

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER OF of the Resource Management Act 1991

AND

IN THE MATTER OF the Proposed Queenstown Lakes District Plan
Chapter 20 Settlement Zone

STATEMENT OF EVIDENCE BY MEGAN JUSTICE
(SUBMITTER 3306 – KINGSTON VILLAGE LIMITED)
(FURTHER SUBMITTER 3435 – GREENVALE STATION LIMITED)

29 MAY 2020

1. INTRODUCTION

QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Megan Justice. I hold a Masters degree in Regional and Resource Planning from Otago University, obtained in 1999 and I am a full member of the New Zealand Planning Institute. I am a certified Resource Management Act decision maker. I am an Associate Consultant with the firm Mitchell Daysh Limited, which practices as a planning and environmental consultancy throughout New Zealand.
- 1.2 I have been engaged in the field of town and country planning and resource and environmental management for 19 years. My experience includes a mix of local authority, Government and consultancy resource management work. In recent years, this experience has retained a particular emphasis on providing consultancy advice with respect to District Plans, plan changes, designations, resource consents, environmental management and environmental effects assessments. This includes extensive experience with large-scale projects involving inputs from a multidisciplinary team, many of which are located within the Queenstown Lakes District.
- 1.3 An outline of projects in which I have provided resource management advice in recent times is included as **Appendix A**.
- 1.4 I confirm my obligations in terms of the Environment Court's Code of Conduct for Expert Witnesses contained in the Practice Note 2014. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I confirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 1.5 I have been engaged by Greenvale Station Limited ("**Greenvale**") to provide resource management planning advice with respect to submissions filed by Kingston Lifestyle Properties Limited in relation to the Settlement Zone provisions of the Proposed Queenstown Lakes District Plan, Stage 3 ("**Proposed Plan**").
- 1.6 I have also been engaged by Kingston Village Limited ("**KVL**") to provide resource management planning advice with respect to the provisions contained in Chapter 39, Stage 3 of the Proposed Plan, as well as the inclusion

of the Outstanding Natural Landscape (“**ONL**”) classification over the land currently zoned Kingston Village Special Zone (“**KVSZ**”).

- 1.7 I assisted with the preparation of KVL’s submission and Greenvale’s further submission on Stage 3 of the Proposed Plan.
- 1.8 I have combined my evidence for both Greenvale and KVL as both briefs of evidence relate to the Settlement Zone at Kingston. I have structured this evidence in two parts:
 - 1.8.1 Firstly, I provide resource management planning advice with respect to the further submission by Greenvale in relation to the Kingston Lifestyle Properties Limited submission on the Settlement Zoning and provisions; and
 - 1.8.2 Secondly, I provide resource management planning advice with respect to the submission by KVL in relation to the landscape classification over the KVSZ.

SCOPE OF EVIDENCE

- 1.9 By way of summary, in this statement of evidence I will, for each submitter for whom I am providing resource management planning advice:
 - 1.9.1 Provide a brief overview of the submissions that my evidence responds to;
 - 1.9.2 Provide a brief summary of the section 42A recommendations with respect to those submissions; and
 - 1.9.3 Provide an analysis of the submissions and section 42A recommendations and the extent to which in my view, they are appropriate in terms of section 32 of the Resource Management Act 1991 (“**RMA**” or “**the Act**”) and the overarching principles of the Act.
- 1.10 In preparing this brief of evidence, I can confirm that I am familiar with and have recently visited the sites to which the KVL and the Greenvale submissions relate and that I have read;
 - 1.10.1 The relevant submissions and further submissions relating to Chapter 20 Settlement Zone;

1.10.2 The section 42A reports prepared by Craig Barr, Rosalind Devlin and Amy Bowbyes (all dated 18 March 2020); and,

1.10.3 The Environment Court decision regarding Chapter 3 of the Proposed Plan.¹

2. GREENVALE FURTHER SUBMISSION ON KINGSTON LIFESTYLE PROPERTIES LIMITED SUBMISSION

2.1 Kingston Lifestyle Properties Limited filed a submission seeking the rezoning of land containing the Kingston Flyer Railway Corridor to Settlement Zone with a Commercial Precinct overlay. Within this area, the submission sought to broadly enable the recommencement of the historic Kingston Flyer railway and establish associated development including potential retail, restaurant and bar, residential and service apartments, visitor accommodation and hotel opportunities.

