

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
REMARKABLES PARK LIMITED AND
QUEENSTOWN PARK LIMITED

**SUBMISSIONS OF COUNSEL FOR REMARKABLES PARK LIMITED AND
QUEENSTOWN PARK LIMITED**

STAGE 2, HEARING STREAM 15

Dated: 17 September 2018

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MAY IT PLEASE THE PANEL:**1. INTRODUCTION**

- 1.1 Queenstown Park Limited (**QPL**) and Remarkables Park Limited (**RPL**) have made submissions and further submissions on Stage 2 of the Queenstown Lakes Proposed District Plan (**PDP**).¹
- 1.2 The relief sought by QPL/RPL in its submissions is summarised in **Annexure A**. The final column records the submission points that QPL/RPL understand have been accepted by experts on behalf of the Queenstown Lakes District Council (**QLDC**) and the submission points that remain outstanding.²
- 1.3 These legal submissions focus on the key issues that remain unresolved. Those issues are:
- a. Chapter 25 Earthworks:
 - i. Use of the words “manage” and “protect” in Objectives 25.2.1 and 25.2.2 and related policies; and
 - ii. The limitations on the exemption for earthworks related to fencing in Rule 25.3.4.5.
 - b. Chapter 29 Transport:
 - i. The Minimum Parking Requirements for visitor accommodation; and
 - ii. The definition of ‘Public Water Services Ferry’.
 - c. Chapter 38 Open Space and Recreation:
 - i. The zoning of the Lower Shotover Delta area.
- 1.4 Before addressing these issues directly, these submissions:
- a. Summarise the legal framework for the district plan review;
 - b. Briefly address the law on scope; and
 - c. Summarise the planning evidence of Tim Williams on behalf of QPL/RPL.

¹ Submission numbers 2462, 2755, 2468 and 2754.

² As shown in the QLDC’s latest recommended provisions: Appendix 1 to the rebuttal evidence of Jerome Wyeth (for Chapter 25 Earthworks); Appendix 1 (Corrected) to rebuttal evidence of Victoria Jones for Chapter 29 Transport);

2. LEGAL FRAMEWORK

2.1 Counsel for the QLDC described the legal framework against which the Panel must evaluate the district plan review and submissions on it. Those general submissions are accepted, in particular counsel for the QLDC's reference to the mandatory requirements for the preparation of district plans described in **Colonial Vineyard Ltd v Marlborough District Council**³ and amended by the Resource Management Amendment Act 2013 and the Resource Legislation Amendment Act 2017.⁴

2.2 A concise summary of those requirements was set out in **A & A King Family Trust v Hamilton City Council**:⁵

“[9] The legal framework for plan reviews is set out in sections 31, 32 and 72-76 of the RMA. The matters that need to be addressed were comprehensively set out by the Court in *Colonial Vineyard Ltd v Marlborough DC* and *Reiher v Tauranga City Council* as follows:

[10] In examining a provision under the Act, including Section 32, we must consider:

- (a) Whether it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act;
- (b) Whether it is in accordance with Part 2 of the Act;
- (c) If a rule, whether it achieves the objectives and implements the policies of the plan; and
- (d) Whether having regard to efficiency and effectiveness, the provisions are the most appropriate way to achieve the objectives of the proposed plan, having regard to the benefits, the costs and the risks of not acting.

[11] In doing so the Court must take into account the actual and potential effects that are being addressed to consider the most appropriate provisions, if any, to respond to this.

[10] As well, s 74 of the RMA requires a territorial authority to prepare and change its district plan in accordance with its functions under s 31 (among other things). These functions include the establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district.”

2.3 The Court in **A & A King Family Trust** also commented in relation to section 32 of the Act:

“[12] The test under s 32 has been considered in many decisions of the Environment Court, including *Gisborne District Council v Eldamos Investments Limited*, *Long Bay-Okura Great Park Society Incorporated v North Shore City Council*, *Colonial Vineyard Limited v Reiher* referred to above to name a few. As well, the High Court considered it in *Shotover Park Limited and Remarkables Park Limited v Queenstown Lakes District Council*. In *Shotover Park Limited*, the term *most appropriate* was applied as follows:

[57] The RMA objective is "the most appropriate way" to achieve the purposes of this Act. See above, ss 32(2)(a) and (b). The phrase "the most appropriate" acknowledges

³ **Colonial Vineyard Ltd v Marlborough District Council** [2014] NZEnvC 55.

