

**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 Hearing Stream 13
– Queenstown
Mapping Annotations
and Rezoning
Requests

**SUPPLEMENTARY REBUTTAL EVIDENCE OF ROBERT BRUCE BUXTON
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL**

QUEENSTOWN MAPPING – GROUP 2 RURAL

11 July 2017

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1. INTRODUCTION

- 1.1 My full name is Robert Bruce Buxton. I am a Director of Buxton & Walker Limited, a resource management consultancy and I have been engaged by Queenstown Lakes District Council (**QLDC or Council**) to provide planning evidence and recommendations on submissions categorised as Group 2 Rural in hearing stream 13 on Stage 1 of the Proposed District Plan (**PDP**).
- 1.2 My qualifications and experience are set out in my statement of evidence in chief dated 24 May 2017.
- 1.3 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise except where I state that I am relying on the evidence of another person.
- 1.4 All references to PDP provision numbers are to the Council's Reply version of those provisions unless otherwise stated.

2. SCOPE

- 2.1 My supplementary rebuttal evidence is provided in response to the following evidence filed on behalf of:
- (a) Mr Ben Farrell for Lake Wakatipu Station Ltd (478);
 - (b) for Queenstown Park Ltd (**QPL**) (806) and Remarkables Park Ltd (**RPL**) (807):
 - (i) Ms Alison Dewes; and
 - (ii) Mr David Serjeant.
- 2.2 I also confirm that I have read the following statements of evidence:
- (a) for Lake Wakatipu Station Ltd (478):
 - (i) Mr Stephen Skelton;
 - (ii) Mr Paul Faulkner;

- (iii) Mr Anthony Steel;
- (b) for QPL (806) and RPL (807):
 - (i) Mr Paul Anderson;
 - (ii) Mr John Ballingall;
 - (iii) Mr Simon Beale;
 - (iv) Mr Robert Bond;
 - (v) Mr Stephen Brown;
 - (vi) Mr Paul Faulkner;
 - (vii) Mr Robert Greenaway;
 - (viii) Mr Stephen Hamilton;
 - (ix) Mr Timothy Johnson;
 - (x) Mr Simon Milne;
 - (xi) Mr Anthony Penny;
 - (xii) Mr Alistair Porter;
 - (xiii) Mr Justin Ralston;
 - (xiv) Ms Rebecca Skidmore;
 - (xv) Mr Rick Spear; and
- (c) Stephen Brown for RPL (807).

3. MR DAVID SERJEANT, MS ALISON DEWES AND MR STEPHEN BROWN FOR QUEENSTOWN PARK LIMITED (806) AND REMARKABLES PARK LIMITED (807)

3.1 Mr Serjeant has provided planning evidence in relation to the request by QPL and RPL to rezone approximately 2000 hectares of land from notified Rural zone to Queenstown Park Special Zone (**QPSZ**). The zone provisions sought by QPL have also changed since I prepared my evidence in chief. At that time I did not assess those provisions in any detail as a letter from the submitter on 24 March 2017 had advised that the provisions were still being worked through by the submitter's experts. Activity areas RR1 and RR7, RV1 and RV2, and a node for glamping have been removed. The submitter had also sought that the boundary of the Remarkables/Hector Mountains Outstanding Natural Landscape (**ONL**) be relocated in the vicinity of their property and that the Significant Natural Areas (**SNA**) be removed, but it appears these are no longer being pursued, as well as the alternative request for creation of a Remarkables Alpine

Recreation Area. It appears that all parties are now agreed that the submitter's site is an ONL containing SNAs.

3.2 Mr Serjeant has listed the higher level documents, and has summarised these in paragraph 5.10 of his evidence. However, I am not persuaded that Part 2 of the RMA regarding enabling people and communities to provide for their social, economic, and cultural well-being can be encapsulated by "*responding to national level government and market expectations that Queenstown must continue to provide for tourism growth*" as Mr Serjeant has stated in his paragraph 5.10. Social, economic and cultural well-being is also achieved through protecting ONLs. I also note that in his paragraph 5.6, he relies on Policy 5.3.1 in the Proposed Regional Policy Statement (**PRPS**), which qualifies the provision in rural areas of tourism and recreational activities with "*that are of a nature and scale compatible with rural activities*". I note that the PRPS is under appeal, but I accept must be had regard to.