2.2 Greenvale a filed a further submission in broad opposition to the proposal by Kingston Lifestyle Properties Limited. In summary, the further submission expressed concerns regarding the following matters:

2.2.1 The original submission contained no assessment of effects that would accrue if the land was rezoned and the provisions updated accordingly. This includes the potential fire risk to Greenvale Station, whose land, I understand, has previously caught alite as a result of Kingston Flyer operations;

2.2.2 No section 32 evaluation had been provided which demonstrates that the proposed rezoning and extensive amendments to the zone provisions are the most appropriate for achieving the purpose of the Act;

2.2.3 The land sought to be rezoned was not entirely “on the plan” as it extended beyond the extent of the notified plan; and,

2.2.4 The relief does not demonstrate that the outcomes will be consistent with the purpose of the RMA.

¹ Decision of the Environment Court [2020] NZEnvC 40.

- 2.3 The section 42A report recommends that, with respect to Kingston Lifestyle Properties Limited rezoning request:
- 2.3.1 the area of land previously zoned Township within the Operative District Plan be rezoned Settlement Zone as part of the Proposed Plan;²
 - 2.3.2 the area of Crown Land be retained as Rural Zone;³
 - 2.3.3 the Commercial Precinct overlay be applied to the existing areas of existing commercial activity;⁴ and,
 - 2.3.4 the requested zoning of the rail corridor land be rejected.⁵
- 2.4 With respect to the site specific provisions sought for the Settlement Zone Commercial Precinct at Kingston, the section 42A report recommends that the provisions be rejected and considers that a consenting pathway is available for future activities within the Settlement Zone within the introduction of the proposed provisions.⁶
- 2.5 The Kingston Lifestyle Properties Ltd submissions seeks wide ranging changes to the notified Settlement zoning and the imposition of the Commercial Overlay over land associated with the Kingston Flyer steam train operation. The submission also seeks changes to the Settlement Zone provisions to better provide for the commercial operation of the Kingston Flyer steam train, as well as other commercial and visitor accommodation endeavors. In my view, there is likely to be some merit in the relief sought by Kingston Lifestyle Properties Ltd in relation to the development of the land in proximity to the existing railway station and lakeshore areas.
- 2.6 However, as noted in the Greenvale further submission, there has been no evaluation of the potential environmental, social, cultural or economic effects arising as a result of the proposal, nor an evaluation of the respective costs or benefits. Despite the recommendations made within the section 42A report to rezone parts of the submitters site in accordance with the relief sought, there was no accompanying section 32 and section 32AA evaluation. In the absence

² Section 42A report prepared by Rosalind Devlin, dated 18 March 2020, paragraph 34.5.

³ Section 42A report prepared by Rosalind Devlin, dated 18 March 2020, paragraph 34.6.

⁴ Section 42A report prepared by Rosalind Devlin, dated 18 March 2020, paragraph 34.15.

⁵ Section 42A report prepared by Rosalind Devlin, dated 18 March 2020, paragraph 34.16.

⁶ Section 42A report prepared by Amy Bowbyes, dated 18 March 2020, paragraph 11.9.

of a detailed section 32 and section 32AA evaluation from the submitter or the Council Officer, it would be premature to support the submitter's proposal.

2.7 In my view, the risks of acting under section 32(2)(c) of the RMA are potentially significant given that insufficient information is available regarding the effects of the proposed rezoning and whether or not the associated provisions are the most appropriate in terms of section 32(1)(a) and (b) of the Act. In particular, the relief sought by Kingston Lifestyle Properties Ltd via proposed Rule 20.4.5 would enable the Kingston Flyer activity to operate as a permitted activity, without the need to comply with any of the Settlement Zone standards or other District Wide rules or standards. As you will hear from Mr Wilkins, this activity has resulted in fires within his property. Other potential effects that require consideration include noise, nuisance and safety effects, as well as the positive effects of the activity. Consideration of the environmental effects associated with the operation of the train in this location is required in order to determine whether or not the relief sought is the most appropriate way to achieve the purpose of the Act. This has not been provided in the Kingston Lifestyle Properties Limited submission.

2.8 Accordingly, I consider that the submitters relief and the recommendations of the section 42A report which enables the rezoning of the submitters land to Settlement Zone be rejected.