⁴ Opening Representations / Legal Submissions for Queenstown Lakes District Council, Stream 15, 31 August 2018, at Appendix 1.

⁵ **A & A King Family Trust v Hamilton City Council** [2016] NZEnvC 229.

that there can be more than one appropriate way to achieve the purpose of the Act. The task of the territorial authority is to select the most appropriate way, the one it considers to be the best.”

Scope

- 2.4 The starting point for the test on scope is **Countdown Properties (Northlands) Ltd v Dunedin Council**⁶ where it was held that an amendment to a plan should not go beyond what was “*reasonably and fairly raised in submissions on the plan change*”, and that scope “*will usually be a question of degree to be judged by the terms of the proposed change and of the content of the submissions.*”⁷
- 2.5 This approach was accepted and applied in **Royal Forest and Bird Protection Society Inc v Southland District Council** where the High Court found:⁸

“... it is important that the assessment of whether any amendment was reasonably and fairly raised in the course of the submissions should be approached in a realistic workable fashion rather than from the perspective of legal nicety.”

3. EVIDENCE

- 3.1 The Planning evidence of Mr Williams on behalf of QPL/RPL⁹ recommends amendments to the PDP, as listed below. Some of these amendments have been accepted by experts for the QLDC and are recorded as such.

Chapter 25 Earthworks

- a. Amend Objective 25.2.1 as follows:

Earthworks are undertaken in a manner that ~~minimises~~ manages adverse effects on the environment, ~~protects~~ people and communities, and maintains landscape and visual amenity values.

- b. Amend Policy 25.2.1.2 as follows:

Manage the adverse effects of earthworks to ~~avoid inappropriate adverse effects and minimise other adverse effects to:~~

- c. Amend Policy 25.2.1.2b) and g) as follows:

b. Maintain ~~and enhance~~ the amenity values of Rural Landscapes.

...

⁶ **Countdown Properties (Northlands) Ltd v Dunedin Council** [1994] NZRMA 145.

⁷ Ibid, p166.

⁸ **Royal Forest and Bird Protection Society Inc v Southland District Council** [1997] NZRMA 408 (HC), p10.

⁹ Statement of Evidence of Timothy Williams on behalf of RPL and QPL (Planning), Hearing Stream 15, 6 August 2018.

g. Maintain ~~and enhance~~ public access to and along lakes and rivers.

[Also recommended by the QLDC¹⁰]

- d. Amend Rule 25.2.4.5 to relax the exception applied for the construction of fences. Earthworks for fencing work should be exempt to a maximum cut of 2 metres in length not exceeding an average of 1 metre along the length of the fence line. The maximum width restriction should be deleted. As an alternative, apply a Controlled Activity regime for fencing exceeding the exemption thresholds.
- e. Amend Assessment Matter 25.8.2d. as follows:

Whether the proposal is supported by an erosion and sediment management design. Where applicable due to matters associated with the scale, area, duration of the works or the sensitivity of receiving environment ~~Whether the proposal is supported with erosion and sediment management design by a suitably qualified person.~~ in particular where resource consent is required for non-compliance with Rule 25.5.11 this design is prepared by a suitably qualified person.

[Also recommended by the QLDC¹¹]

Chapter 29 Transport

- f. Amend Policy 29.2.2.4 as follows:

Enable some of the parking required for residential, commercial and visitor accommodation activities to be provided off-site provided it is located in close proximity to the activity and is secured through legal agreements.

[Also recommended by the QLDC¹²]

- g. Amend Policy 29.2.2.5 by adding an additional criterion e) as follows:
- e. there will be positive design outcomes and/or opportunity for landscaping onsite or the reduction will assist in achieving anticipated higher densities within the zone
- h. Reduce the Minimum Parking Requirements for guest room type accommodation to a flat ratio of 1 car park per 5 guest rooms.

