability to further substitute it. Notwithstanding this, the district plan has to be part of the process for the beneficiaries to achieve an economic benefit from the land just like any other land owner. That is clearly why Mr Beresford has become involved in the process.
- 13 Mr Barr also doesn't consider the Council is required to act as a substitute for the Crown in terms of itself providing redress, particularly when this may have consequences for the wider community.
- 14 In my view the Council is not being asked to act as a substitute in providing redress. However as the body tasked with preparing and implementing district plans it cannot divorce itself from the issue. Indeed in my opinion the Council and its planning regimes have to a large extent dictated the situation that currently presents itself. It needs to be remembered that the land was formerly Council land which was obtained by the Crown for the purpose of economic support and maintenance for the beneficiaries of the original descendants. I therefore find it difficult to accept that the Council would not have known the purpose for which the land was obtained. Yet over the past 15-20 years various planning studies and plan changes have led to an encroachment of urban

growth around the site, with little regard to the site itself which now makes its continued use for any economic rural purposes difficult if not impossible. Indeed, my reading of many of the documents involved in these processes, while acknowledging the ownership of the site was private, make no detailed reference to its actual intended purpose. It seems that it was simply assumed that land was normal rural land and was, and could be, used for a recreational purpose. Indeed the Wanaka Structure Plan Review states:

The Structure Plan identifies 'Plantation Forest' as a potential landscape protection area. This highlights the landscape sensitivity of this area as well as its potential to contribute to open space and recreation networks.¹

- 15 Further, the rules regime in the PDP, including the ONL and prohibition of the two forestry species which currently grow on the site has further compromised the site from an economic perspective for the beneficial owners. Indeed Ms Banks in response to a question from the Chairman said that the issue of logging trucks was another reason why Mr Beresford's submission shouldn't go ahead.
- 16 It is also important to acknowledge the sequence with which events have occurred because in my opinion this has some bearing on the balancing of matters under Part 2. The land was obtained from the Council via the Ngai Tahu Settlement Act 1998. At that time the land (as it currently is) was zoned rural and contained forestry. The surrounding land was also rural and importantly in my opinion there was no ONL identified² on this or any adjoining site. Although I acknowledge there is no actual proof it seems unlikely that the Crown would have obtained land for the purposes intended if it was known to contain the type of restrictions now proposed in the PDP.
- 17 In terms of site use Mr Barr considered in his rebuttal *"there would be ample opportunities for appropriate commercial recreational development"* yet at the hearing he accepted the Chairman's point that if Mr Greenaway says no to the question of whether the mountain biking community would be prepared to pay for the use of the site that would *in effect snooker the only practicable use across this room that we've been able to identify³*. Mr Greenaway has now responded saying that a commercial mountain bike park is an unlikely option. In my opinion therefore any other commercial recreational development is a very unlikely scenario which leaves few if any options under a rural zoning (other than some form of residential development) and the Chairman is right in my view to raise the issue of s85 of the Act.
- 18 Mr Barr does not agree that any benefits arising from having regard to the principles of the Treaty of Waitangi, should override the social wellbeing of the wider community in terms of the potential loss of recreational opportunities and the impacts of the location of urban development hard against an ONL, where this would be likely to result in inappropriate development. In response I simply make the points that:

¹ Page 11, Wanaka Structure Plan Review

² ONL's only became identified in the Operative Plan via a resource consent process.

³ Transcripts Session 5 18th May 2017

- (1) The recreational opportunities cannot be given any significant (if any) weight in Mr Barr's preferred option of retaining a Rural zone as they could be extinguished at any time. They can only be considered and weighted under the rezoning proposal I have put forward as that is the only option that secures those recreational opportunities.
- (2) The ONL is proposed and therefore importantly did not exist in any form at the time the land was obtained by the Crown for the purpose of providing for the beneficiaries. In my opinion this is an important point in weighing the various issues.
- 19 The question of existing use rights associated with forestry raised by Mr Barr is difficult and in my opinion:
- (1) Is not easily resolved without Court interpretation given the complexities which Mr Barr acknowledged when he said at the hearing that "*it might be drawing a long bow*".
- (2) Would be difficult to rely upon going forward.
- 20 In any event I doubt very much whether existing use rights would be specific enough to protect the two species currently grown on the site, both of which are proposed to be prohibited by the PDP. In my discussions with Mr George Platt of PF Olsen (who currently manage the forest) he was unable to identify a permitted species which could be grown viably as a commercial enterprise on the site taking into account its location.