3.3 Mr Serjeant identifies what he considers to be the core issue (at his paragraph 6.13), which is:

Queenstown has an excess demand for visitor activities based on the rural and open space resources of the district. The issue I identify for Queenstown and to be tested on the objectives for the QPSZ is therefore: Where is this demand to be met, and how can supply of the product be increased so as to ensure the quality of the resources on which it is based are sustainably managed?

3.4 I agree with Mr Serjeant that identifying the issue can be very useful in undertaking any resource management assessment. However, I consider the issue he has identified is not very useful as it changes the focus of protecting ONLs to "sustainably managing the quality of the resource", which I consider lacks clarity.

3.5 Mr Serjeant has provided a thorough analysis of the proposed QPSZ. While I agree with Mr Serjeant that landscape is the key matter to consider (his paragraph 10.2), I would also note that in terms of s6 of the RMA, the following subsections are also relevant:

- (a) the preservation of the natural character of ... rivers and their margins, and the protection of them from inappropriate subdivision, use, and development (s6(a));
- (b) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (s6(c)); and
- (c) the maintenance and enhancement of public access to and along ... rivers (s6(d)).

3.6 Mr Serjeant notes in his paragraph 7.1 that in his view, Chapter 3 (Strategic Direction), Chapter 6 (Landscape) and Chapter 21 (Rural) have given effect to the Operative Regional Policy Statement for Otago (**ORPS**) and would appear to have regard to the Proposed Regional Policy Statement for Otago (**PRPS**). I consider that the testing of the proposal against the Strategic chapters of the PDP would give effect to the RPS and have regard to the PRPS, and also address s32(1) of the RMA. I consider the key matters from those Strategic chapters as they relate to Rural land are:

- (a) protection of the ONL from inappropriate development (Strategic Chapter Goal 3.2.5 and Objective 3.2.5.1 and Landscape Chapter Objectives 6.3.1, 6.3.2, 6.3.4);
- (b) protection of the natural character of lakes and rivers and their margins (Strategic Chapter Goal 3.2.4 and Objective 3.2.4.5 and Landscape Chapter Objectives 6.3.1, 6.3.2, 6.3.4);
- (c) recognising the value of farming to the landscape (Strategic Chapter Objective 3.2.5.5); and
- (d) recognising the diversification of farms beyond farming into commercial recreation and tourism activities, but sensitive to ONL (Strategic Chapter Goal 3.2.1 and Objective 3.2.1.4 and Landscape Chapter Objective 6.3.8).

3.7 I consider that based on the above provisions, the Strategic chapters can be summarised as directing that diversification of property classified as an ONL into tourism or residential activity should only occur at a scale and in a location where the landscape values (including the natural character of lakes and rivers and their margins) are sustained/not degraded.

- 3.8** I consider that the objectives of the Rural zone are the most appropriate way to achieve the purpose of the RMA and the Strategic objectives of the PDP, with its emphasis on "*protecting, maintaining and enhancing landscape values, nature conservation values, the soil and water resource and rural amenity*". I consider the objectives of the QPSZ have been drafted with an emphasis on achieving the proposed development rather than the purpose of the RMA, and with little mention of landscape values. The objectives are based on the premise that the submitter's site can accommodate a range of activities that will link the valley floor with the mountains. The landscape values of the ONL are to be given regard to (QPSZ 44.2.1B Objective) and QPSZ Policy 44.2.1.4 refers to having only "regard for the surrounding rural landscape" which in my opinion does not place the landscape as the key matter. There is also no mention of the characteristics of the Kawarau River that is part and parcel of the zone (particularly given that the zone includes a gondola corridor over the river as well as sites for jetties and bridges) and the river's value nationally as highlighted by the WCO. Ms Mellsop's rebuttal evidence is that development anticipated by the submitter will have significant effects on the ONL and the river.
- 3.9** Although I consider that the Rural zone is the most appropriate way to achieve the purpose of the RMA and the Strategic objectives of the PDP, I have considered the proposed rules of the QPSZ below.
- 3.10** The proposed rules for the Activity Areas provide for residential, visitor accommodation, commercial and community activities as primarily controlled or restricted discretionary activities. A gondola within the gondola corridor is also a controlled activity which of course must be granted. The matters for control for the gondola appear to be rather broad for a controlled activity, such as "the effects on existing recreation and tourism activities on and beside the Kawarau River". For example, it is not clear whether this means that the hours of operation could be controlled.
- 3.11** In the case of jetties and wharves being provided as restricted discretionary activities, the provisions appear to be based on the

identified locations being considered to achieve the purpose of the objectives, although I note that the matters for discretion are so wide that they raise the question as to why the sites have been selected.