¹⁰ Rebuttal Evidence of Jerome Wyeth on behalf of QLDC, Chapter 25 Earthworks, 22 August 2018, para 6.9.

¹¹ Ibid, Appendix 1 Recommended Revised Chapter 25.

¹² Rebuttal Evidence of Victoria Jones on behalf of QLDC, Chapter 29: Transport, 22 August 2018, para 13.2.

- i. Reduce the bus-parking requirements to require bus parking only after the first 30 units.

[Also recommended by the QLDC¹³]

- j. Control on-street parking requirements through the District Plan, rather than the QLDC Code of Practice (**COP**).
- k. Amend the definition of Public Water Ferry Service to remove the explicit exclusion of ferry services “operated for the sole or primary purpose of tourism.”

Chapter 38 Open Space and Recreation

- l. Rezone the area in the Lower Shotover Delta from Informal Recreation to Active Sport and Recreation.

4. OUTSTANDING ISSUES: CHAPTER 25 EARTHWORKS

Objective 25.2.1 and Related Policies

- 4.1 QPL/RPL consider that an objective to “*manage*” the adverse effects of earthworks on the environment is more appropriate than an objective to “*minimise*” adverse effects.
- 4.2 Mr Williams’ opinion is that the words ‘minimise’ and ‘protect’ unduly restrict the opportunity for plan users to mitigate or remediate adverse effects arising from earthworks. Jerome Wyeth, in evidence for the QLDC, infers that the QLDC’s intention with Objective 25.2.1 is to ensure that adverse effects are reduced to the smallest extent practicable through remediation or mitigation.¹⁴
- 4.3 It is submitted that this outcome will not be achieved through the QLDC’s proposed wording of Objective 25.2.1. The requirement to *minimise* adverse effects, in our submission, creates uncertainty for plan users in that it requires a reduction of an adverse effect to an *indeterminable* level. A minor adverse effect may still be able to be minimised further. This approach may result in an outcome where the consent pathway for any earthworks is uncertain and likely to be subject to challenge from a council officer. This provides, in our opinion, a quasi-avoidance regime.

¹³ Section 42A Report of Victoria Jones on behalf of QLDC, Chapter 29 Transport, 23 July 2018, para 12.30(a).

¹⁴ Rebuttal evidence of Jerome Wyeth on behalf of Queenstown Lakes District Council, Chapter 25 Earthworks, 22 August 2018, para 6.3.

- 4.4 The concept of management, on the other hand, lies at the heart of the RMA and involves weighing often conflicting considerations to determine, overall, an appropriate outcome. When considering earthworks required for a proposed activity, an assessment of risk is required based on factors such as weather conditions, the extent of the proposed work and the remediation or mitigation offered. The concept of management is, in QPL/RPL's submission, more appropriate.

Exception Applied for the Construction of Fences

- 4.5 QPL/RPL support the QLDC's intention to provide an exception for earthworks associated with fencing in Rule 25.3.4.5. However, in order to create the genuine ability for new fences to be constructed through the exception, QPL/RPL consider that the restriction placed on the exception needs to be relaxed. Mr Williams explains in his evidence why the restriction currently proposed makes the exception, in effect, unusable:¹⁵

“In my experience, achieving a cut no higher than 1m in association with the formation of a fence line on all but reasonably flat terrain is difficult if not impossible. Similarly, not exceeding a 1m width is just as difficult. Taking into account the majority of operational farms in QLDC occupy sloping country in particular high country farms these restrictions become particularly unworkable and, in reality, there is no practicable or useable exception for tracs and fencing. As such, the rule does not implement objective 25.2.2.2 of policy d)...”

- 4.6 Mr Williams goes on to explain the benefits of providing greater flexibility in cut length and width, in that it provides the ability to modify the cut batter angle to provide a batter slope that can be revegetated and allowing scarring on a landscape to be mitigated. Mr Williams also explains that the width of a cut is less critical to the visibility of any earthworks, and considers that there should be no limit on width for these kinds of earthworks.¹⁶
- 4.7 As an alternative, QPL/RPL consider that a Controlled Activity regime for fencing that exceeds the restrictions would better reflect the QLDC's intended policy outcomes of recognising the importance of fencing to the continued operation of farming in the district.¹⁷

¹⁵ Statement of Evidence of Timothy Williams on behalf of RPL and QPL, Hearing Stream 15, 6 August 2018, para 5.10.