Conclusion

- 21 The competing interests and conflicts in my opinion lie between the landscape values particularly associated with the proposed ONL and the other values namely recreational, community and economic. The landscape values are contained primarily in the geography and visibility of the site. The existing exotic trees while prominent on the site are not a particularly integral part of those values and indeed the PDP in my view sets itself against forestry within an ONL and certainly the species of tree currently on the site. This is perhaps one of the conundrums of the PDP proposing an ONL over this site. On the other hand the current forestry is an integral part of the recreational values on the site. The ability to ride trails in amongst and between well-established trees is an integral part of the enjoyment obtained from mountain biking through this area.
- 22 There is also conflict between the landscape values and the economic use of the site. The ONL area makes the continuation of forestry difficult and the prohibition of *Pinus radiata* and Douglas fir make this even less likely. I note that at the time in 1998 when the Substitute Block was selected, the site was zoned Rural and there was no ONL boundary nor a prohibition on *Pinus radiata* and Douglas fir plantings. The PDP makes the continuation of this land use at best marginal. Other activities are also restricted by the landscape values attributed to the site.
- 23 The balancing of these competing and conflicting interests and values is complex. In my opinion one needs in the first instance to look at the purpose for which the land has been provided. It essentially stems from a breach of the Treaty principles going back more than 100 years, the Crown's redress being to provide for the economic sustenance (which I equate to wellbeing) of the

descendants of the original beneficiaries. These descendants therefore should be enabled to utilise the land for some form of economic purpose rather than having it further alienated by district plan provisions.

- 24 While I accept that landscape values are important in this instance I consider the resulting benefits both for the beneficial owners in economic terms and the community in recreational terms, which cannot be guaranteed in any other way, outweigh the relatively moderate landscape effects. In my opinion the economic wellbeing of the beneficial owners and community wellbeing which are captured in s5 outweighs the landscape values (s6) now being proposed. In this context I note that the proposal still maintains an ONL across approximately half the site, with design controls on the more visually sensitive areas – so it's not that s6 is being ignored or trumped, rather it's around the margins where I lean more towards s5 and s8, with s6 still taking prominence in the most visually significant areas.
- 25 The proposed planning regime in my opinion delivers a balanced outcome in terms of landscape and amenity values and also provides significantly for both economic and community wellbeing in the form of guaranteeing the economic wellbeing for the beneficial owners and future recreational access. At the same time the proposal will help in addressing a broader treaty matter (or grievance) which has been outstanding for over 100 years.
- 26 Finally, should the Panel consider within the proposed rules there is insufficient protection within the 4ha area between the orange and yellow lines on the plan in Mr Field's evidence and wish to maintain the ONL boundary proposed by Mr Field I have proposed further additional changes in Appendix 1 below. In my opinion the original changes proposed were sufficient in that they would require similar outcomes via the structure plan preparation process, however I accept that the Panel may have a different view.



Dean Chrystal

12th June 2017

APPENDIX 1

New rule 11.5.11 – Comprehensive Development Plan for Sticky Forest, Wanaka - Restricted Discretionary.
Resource consents arising from this rule are to be processed on a non-notified basis.

No new dwellings shall be erected within the portion of the Large Lot Residential zone located within the Outstanding Natural Landscape overlay at Sticky Forest, Wanaka, unless it is consistent with a Comprehensive Development Plan that has been lodged with, and approved by, the Council. The preparation of a Comprehensive Development Plan is a Restricted Discretionary Activity. The exercise of Council's discretion shall be limited to the degree to which the Comprehensive Development Plan identifies the following matters:

- i) All building platforms;**
- ii) Architectural designs for all dwellings;**
- iii) Landscaping for all the area within the ONL; and**

The degree to which the above three matters mitigate landscape effects through the use of the following design techniques:

- design and appearance of buildings to achieve a consistency of form and character that is complimentary to the natural setting;**
- Orientation of buildings to follow natural contours;**
- Potential clustering of dwellings and building elements;**
- Articulation and modulation of build form, height and mass to reduce the potential visual bulk of buildings, and to provide for integrated landscape treatment around and amongst building modules;**
- Co-ordination with the landscape plan;**
- Roof pitches that reflect landforms and slopes;**
- Lighting design reduce glare, and eave design to reduce reflectivity of glass windows and doors;**
- Visual screening of building curtilage and utility areas particularly from views from the lake area.**

Amend proposed Rule 27.8.x.2

27.8.x.2 No subdivision shall take place within the Low Density or Large Lot Residential Zones at Sticky Forest, Wanaka, unless it is consistent with a Structure Plan that has been lodged with, and approved by, the Council, in accordance with 27.8.x.3 **and a Comprehensive Development Plan in accordance with rule 11.5.11.**

Amend proposed Rule 27.8.x.4

27.8.x.4 Subdivision within the Large Lot Residential zone and that is in accordance with a Structure Plan prepared under rule 27.8.x.3 **and a Comprehensive Development Plan prepared under rule 11.5.11** shall be a restricted discretionary activity, subject to other subdivision rules in this Plan.

The exercise of Council's discretion shall be limited to:

- (a) the identification of building platforms to manage potential landscape effects;
- (b) the need for a landscape plan to manage potential landscape effects; and
- (c) the location of roads and earthworks to manage potential landscape effects.

(d) the degree to which the subdivision plan is in accordance with the Comprehensive Development Plan.