3.12 The proposed rules are based on the assumption that the effects of the provided activities can occur (with some control or discretion) while meeting the purpose of the RMA. I am not confident that this is the case, and this is supported by the opinion of Ms Mellsop in terms of her assessment of the effect of the proposal on landscape values.

3.13 In my experience with plan preparation and resource consent processes, unless the effects of the proposal can be certain and there are clear and discrete effects that can be controlled, then there should be the ability to decline the proposal. While this is not efficient and effective in terms of providing for the proposal, it is efficient and effective in achieving the purpose of the RMA if through the close scrutiny of a resource consent application the effects of the activity are determined to be unacceptable. I note that under the restricted discretionary activity status of QPSZ Rule 44.4.9.2 it would appear difficult to decline an application for commercial, community, visitor accommodation or residential activities in the Rural Visitor Activity Areas, in light of the matters of discretion, the specific identification of areas, and the maximum site coverage and height provisions.

3.14 Although I consider that there should be the ability to decline the proposed activities under the scrutiny of a resource consent process, I do not necessarily consider that there should be no development within the ONL. For example the gondola does have many positive effects and these have been outlined by the submitter's witnesses. However, I am not convinced with any certainty that the adverse effects of the gondola can be accommodated within the ONL without understanding the details of a proposal through the resource consent process. I also note that in the Council's Right of Reply to the Rural Hearing 02, the activity status for passenger lift services has been recommended to be a restricted discretionary activity and I consider that this would be the most permissive status to provide for such activities in an ONL. Further, I note that in the Council's Right of Reply to the Ski Area Sub Zones Hearing Stream 11, passenger lift

systems are recommended to be a restricted discretionary activity within the Rural zone generally.¹

- 3.15** The provisions also provide for controlled and restricted discretionary activities to be non-notified. I consider that the impact of the activity area developments, gondola, jetties and bridges (once the details of the proposals are known through a resource consent application), will be of significant public interest and that the general tests for public notification under the RMA should apply.
- 3.16** I consider there is an element of environmental compensation in the proposal. It appears that by providing for activities that will have adverse effects on the ONL, other activities such as a public walking/cycling track and better protection of the SNA will be achieved. Although I accept that "effects" under the RMA include positive effects, I do not consider it efficient or effective that in order to achieve these other activities, there should be some compromise on landscape values and the Council's duty to protect matters of national importance. I also note that in order to have a public walking/cycling track alongside the Kawarau River, the walkers and cyclists will be either beside or under a gondola (a cumulative effect on top of the views of the existing transmission lines), and beside a well formed and used access road rather than a farm track.
- 3.17** I consider the values of the Kawarau River have been rather glossed over. The river has a WCO, and is considered an Outstanding Natural Feature (**ONF**) under both the WCO and the Otago Regional Plan - Water. The effect of a gondola, access road, jetties and bridges on the character of the river have not in my view been fully considered. In terms of the proposed matters for control for a gondola within the Gondola Corridor, the effects on existing recreation and tourism activities are to be considered but not the effect on all the characteristics of the WCO. There also appears to be very little assessment of the location of the jetties and bridges in the QPSZ, in terms of the effects on the character of the river.

¹ Reply of Kim Banks dated 19 May 2017 (Hearing Stream 11) at paragraph 3.4(d).