¹⁶ Statement of Evidence of T Williams, paras 5.11-5.15.

¹⁷ Statement of Evidence of T Williams, para 5.16

5. OUTSTANDING ISSUES: CHAPTER 29 TRANSPORT

Amendments to Policies

- 5.1 QPL/RPL agree with Vicki Jones on behalf of the QLDC that Ngai Tahu's submission provides scope to amend Policy 29.2.2.4 to also allow commercial activities to meet some of their parking requirements through off site parking.¹⁸
- 5.2 Ms Jones queries whether there is scope to amend Policy 29.2.2.5 by adding an additional criterion e) to enable a reduction in the minimum number of car parking spaces required where:
- e. there will be positive design outcomes and/or opportunity for landscaping onsite or the reduction will assist in achieving anticipated higher densities within the zone
- 5.3 The following submission points are considered to "reasonably and fairly" raise this relief, when taking a workable and practical approach to scope:
- a. Submission 2297.6: Requirement for assessment matters to support consideration of a shortfall in parking;
 - b. Submission 2014.1: That the minimum vehicle parking requirements be reduced or removed completely and replaced with other types of incentives;
 - c. Submission 2465.6: Inclusion of "the benefits of the proposal" in all restricted discretionary assessment matters in Chapter 29;
 - d. Submission 2336.15: Amend Policy 29.2.2.5(c) so that the location of a development is taken into consideration; and
 - e. A number of submissions seek greater flexibility in the operation of Policy 29.2.2.5, including through deleting the word "only" so that more activities are able to utilise reduced parking requirements.¹⁹
- 5.4 When looking at these submissions together, it is submitted that members of the public were clearly put on notice that further exceptions to the minimum parking requirements were a possible outcome from the PDP process.

¹⁸ Rebuttal Evidence of Victoria Jones on behalf of QLDC, Chapter 29: Transport, 22 August 2018, para 13.2. Refer Ngai Tahu submission 2336.21.

¹⁹ 2448.13, 2465.10, 2466.44, 2467.5, 2492.38, 2494.42, 2518.4, 2560/11, 2581.44, 2590.7 and 2601.7.

- 5.5 Should the Panel consider that there is insufficient scope for the amendment, QPL/RPL seek, in the alternative, that ‘the benefits of the proposal’ be included as criterion e).

Minimum Parking Requirements for Guest Room Type Accommodation

- 5.6 QLDC’s experts agree with Mr Williams that a reduction in minimum parking requirements for guest room type accommodation is appropriate in the High Density Residential, Medium Density Residential and Business Mixed Use zones. The experts consider, however, that there is a lack of data to support a reduction of minimum parking requirements district-wide, or that they should be reduced to a blanket 1 park per 5 units as proposed by QPL/RPL.²⁰
- 5.7 Mr Williams considers that a reduction in the availability of parking will influence visitor behaviour and decisions on whether to hire a car or use public transport. It is submitted that a reduction in minimum parking requirements may contribute positively to a reduction in traffic congestion in the district. In addition, Mr Williams considers that reduced parking requirements results in positive design outcomes, particularly for higher density development.

Definition of ‘Public Water Ferry Service’

- 5.8 The QLDC oppose RPL/QPL’s request to delete the exclusion of ferry services that are “*operated for the sole or primary purpose of tourism*” from the definition of ‘Public Water Ferry Service.’²¹
- 5.9 QPL/RPL agree that there is merit in prioritising boating activity that contributes to the district’s public transport network and may reduce traffic congestion over boating activity that does not provide such a function. However, ferry services should be assessed on the way they operate, rather than who they operate for. For example, a ferry service that operates between key transit areas and on a regular schedule will contribute to the public transport network regardless of whether that service is offered primarily for tourists, or for resident commuters.
- 5.10 In my submission, the PDP’s objectives are best achieved by targeting the definition towards the features of a water ferry service that are sought to be incentivised, rather than by attempting to exclude particular kinds of ferry service users.

