

Before Queenstown Lakes District Council

In the matter of The Resource Management Act 1991

And The Queenstown Lakes District proposed District Plan Topic 09
Resort Zones

MEMORANDUM OF COUNSEL REQUESTING STRIKE OUT OF SUBMISSION

Jack's Point Residential No.2 Ltd, Jack's Point Village Holdings Ltd, Jack's Point Developments Limited, Jack's Point Land Limited, Jack's Point Land No. 2 Limited, Jack's Point Management Limited, Henley Downs Land Holdings Limited, Henley Downs Farm Holdings Limited, Coneburn Preserve Holdings Limited, Willow Pond Farm Limited (#762, #856 and #1275)

Dated 3 March 2017

Solicitors

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BACKGROUND

- 1 At the District Plan Review hearing for Chapter 41 of the DPR, Counsel for the Jack's Point group submitters submitted that the Commissioners had the opportunity to strike out submission 789 Vivo Capital Ltd ("Submission"), in accordance with the discretion available to do so under section 41C of the Resource Management Act. The Chair directed that if the Jacks Point entities wished the Commissioners to formally consider such an action, a request should be lodged by 3 March 2017.
- 2 Accordingly, the Jack's Point group now confirm its request that the Commissioners exercise their powers under section 41C of the Resource Management Act 1991 ("RMA") and strike out submission 789 Vivo Capital Ltd ("Submission").
- 3 Section 41C(7) of the Act gives the Commissioners the power to strike out a submission based upon specified legislative grounds as follows:

41C(7) Before or at the hearing, the authority may direct that the whole, or a part, of a submission be struck out if the authority considers—

(a) that the whole submission, or the part, is frivolous or vexatious; or

(b) that the whole submission, or the part, discloses no reasonable or relevant case; or

(c) that it would otherwise be an abuse of the hearing process to allow the whole submission, or the part, to be taken further.

- 4 The relevant grounds are addressed in turn below.

Section 41C(7)(b) no reasonable or relevant case

- (a) In accordance with Section 41C(7)(b) there is no reasonable or relevant case which the Submission discloses to assist the District Plan Review ("DPR") process. The Submission seeks to rezone a parcel of land annotated Open Space Landscape within the Jack's Point Resort Zone ("JPZ"). The land the subject of the Submission is located within the Highway Landscape Protection Area, and on the western side of Woolshed Road as Village Woolshed Road and Residential Woolshed Road. There are no specific provisions included in the Submission other than the requirement of an outline development plan process to be applied to the area.

- (b) The submitter declined to present submissions or expert evidence at the JPZ hearing held on 14-17 February 2017. Therefore there is no further particularity of the Submission which has been presented that would enable other submitters and the Commissioners to interpret the relief sought in the Submission. There is no reasonable or relevant case put forward in the Submission to enable meaningful public engagement in the relief sought.

Section 41C(7)(c) An abuse of process to allow the Submission

- (c) A number of other public submitters on the JPZ have incurred significant time and costs to appear in respect of their submissions and assist the Commissioners in their inquiry under the DPR to achieve a sound planning outcome for the proposed resort zone.
- (d) Despite the potentially significant implications of the Submission being proposed, the submitters have not given any indication of their desire to be heard on this zoning matter, and the hearing has now adjourned.
- (e) Given the thorough public process and fairness which has been extended to the submitters to enable their representation at the hearing which has been declined, and the possible significant consequences of the relief being sought in the Submission remaining live, it would otherwise be an abuse of the hearing process to allow the submission to continue any further.
- (f) Other submitters who have taken the opportunity to assist the Commissioners and present significant expert evidence in respect of suitable zoning options for the land the subject of the Submission would be unjustly disadvantaged if the Submission were to remain live, and therefore potentially the subject of a future Court appeal process based upon merits of any Council decision.

Conclusion

- 5 In light of there being no reasonable or relevant resource management case established by the Submission or supported in evidence presented at the hearing, and in light of the potential abuse of process that would occur if the Submission were allowed to remain live, given that the submitters have declined to participate in the public process, it is respectfully requested that the Submission be struck out in accordance with section 41C(7) (b) and / or (c) of the RMA.

Dated 3 March 2017



Maree Baker-Galloway
Counsel for Jacks Point group entities