3. CONCLUSION

3.1 The section 42A report has recommended accepting in part, the submissions seeking to rezone the Kingston Lifestyle Properties Limited land. The associated amendments proposed to the Settlement Zone provisions are not recommended to be accepted.

3.2 Based on my review of the submissions and section 42A report, there has been no section 32 evaluation undertaken by the submitter nor has an associated s32AA evaluation been undertaken by the Council Officer that supports the proposed rezoning of the submitters land. In my view, it would be inappropriate to accept the proposed rezoning in the absence of any information that clearly identifies the potential costs and benefits of the proposal, particularly with regard to environmental, social, cultural and economic effects. Accordingly, in my view the submission seeking the rezoning of the Kingston Lifestyle Properties Limited site and the changes to the provisions of the Settlement Zone should be rejected.

4. KVL SUBMISSION - PLANNING MAPS - LANDSCAPE CLASSIFICATION

- 4.1 KVL lodged a submission on the maps notified as part of Stage 3 of the Proposed Plan. This submission sought the relocation of the ONL boundary line to exclude the KVSZ land. An excerpt from the Proposed Plan Stage 3 planning map showing the notified ONL boundary is attached in **Appendix B**, along with an excerpt from Planning Map 39b of the Operative District Plan, which depicts the KVSZ.
- 4.2 The KVSZ is not part of the Proposed Plan. As identified in the relevant section 42A Strategic Overview report⁷, the KVSZ forms part of Volume B of the overall Operative District Plan and is therefore “unreviewed”. I understand that the KVSZ will be reviewed as part of Stage 4 of the Proposed Plan.
- 4.3 The KVSZ contained in Volume B of the Operative District Plan enables medium to high density residential development in accordance with a Structure Plan. In terms of landscape classification, the KVSZ is not classified as an ONL, Outstanding Natural Feature or a Rural Amenity Landscape. This is appropriate in my view given the intensity of development enabled in the zone.
- 4.4 Stage 3 of the Proposed Plan (as notified) includes a new ONL boundary that carves out the Settlement Zone at Kingston. The proposed new ONL encompasses the yet to be reviewed KVSZ. KVL’s submission sought that this ONL boundary line be relocated to exclude the KVSZ land from the ONL classification.
- 4.5 The section 42A report relating to the Settlement Zones recommends that this submission be rejected and considers that the location of the ONL boundary in relation to the KVSZ is best addressed when KVSZ is reviewed as part of Stage 4 of the Proposed Plan review.⁸ The section 42A report goes on to state that the KVL submission did not provide a landscape assessment as part of the submission.⁹
- 4.6 I have three concerns with this approach. Firstly, there is no need to re-visit the landscape values inherent at the KVSZ. Landscape matters were

⁷ Section 42A report prepared by Craig Barr, dated 18 March 2020, paragraph 3.8.

⁸ Section 42A report prepared by Rosalind Devlin, dated 18 March 2020, paragraph 33.4.

⁹ Section 42A report prepared by Rosalind Devlin, dated 18 March 2020, paragraph 33.5.

comprehensively considered at the time the KVSZ was promulgated. The landscape assessment carried out for the rezoning did not classify the KVSZ land as ONL. This report considered that the vast mountain slopes and Lake Wakatipu are dramatic, natural, remarkable and memorable on a district wide basis, as well as a national basis. This report concluded that the valley that contains Kingston township is flanked to the north, west and east by overwhelmingly natural landscapes, that the author considered to be ONLs. The valley floor, that contains Kingston township, and now the KVSZ, was considered by the report author to be a visual amenity landscape, and the rezoning of the land to the KVSZ was supported. The outcome of these deliberations was that the KVSZ land was suitable for development, and the KVSZ was confirmed. This zoning remains operative to date.