²⁰ Rebuttal Evidence of V Jones, para 13.3. Rebuttal Evidence of Michael Smith on behalf of QLDC, Transport, 22 August 2018, paras 6.1-6.5.

²¹ Section 42A Report of Victoria Jones on behalf of QLDC, 23 July 2018, paras 11.22-11.27.

5.11 QPL/RPL suggest the following wording for the definition of 'Public Water Ferry Service':

Means a ferry service for the carriage of passengers for hire or reward, that:

- is available to the public generally; and
- is operated to a regular schedule (with reasonable seasonal variation permitted); and
- is not contracted or funded by the Ministry of Education for the sole or primary purpose of transporting school children to and from school.

The definition is limited to that part of the ferry service that occurs on the surface of the water and excludes any associated activity that occurs on land or on a structure attached to land, including the lake bed.

6. OUTSTANDING ISSUES: CHAPTER 38 OPEN SPACE AND RECREATION

6.1 QPL/RPL's submissions seek that the Lower Shotover Delta Area be zoned Active Sport and Recreation. The notified zoning of the area is Informal Recreation.

6.2 The Active Sports and Recreation Zone applies to larger parks and reserves primarily used for organised sport or events, and that are "easily accessible."²²

6.3 Mr Williams' evidence explains his view that, while the site is currently operating as a fill site, it provides significant opportunity for sports fields or similar activities in the future. Most particularly, because:

- a. Following completion of the fill operation, it will be a large flat area providing flexibility for a number of sports fields or other recreation uses;
- b. It is sheltered from prevailing winds;
- c. It has relatively high amenity values; and
- d. It is becoming well connected to the urban environment.

Dated the 17th day of September 2018



R S Ward
Counsel for Queenstown Park Limited and Remarkables Park Limited

ANNEXURE A
RELIEF SOUGHT IN RPL/QPL SUBMISSIONS ON STAGE 2 OF PDP

PDP Provision	Description	QPL/RPL Submission point no.	Relief Sought	Outstanding / Agreed with QLDC
Chapter 25 Earthworks				
25.2.1	Objective – Earthworks are undertaken in a manner that minimises adverse effects on the environment and maintains landscape and visual amenity values.	2462.1, 2468.1 and 2468.2	Oppose the use of the word “minimise”	Outstanding
25.2.2	Objective – The social, cultural and economic well being of people and communities benefit from earthworks while being protected from adverse effects.	2462.3 and 2468.4	Delete the words “while being protected from adverse effects”.	Outstanding
25.2.2.1	Subject to Objective 25.2.1, enable earthworks that are necessary to provide for people and communities wellbeing, having particular regard to the importance of: a. – c.	2462.4 and 2468.5	Amend policy 25.2.2.1 to delete reference to the policy being “subject to objective 25.2.1”.	Agreed
25.4 (Table 25.1)	Activity Status Earthworks Activities	2462.6	Amend rule 25.4 to enable improvement and formation/creation of track	Outstanding

			access as a permitted activity in all zones.	
25.3.4.5	Earthworks for the following shall be exempt from the rules in Tables 25.1 to 25.3: c. Fence posts.	246.21	Amend the exemption for fencing to provide for a percentage of cuts to exceed 1m within an upper limit of 2m and delete 1m width restriction.	Outstanding
25.8.2.d.	Assessment Matters: Where applicable due to matters associated with the scale, area, duration of the works or the sensitivity of receiving environment. Whether the proposal is supported with erosion and sediment management design by a suitably qualified person. In particular where resource consent is required for non-compliance with Rule 25.5.11.	2462.7	Oppose the requirement for an erosion and sediment management design plan prepared by a suitably qualified person for all earthworks requiring resource consent. Such a plan should only be required for bulk earthworks in excess of 50,000m ³ .	Agreed
25.5.11, and 25.5.15 to 25.5.22	Exemptions from Tables 25.1 to 25.3	2468.9	Seek that: a) Earthworks for the “improvement and formation/creation” of track access (rather than only “maintenance”) be a permitted activity via rule 25.3.4.5; b) Maintenance, improvement and creation of recreational trails be a permitted activity	Outstanding