- 3.18** I have considered the evidence of Ms Dewes in light of my concern about the loss of cropping paddocks from a farming operation that has been described as not economically viable. It appears that in her view the portions of the farm that could be more intensively farmed are the areas that should be developed for non-farming purposes in order to avoid the adverse effects that intensive farming creates. I consider such an approach of locating non-rural activities onto what are potentially the most productive portions of a farm, would not achieve the purpose of the RMA.
- 3.19** By zoning the whole of the Queenstown Parks Station, the proposal refers to the integrated management that would be achieved. While I agree that there would be integrated management for the station, including environmental compensation, I consider it would not be efficient or effective in terms of preparing the PDP if every station within the district was to have its own zone.
- 3.20** I have concerns regarding the identification of the proposed location of the Activity Areas within an ONL. I consider that the approach of Mr Brown, whereby the ONL is broken into areas of less importance and these are considered suitable for reasonably intensive development, would not be an efficient and effective method of achieving the objective of protecting outstanding landscapes if it was applied to the whole of the Rural zone. I am particularly concerned because in this case the land also lies beside a river that has a WCO. If the landscape values on this land, which connects a nationally significant river with a nationally significant alpine landscape, are considered to be able to be partitioned into areas that can absorb the level of development that is proposed, then I consider there would be many other proposals within the district where similar development could be undertaken on this basis. I am also concerned that it is the river fans features within the ONL that are considered to be able to absorb development.
- 3.21** Mr Mander has reviewed the evidence of Mr Penny in regard to traffic issues. Mr Mander accepts that QPSZ Rule 44.5.2 would address some of his concerns, and the remainder of his concerns would be addressed if the NZ Transport Agency could submit on any consent

applications affecting the site, and if Council had the ability to impose traffic and transportation conditions on any consents that are granted. This could be achieved by making the effects on the State Highway a matter of control or discretion. I note that QPSZ Rule 44.5.2 only refers to "residential or visitor accommodation", whereas I consider it should also include "commercial or community activities", as they also create traffic effects.

3.22 Mr Watts has reviewed the geotechnical evidence of Mr Bond, and comments that it is not possible to be prescriptive about engineering measures to mitigate these risks and that further localised site investigation will likely be required. Mr Watts has also reviewed the geotechnical evidence of Mr Faulkner which is focussed on the proposed gondola, and considers that given the multiple natural hazards and only preliminary risk assessment completed at this stage, there is a requirement for further investigations and assessments. On this basis, if the rezoning were to proceed, all development should include "natural hazards" as a matter of control or assessment.

3.23 The evidence of Mr Davis states that provided the QPSZ provisions are modified so that Council has control over installation of new farm tracks, fire breaks and recreational trails less than 2m in width, he does not oppose the QPSZ from an ecological perspective.

3.24 I also have concerns about the wording and/or interpretation of some of the provisions. For example:

- (a) there are no definitions of "back country toilet", "Trail Plan", and "glamping". For glamping, there is provision for up to 6 sites, with no indication of what their size might be (considering each site can accommodate up to 20 people). Also, presumably these sites would need associated access tracks for cleaning, restocking and maintenance;
- (b) the *vires* of Rules 44.4.7 and 44.4.8, is questionable in that Rule 44.4.7 provides for development of a Trail Plan, rather than the activity of a Trail. Also the *vires* of Rule 44.5.9 to vary the gondola corridor boundaries (via a consent

application) is questionable, as it amounts to varying the structure plan by resource consent. I wonder if the intention was to include a more stringent activity status, where a proposed gondola is not located within the boundaries of the gondola corridor on the structure plan;

- (c) there appears to be no limit on the number of farm buildings in Rule 44.4.11;
- (d) it is unclear whether "Premises licenced for the sale of liquor" are to be confined to Activity Areas, in Rule 44.4.14;
- (e) the interpretation of Rule 44.5.3 is uncertain, including what the total number of units applies to (e.g. does it apply each area or the combined areas). Also there is no mention of RR2 and RV4 in this rule;
- (f) the wording of Rule 44.5.5 refers to "greater than" whereas I consider it should be "less than". It is also not clear whether the maximum height of 23m in the gondola corridor would apply to station buildings in the corridor as well;
- (g) Rule 44.5.5.3, if it is a standard, implies that the height should be between 12m-16m and if lower would be a restricted discretionary activity. The same problem applies to Rule 44.5.5.5. Rule 44.5.5.4 does not mention residential activities;
- (h) Rule 44.5.6 is a standard but there is no associated activity for earthworks in the activity table except for Rule 44.4.6. Depending on what the activity status of earthworks was intended to be, the maximum height of cut and fill seems large for an ONL; and
- (i) Rule 44.5.12, if it is a standard, states that stocking rate is to be greater than 3 units per ha, not less than, which presumably is the reverse to what is intended.