- 4.7 In light of the above, there is no reason for providing a further landscape assessment for the KVSZ land. I note that the section 32 evaluation for the Settlement Zone at Kingston did not include any new landscape evaluation.
- 4.8 Secondly, the classification of the KVSZ land as an ONL will impose additional hurdles for the development of the KVSZ in accordance with the Operative District Plan zoning. Development of the zone is underway with resource consents for the first stage of the subdivision, comprising 217 lots currently being processed by the Council. Further stages of subdivision development will follow. With the Proposed Plan containing an ONL over the site, consideration of the landscape provisions contained in Chapter 6 of the Proposed Plan will now be necessary for each stage of the subdivision. This is inefficient and ineffective as the landscape matters were addressed at the time the site was rezoned and the subdivisions enable activities that are generally permitted by the KVSZ.
- 4.9 Finally, the suggestion that the landscape values of the site should be re-litigated at the time the KVSZ is reviewed and incorporated into the Proposed Plan is concerning. The KVSZ is zoned to enable medium to high density residential development. As with other existing urban zones that have been reviewed, when KVSZ is reviewed and incorporated into the Proposed Plan, I would expect some fine tuning of the provisions to ensure consistency with the revised drafting style of the Proposed Plan. I would not expect a wholesale re-consideration of the merits of the KVSZ in this location and of the classification of the area as an ONL.

- 4.10 In addition, the question of whether or not the Proposed Plan landscape classifications and associated provisions apply to land that has not yet been reviewed in the Proposed Plan process (which is referred to as Volume B of the District Plan) has evolved through the course of the Proposed Plan review. When Stage 1 of the Proposed Plan was notified, it was my understanding that the Proposed Plan provisions only applied to the land that had been reviewed via the Proposed Plan process. For land that was not reviewed, such as the KVSZ, only the Operative District Plan was relevant, and no provisions or definitions in the PDP applied to this land.
- 4.11 This has now changed. As described in the Environment Court's decision issued in April 2020¹⁰, and the Council's response to this decision¹¹, the unreviewed zones, such as the KVSZ, are in fact subject to Proposed Plan Chapter 6: Landscapes. Specific cross references are to be included in the Proposed Plan to ensure plan users refer to the relevant Proposed Plan chapters. These cross references, while, at the time of writing is still subject to the Court's decision, make it clear that the Proposed Plan Landscape provisions will apply to unreviewed land in Volume B of the District Plan, such as the KVSZ.
- 4.12 The staged Proposed Plan review process has resulted in a highly complicated planning framework for the Queenstown District. Imposing the ONL classification over the KVSZ has added to this complexity, and removing this landscape classification, which for the reasons I have discussed above is not justified in my view, will remove one layer of complexity.
- 4.13 In my view, the proposed ONL classification over KVSZ lacks the requisite evaluations under section 32. In the absence of any evidential basis for the proposed ONL classification or associated section 32 evaluation, in my view it is inappropriate to retain the ONL classification over the KVSZ as part of Stage 3.

5. CONCLUSION

- 5.1 The section 42A report has recommended that KVL's submission seeking the ONL boundary line be relocated to exclude the KVSZ be rejected, noting that

¹⁰ Decision of the Environment Court [2020] NZRnvc 40, ENV-2018-CHC-150.

¹¹ Memorandum of Counsel for Queenstown Lakes District Council Addressing Explanatory Text in the District Plan Topic 1: A Resilient Economy, dated 8 May 2020, paragraph 9.

this matter could be addressed at the time the KVSZ is reviewed as part of the Proposed Plan.

- 5.2 With respect to the section 42A report's recommendation, I find no justification for imposing the ONL over the KVSZ land. This land is not classified as ONL in the Operative District Plan and no landscape evaluation has been carried out to support the imposition of the ONL over the KVSZ land as part of Stage 3 of the Proposed Plan.
- 5.3 While this ONL could be addressed at the time the KVSZ is reviewed, I find no reason why such a review of landscape values would be required as part of that process. The landscape values assessment was undertaken at the time the KVSZ was promulgated. Imposing the ONL over the land now, with no justification, then requiring the re-consideration of this unjustified ONL boundary at the time the KVSZ is reviewed is illogical. It appears that the location of the line around Settlement Zone at Kingston is an error and now is the appropriate time to correct this.