			In the alternative, the above activities be provided for as controlled activities.	
Operative District Plan	"Bulk Earthworks".	2462.2 and 2468.3	Seek that "Bulk Earthworks" (as described in the Operative District Plan) be expressly provided for as a restricted discretionary activity.	Agreed in part
Chapter 25 Generally	Presently references to operational efficiency are limited to farming and Ski Area subzones.	2462.5	Seek that provision for operational efficiency of farming be extended to also refer to other activities (tourism, recreation, commercial, visitor accommodation).	Agreed in part
Chapter 29 Transport				
29.4.8	See Table 29.1 – Transport Related Activities outside a road.	2462.9 and 2468.13	Support provision 29.4.8 and seek that restricted discretionary assessment matters should refer to reliance on vehicles and roads.	Not pursued - sufficiently addressed in other criteria
29.8.3.1	Restricted Discretionary Activity - Park and Ride and public transport facilities. 29.8.3.1 Whether and to what extent the location and design of Park and Ride or any public transport facility: a. to e.	2462.10 and 2468.14	Seek that another point to be added to provision 29.8.3.1 as follows: '(f) reduces the demand on the roading network and provides an alternative to cars or other road based transport'.	Not pursued - sufficiently addressed in other criteria
29.9.15	Extract from Table 29.5 – Minimum Parking Requirements: ... In addition, where over 50 guest rooms are proposed over one or more sites; 1 coach park per 50 guest rooms, provided that coach parks may overlay the required car parking spaces	2468.11	1 coach park per 50 rooms is excessive, seek that an upper limit to parking should only apply if coach parking is provided.	Agreed

	or may be located off -site, provided that where located off -site in accordance with Rule 29.5.2, a loading area shall be provided on the site containing the visitor accommodation.			
29 Variation to Stage 1 PDP Chapter 2	See 29 Variation to Stage 1 PDP Chapter 2.	2462.11 and 2468.15	Reject the definition of "public water ferry service", seek the deletion of bullet point 3 excluding ferry services "operated for the sole or primary purpose of tourism".	Outstanding
Table 29.5	Minimum Parking Requirements	2468.27	Do not assist in achieving density, bulk and heights promoted in Stage 1. Seek modelling and analysis of the parking requirements in conjunction with the proposed bulk and location of visitor accommodation development be undertaken.	Outstanding
Chapter 38 Open Space and Recreation				
38.1	Table 38.1: Activities Open Space and Recreation Zones	2462.20	Oppose non-complying status of activities not listed in table 38.1 as per 38.9.1	Outstanding
38.2.1	Objective - The open space and recreation needs of the District's residents and visitors are met through the provision of a wide range of quality Open Space and Recreation Zones that provide for passive and active recreation activities.	2468.18	Support objective 38.2.1, it is unclear how chapter 38 is providing open spaces and recreation zones within urban areas.	
38.2.3	Objective – Commercial activities are limited to those that have a	2462.15 and 2468.20	Seek amendment to Objective 38.2.3 and its policies for clarification of the references 'do not degrade' and 'do not detract'.	Agreed

	functional requirement to locate within Open Space and Recreation Zones and do not degrade open space and recreation values. Policies 38.2.3.1 to 38.2.3.3.			
Chapter 38		Not allocated	Chapter 38 should identify how new parks and open spaces are to be provided for along with any requirements around the number of these reserves and their size.	Outstanding
Chapter 38		2462.14 and 2468.19	Oppose the protection of established activities that are contrary to the proposed framework. Consider some historic uses of reserves may not be appropriate.	Outstanding
Planning Maps		2662	Rezone Land in the Shotover delta (below and north-east of the RESA) Active Sport and Recreation zone	Outstanding
Planning Maps		2468.24	Rezone land at the southern end of Riverside Road on Map 31a Informal Recreation.	
Planning Map 30		2462.19 and 2468.25	Rezone Part Section 131 Block III Shotover Survey District Community Purposes Zone; include maximum building height of 15m and total ground floor area 1500m ² .	[Submission points struck out]