

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES DISTRICT COUNCIL**

UNDER the Resource Management Act 1991

IN THE MATTER of submissions on the Queenstown
Lakes Proposed District Plan Variation –
Te Pūtahi Ladies Mile

BY **ANNA HUTCHINSON, TIM
HUTCHINSON and JOHN TAVENDALE**
as trustees of the Anna Hutchison
Family Trust

**SUBMISSIONS FOR FURTHER SUBMITTERS ON JURISDICTIONAL
ISSUES**

Dated: 30 November 2023

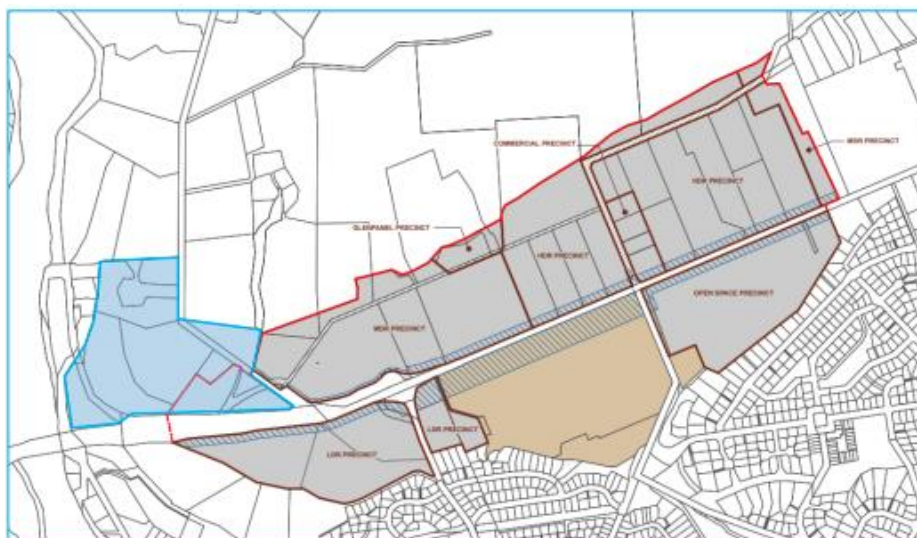
MAY IT PLEASE THE PANEL:

Introduction

- [1] Dan and Mitzi Cole-Bailey, Dot and Hans Arnesdt, Graeme Rodwell, Les and Lesley Huckins, and Robert and Joy Oakes (**further submitters**) have made further submissions opposing the relief sought in the submission by Anna Hutchinson, Tim Hutchinson, and Don Tavendale as Trustees of the Anna Hutchinson Family Trust (**Hutchinson submission**).
- [2] The further submitters oppose the Hutchinson submission primarily on the basis they say it is not “on” the Te Pūtahi Ladies Mile Variation (**Variation**). Accordingly, the Hearings Panel has no jurisdiction to hear or determine it.
- [3] These submissions address the further submitters’ position on this jurisdictional issue. Counsel have had the benefit of reading the submissions for the Queenstown Lakes District Council (**Council**) on the issue, as well as the questions put by the Panel to counsel for the Council, and aim to address the matters raised in those discussions.

Background

- [4] The Hutchinson submission seeks a relatively substantial area of land, made up of several titles, be included within the Ladies Mile Zone. It also seeks the extension of the Urban Growth Boundary located on the current notified western boundary. This is shown on Figure 3 contained in the Hutchinson submission and reproduced below (extension area shown in blue).



- [5] The area of the land sought to be rezoned through the submission has been calculated by the Council to be one sixth of the total area notified to be rezoned under the Variation.¹
- [6] The land that is the subject of the submission is currently zoned Wakatipu Basin Lifestyle Precinct (**WBLP**) under the Proposed District Plan.² The WBLP generally provides for rural living type development at a density of around 1ha.

Legal principles

- [7] It is clear the land sought through the Hutchinson submission to be rezoned was not notified to be rezoned as part of the Variation. The Panel must therefore nonetheless be satisfied the submission is “on” the Variation so as to provide jurisdiction to consider the relief sought.
- [8] The principles as to whether a submission is “on” a Plan Change, Proposed Plan or Variation to a Proposed Plan are relatively well established. The commonly referred to authority is that of the High Court in *Motor Machinists Limited*.³ There the Court endorsed the following two-limb test established in *Clearwater Resort Limited*:⁴

¹ Opening legal submissions for Queenstown Lakes District Council, 24 November 2023 at paragraph 42.

² Hutchinson submission at paragraph 7.

³ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.

⁴ *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

- (a) whether the submission addresses the change to the pre-existing status quo advanced by the Variation; and
- (b) whether there is a real risk that people affected by the Variation (if modified in response to the submission) would be denied an effective opportunity to participate in the process.

[9] The Court in *Motor Machinists* held that in relation to rezoning relief, submitters are not necessarily confined to the land that has been notified to be rezoned. Consequential or incidental extensions to a notified zoning are permissible.⁵ Land for example that is adjacent to an area proposed to be rezoned may fall within this exception.⁶

[10] However, the issue will always fall on its particular facts. The overriding consideration in whether relief can fairly be said to be consequential or incidental to what is notified is whether any further s 32 analysis would be required to incorporate the relief sought.⁷

[11] As part of the second limb of the analysis, it is important to consider whether submitters or would-be submitters were fairly made aware of the relief sought through the submission. There are issues of prejudice if they were or may not have been aware of the relief and were entitled having reviewed the notified Variation to conclude the status of the land that is now the subject of the submission was not proposed to nor able to change as part of the process.