Megan Justice

29 May 2020

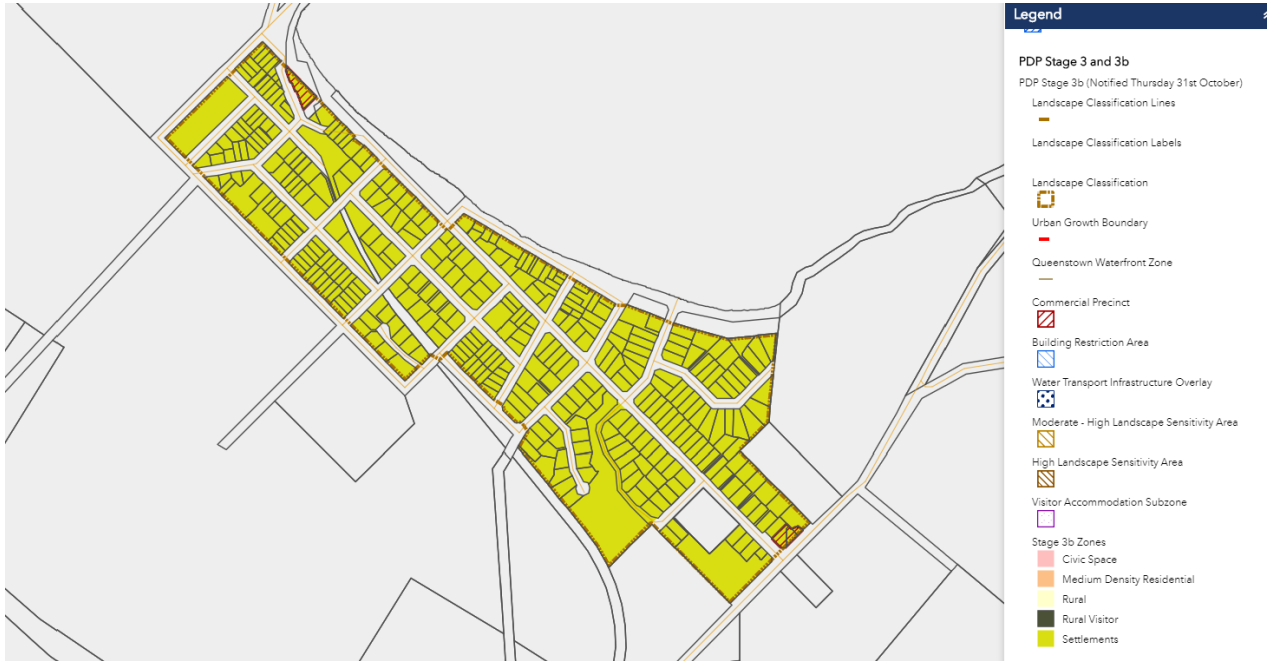
APPENDIX A

SUMMARY OF RECENT PROJECT EXPERIENCE

- Queenstown Lakes District Council –preparation of Plan Change 50 s32 evaluation to rezone land in central Queenstown in the Queenstown Lakes District Plan
- Port Marlborough New Zealand Limited – submissions and further submissions and evidence, and preparation of planning provisions on the Proposed Marlborough Environment Plan
- Port Marlborough New Zealand - preparation of resource consent application for extension to Waikawa Marina
- Queenstown Lakes District Council – preparing subdivision applications for Lakeview site, central Queenstown
- Kingston Village Limited - preparing subdivision and landuse application for 217 lot subdivision at Kingston
- Otago Regional Council – preparation of a Notice of Requirement to designate the site for the Central City Bus Hub
- Ryman Healthcare Limited – preparing submissions planning provisions specific to retirement villages, and evidence for the Proposed Christchurch Replacement District Plan process
- HW Richardson Group – preparing evidence on the Proposed Invercargill District Plan
- Ryman Healthcare Limited – involved with preparing planning provisions specific to retirement villages for the Auckland Unitary Plan and preparing evidence on the Auckland Unitary Plan
- Ryman Healthcare Limited – obtain land use and regional level resource consents for the Howick Retirement Village, Auckland City
- Ryman Healthcare Limited – obtain subdivision, land use and regional level resource consents for the Rangiora Retirement Village, Rangiora
- PowerNet Limited – preparing submissions, further submissions and Notices of Requirement for numerous Designations in Dunedin City District, Invercargill District and Clutha District, and attendance at the relevant Council hearings
- Otago Regional Council – submissions, further submissions and notices of requirement for the Dunedin City Council Proposed Plan, and attendance at the relevant Council hearings
- Queenstown Lakes District Council – contracted to process resource consent applications

APPENDIX B

PLAN DEPICITING THE ONL BOUNDARY LINE AS NOTIFIED IN THE PDP STAGE 3 PLANNING MAPS



PLAN DEPICTING THE KINGSTON VILLAGE SPECIAL ZONE FROM THE
ODP MAP 39b



 Kingston Village Special Zone