3.25 I refer to the Memorandum of Counsel filed on behalf of QLDC regarding the Panel's Minute concerning annotations on maps, dated 30 June 2017. I understand this memorandum confirms the approach the Council will take in this hearing, in light of the views of the Panel relating to its jurisdiction, as expressed in its Minute dated 12 June 2017. On this basis it would appear that the submitter's request to include the gondola corridor over the ODP Remarkables Park Special

Zone cannot be considered in Stage 1 of the review. I understand that legal submissions will address this matter.

3.26 Overall I continue to recommend that the rezoning should be rejected.

4. MR BEN FARRELL AND MR PAUL FAULKNER FOR LAKE WAKATIPU STATION LIMITED (478)

4.1 Mr Farrell has provided an assessment of the proposed zone against the Strategic provisions of the PDP and concludes that the Rural Visitor (**RV**) zone is the most appropriate way to achieve the purposes of the Act. This is in reply to the Panel's Minute regarding requests to rezone land with an operative zone, as discussed in paragraphs 4.1 and 4.2 (Grant Hylton Hensman and others (361)) of my rebuttal evidence.² However, in my view Mr Farrell has not provided a package of zone provisions that will fit with the structure of the PDP.

4.2 My comments in paragraphs 9.2 to 9.5 and 9.7 to 9.8 (Te Anau Developments (607)) of my rebuttal evidence³ regarding the RV zone also apply here. It is not clear how the RV zone provides for new proposals as the current wording of the RV zone objective (section 12.3.4 of the ODP) refers to existing recreation and visitor facilities and their extension. It is also very difficult to assess the effect of the submission when the submitter has not provided any indication of what is proposed for the site.

4.3 Regarding my concern about the loss of flat productive land from the farming operation (Objectives 3.2.5.5 and 21.2.2), Mr Farrell has advised that he considers that the loss of 32ha for flat productive farming purposes is insignificant and not inappropriate given that the station is *"14,305ha in area, with a minimum of around 130ha-180ha of flat paddocks remaining for primary production"*. I disagree that the loss of this proportion (approximately 15 to 20%) of the flat productive land is insignificant. While Mr Farrell considers that the loss of any farm productivity will be offset by the economic benefits from

² Rebuttal Evidence of Robert Buxton dated 7 July 2017 (Hearing Stream 13).

³ Rebuttal Evidence of Robert Buxton dated 7 July 2017 (Hearing Stream 13).

development of the site for non-farming activities, this argument would apply to most farms. It also would not meet Strategic Directions objective 3.2.4.1 which refers to sustaining and enhancing the life supporting capacity of soils.

- 4.4** Dr Read has reviewed the landscape evidence of Mr Skelton, and although she considers the suggested standards regarding setback from escarpments, exterior surface of buildings and lighting are generally positive, she remains of the opinion that the area to which any rezoning should apply should be restricted to the more western area. I agree that, if rezoning was to be provided for, it should be limited to the more western area, as it would avoid the adverse effect of development on the lake front.
- 4.5** Mr Faulkner has provided geotechnical evidence on the natural hazards on the site and has concluded: "*Based on an appropriate level of work being completed I consider it highly feasible that land development, including rural visitor and residential activity could occur at the site.*" Mr Faulkner's assessment has been reviewed by Mr Watts for the Council and he considers the comments by Mr Faulkner to be reasonable. I accept his conclusion.
- 4.6** Mr Denis Mander considers his concern regarding traffic issues has not been addressed and remains opposed to the rezoning.
- 4.7** Mr Glasner has assessed the evidence of Mr Steel and considers that he no longer has concerns regarding servicing the rezoned site.
- 4.8** Overall, without knowing what is proposed for the site, along with the lack of zone provisions that will fit with the structure of the PDP, and the remaining concern over traffic effects and the loss of productive flat land, I maintain my recommendation to reject the rezoning sought.



Robert Buxton

11 July 2017