Whether the submission addressed the pre-existing status quo

[12] The further submitters say the Hutchinson submission cannot fairly be said to address changes to the status quo.

[13] If the Hutchinson submission was not made, the status of the land that is the subject of their submission would not change as part of the Variation process. On its face, the submission therefore does not address any change to the existing status quo.

⁵ At [81].

⁶ *Tussock Rise Ltd v Queenstown Lakes District Council* [2019] NZEnvC 111 at [69]-[90].

⁷ *Ibid.*

[14] Accordingly, the submission must bring itself within the consequential or incidental amendment exception identified in *Motor Machinists*. The further submitters do not consider it can, for the following reasons:

- (a) The scope of the relief sought in the Hutchinson submission is significant. As recognised by the Council and referred to above, the submission seeks to increase the extent of land within the Ladies Mile Zone by a considerable amount (one sixth).
- (b) The area can be shown to be quite separate geographically from the balance of the Ladies Mile land, and separated by Lower Shotover Road which serves as the boundary of the Ladies Mile Zone.
- (c) It is not a case of land which could be seen to naturally form part of, or would clearly be affected by changes to, the land that has been notified. An examination of Figure 3 in the Hutchinson submission illustrates the extension area as being quite distinct from (whilst recognising it is in part adjacent to) the notified Zone. A person reviewing the notified maps could not reasonably ask the question as to why the additional land had not been included.
- (d) As pointed out during questioning of the Council's counsel, there is a strong possibility at least based on the Council's evidence that the inclusion of the Hutchinson land in the Ladies Mile Zoned would lead to quite different effects and outcomes than what was notified.

No s 32 analysis of extended zone area

[15] Importantly, the further submitters say the Hutchinson submission would require substantial s 32 assessment which was not undertaken as part of the notified zoning.

[16] All of the s 32 analysis was based around the notified Ladies Mile area. Its introductory sections clearly define what that area is.⁸ The masterplan

⁸ Section 32 report at page 4.

process and subsequent assessment was all based on an assessment of that area.

- [17] To the further submitters' knowledge, the s 32 analysis did not include the consideration of any alternatives that involved the rezoning of the Hutchinson land (whilst, as acknowledged by counsel for the Council in response to questions from the Panel, the Hutchinsons had some involvement with respect to the engagement by the Council with landowners as part of the masterplan process).
- [18] It cannot reasonably be said that the s 32 analysis carried out under the Variation could remain applicable if this area was to be included. This is due to the scope of what has been sought and the difference in nature and scale of effects that have been identified (including for example, effects on the Shotover River Outstanding Natural Feature (**ONF**) located to the west).

Whether part of the submission could be considered

- [19] Commissioner's Munro asked counsel for the Council as to whether the Panel would be entitled to form the view that part, but not all, of the Hutchinson land was "on" the Variation.
- [20] The further submitters consider if it was found that parts of the submission but not others were consequential or incidental to the notified zoning, legally the Panel would be entitled to form that view. However, there is no evidence as to what such part relief is or might look like. Moreover, the further submitters do not consider any of the land could said to be incidental or consequential to the notified zoning given the delineation between the two areas via landform and the Lower Shotover Road boundary.

Risk of the public being denied an effective opportunity to participate in the process

- [21] The further submitters agree with the Council that there would be substantial potential prejudice to persons affected by the relief sought in the Hutchinson submission.⁹
- [22] Clearly the further submitters themselves in this case have been made aware of and taken the opportunity to oppose the relief sought, and are not therefore prejudiced in that sense.
- [23] However, a consideration under this second limb of the test cannot solely be based on whether and how many nearby landowners made a further submission on the submission in question. As a matter of principle, there remains a concern if parties were not capable of being made aware through the notified Variation process of any possibility of such a large area of land being sought to be rezoned, and had to rely on reading the submissions summary in order to become aware of the outcome now sought.
- [24] In the case of the further submitters, they anticipated matters and rather than simply rely on the notified zoning they made sure to also check the submissions summary to see whether the Hutchinsons sought that their land be included. Given the effects on their land, that was sensible. However, that is not to say other members of the public, particularly those who might not own land in the vicinity of the Hutchinson land but who might for example have an interest in the maintenance of the values of the Shotover River ONF values, would have taken the same approach.
- [25] It would be an undue risk if the Panel was to take the position that no potential submitters were not aware of and would have otherwise submitted on the relief sought through the Hutchinson submission. As counsel for the Council has pointed out, this risk is heightened by the reduced right of appeal under the Streamlined Planning Process that

⁹ Opening submissions for the Council at paragraph 47.

such persons have in relation to the relief sought, and the associated issues of natural justice that could arise.¹⁰

Conclusion

[26] On the basis of their further submission and for the reasons set out above, the further submitters say the Hutchinson submission cannot reasonably be said to be “on” the variation.

[27] Accordingly, the further submitters say the submission cannot lawfully be considered by the Panel.

Dated: 30 November 2023



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G M Todd / B B Gresson
Counsel for the Further Submitters

¹⁰ Opening submissions for the Council at paragraph 36.