

**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

---

**LEGAL SUBMISSIONS FOR:**

DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch  
(#503)  
Friends of Wakatipu Gardens and Reserves  
(#506)

Hearing Stream 1 (Chapter 3- Strategic Direction, chapter 4- Urban  
Development, Chapter 6- Landscapes)  
22March 2016

---

**ANDERSON LLOYD**  
LAWYERS  
QUEENSTOWN

Solicitor: M A Baker-Galloway/ R E Hill  
(maree.baker-  
galloway@andersonlloyd.co.nz/  
rosie.hill@andersonlloyd.co.nz)

---

Level 2  
13 Camp Street  
PO Box 201  
QUEENSTOWN 9348  
DX ZP95010  
Tel 03 450 0700  
Fax 03 450 0799

## 1. Introduction

1.1 This submission addresses district wide provisions of the Proposed District Plan ("**PDP**") and compliments the relief sought by the following entities:

(a) DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch (#503)

(b) Friends of Wakatipu Gardens and Reserves (#506)

1.2 These legal submissions are presented on the basis that scope is determined by the full range of Submissions lodged to the DPR, not each individual Submission; *Simons Hill Station Ltd v Royal Forest & Bird Protection Society of New Zealand Inc*<sup>1</sup>.

1.3 The Panel is entitled to consider optimum solutions and changes to the PDP to address issues raised by all submitters, within the scope established by the PDP as notified, and all the submissions. Each submitter may present solutions within these very wide parameters. Judge Harland in *The Church of Jesus Christ of Latter Day Saints Trust Board v Hamilton City Council* [2015] NZEnvC 160 confirmed;

*"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. Background

2.1 The submitters' key themes and issues in relation to the higher order chapters of the PDP, in particular chapters 3 and 4 are:

(a) The block bounded by the Hobart and Park Streets has important heritage values and special character;

(b) The block plays an important role, being adjacent to the Wakatipu Gardens, and in close proximity to the CBD is very popular with visitors;

---

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

- (c) The important values of the area in question should be better protected both at the strategic level, by acknowledgement generally of the worth of those values, and at the operational level, by providing residential provisions that give appropriate weight to protection of those values and character.
- 2.2 Friends of Wakatipu Gardens and Reserves ("**FOGR**") is the pre-eminent community representative group which acts as a voice for the Wakatipu gardens and reserves areas. FOGR has been actively involved in the recognition and preservation of the special character of the gardens and reserves in the past, including substantial involvement in the Queenstown Bay Reserve Management Plan Review (2015).
- 2.3 DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch are residents of the area, and have similar interests to FOGR. They wish to see the area protected for its current values, and consider that the densification provisions in particular would undermine that character in a manner that fails to achieve the purpose of the Act. They are also concerned more generally that the plans for densification are not accompanied by an assessment of the traffic and other infrastructure demands that will arise, and this will also have flow on adverse effects to the Park Street area (particularly in terms of parking).
- 2.4 The submissions on the PDP to be presented at future hearings therefore will be seeking to introduce a special character overlay or heritage precinct area within the land adjacent to the Wakatipu Gardens and within the two blocks bounded by Hobart and Park Streets. That area exhibits high quality heritage and special character qualities which provides an important entrance to the Gardens and CBD for visitors and residents.
- 2.5 The intent of that relief is to ensure that the Wakatipu Gardens and its surrounds are appropriately recognised and protected for their community and historical worth, and for the benefit of future generations.
- 2.6 At the very least, the submitters will be seeking that the densification provisions do not apply to this area, and that instead the status quo remain.

- 2.7 These matters of detail will be addressed at the hearing in August, and are provided by way of background. In respect of this hearing, the issue is the relevant and consequential relief at the strategic level, flowing from the above specific concerns.

### 3. Policy and planning framework

- 3.1 Chapter 3 is a higher order chapter to the remaining chapters of the PDP. The submitters support this role as a strong strategic direction chapter is considered to facilitate good planning outcomes should there be issues of inconsistency or interpretation of lower order planning provisions in the future; (*Powell v Dunedin City Council* [2005] NZRMA 174).
- 3.2 To achieve the full potential of this chapter it should be ensured that it adequately addresses all of the District's resource management and planning issues which are currently being faced, and which could be contemplated within the next 'two generations of growth' (*Christchurch Regional Council v Christchurch City Council* EnvC Christchurch C217/2001, 6 December 2001 at 18).
- 3.3 A number of provisions of Chapter 3 currently seek maintain and protect the management of landscapes and rural areas of the District. Whilst some provisions do anticipate the protection of built environment and character of urban areas<sup>2</sup>, those are not necessarily balanced and do not take into account the specific nature of some of those areas in the way that has been done for the natural environment.
- 3.4 It is acknowledged that the natural environment of the District is generally outstanding and this contributes significantly to the identity and economy of the District. However the built environment is particularly unique and special in areas as well, and is equally recognised under Part 2 of the Act, in particular;

*Section 5(2)(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

*Section 7(c) the maintenance and enhancement of amenity values*

---

<sup>2</sup> Referring to policy suite 3.2.3

**Section 7(f)** *maintenance and enhancement of the quality of the environment*

**Section 7(g)** *Any finite characteristics of natural and physical resources*

3.5 There is currently a gap in the policy framework which provides for Goal 3.2.3 *"A quality built environment taking into account the character of individual communities"*.

3.6 Related Objective 3.2.3.2 states;

*"Protect the District's cultural heritage values and ensure development is sympathetic to them."*

3.7 The only policy giving effect to that Objective, is Policy 3.2.3.2.1;

*"Identify heritage items and ensure they are protected from inappropriate development"*

3.8 Heritage items are not defined in the PDP, and it is assumed that protection of the *'District's cultural heritage values'* is a broader term than just heritage items. The current single policy sitting under objective 3.2.3.2 and Goal 3.2.3 is not considered to give effect to those higher provisions and should be amended to take into account the broader aspects of cultural heritage than just heritage items.

3.9 **Relief sought:** the following amendments are sought to add to policy suite 3.2.3.2 a new policy;

*"Identify special character and heritage areas and ensure they are protected from inappropriate development."*

3.10 There is scope for this addition not only due to the fact it is a consequential change arising from the relief sought in FOGR and Cassell's submissions, but also from the submission of the NZIA Southern and Architecture + Women Southern submissions (#238) suggesting additions to the same policy suite to achieve comprehensive urban design principles.

#### 4. **Quality urban design and built form**

4.1 The submitters seek to ensure that quality outcomes for built areas and urban design are achieved through the strategic directions of the PDP.

4.2 Council's Section 42a report for the Urban Growth Chapter states;

*" the general growth management principles proposed by Chapter 4 of the Proposed District Plan are consistent with the direction of the RPS, and its high level goals to ensure that urban development does not materially impact on the qualities and features of the District's natural environment that make it an attractive place to work, live and visit, and which contribute to its distinct and special character".*

4.3 That reasoning for the provision of urban growth subject to impacts on the natural environment is equally relevant for the built environment in my submission, and should be recognised in the urban growth chapter.

4.4 Community values and special areas must be protected where those areas are highly valued and cannot absorb the effects of future development. The provisions in Chapter 4 enabling intensified urban growth within the Queenstown UGBs and land adjacent to the UGB is concerning as this does not provide an appropriate qualification on where development might be inappropriate.

4.5 Those provisions which constrain inappropriate development within the Arrowtown UGB could equally apply to the area of land adjacent to the Gardens which exhibits important historical and cultural attributes and provides for an important entrance into the CBD which should be maintained and enhanced in the future.

4.6 The only provision which currently touches on this type of recognition within the Queenstown UGB is at 4.2.4.2 which states;

*Ensure that development within the Queenstown Urban Growth Boundary:*

...

- *Provides an urban built form that is sympathetic to the natural setting and enhances the quality of the built environment*

..."

4.7 The remaining bullet points under that policy are focused on landscape, infrastructure, transport and providing for a range of uses. There is no mention of the importance of protecting existing heritage and character

values. It is submitted that at the strategic level there needs to be this direction.

- 4.8 **Relief sought:** Insert the following new bullet point into policy suite 4.2.4.2;

*Ensure that development within the Queenstown Urban Growth Boundary*

...

*Protects and enhances the special character and identity of urban settings.*

...

- 4.9 There is scope for the above change derived not only from the FOGR and Cassell's submissions, but also the submission of NZIA Southern and Architecture + Women Southern submissions (#238) which seeks amendments to policy suite 4.2.4.2 including the addition of the following bullet point;

*"Achieves a high quality urban environment responsive to the context of its surroundings"*

## 5. **Traffic and transport issues – providing for integrated management**

- 5.1 The section 42A reports states that;

*"The District's landscapes are particularly valued, and an integrated approach to urban growth management with a focus on urban intensification can help reduce the risks to amenity values (s 7c RMA) and landscape values (s 6b) posed by dispersal of urban growth"<sup>3</sup>.*

- 5.2 Amenity values in section 7(c) are not just derived from natural landscape characteristics but also from the built form and as such should be recognised in setting urban growth policies.
- 5.3 It is unclear how the provisions notified in stage 1 achieve the intent of integrated management as the split of stage 1 and 2 issues makes it

---

<sup>3</sup> S 42A report Chapter 3, Appendix 3 (referring to section 32 reports) page 14

impossible for submitters on the PDP to have a full picture of the planning regime at hand. The section 42A report also states;

*Consistent with the intent of Section 31, the proposed provisions enable an integrated approach to the multiple effects associated with urban development, and integrated mechanisms for addressing these effects through the hierarchy of the District Plan. Section 31 reinforces the Council's proposed multi-faceted approach to urban development, which is based upon the establishment of defined urban limits, integrating land use and infrastructure, promoting density in strategic locations, and protecting the District's landscapes<sup>4</sup>.*

- 5.4 It is questionable whether section 31 of the Act is complied with in the setting of the strategic direction and urban development chapters when a significant issue related to urban growth is infrastructure and traffic. Provisions relevant to those topics have not yet been notified and may not be until after decisions have been made on these Stage 1 provisions. That may lead to inconsistent and incoherent drafting provisions which do not give effect to the purpose of sustainable management and do not achieve the section 31 duty of integrated management.



**R E Hill**

Counsel for DJ and EJ Cassells, Friends of Wakatipu Gardens and Reserves  
22 March 2016

---

<sup>4</sup> Ibid, at page 3