

Before the Queenstown Lakes District Council

Under the Resource Management Act 1991

And

In the matter of **the Queenstown Lakes Proposed District Plan Stage 3
Stream 16 – Wāhi Tūpuna**

Synopsis Legal submissions on behalf of Wayfare– Wāhi Tūpuna matters

7 July 2020

Submitters' solicitors:

Maree Baker-Galloway | Roisin Giles
Anderson Lloyd
Level 2, 13 Camp Street, Queenstown 9300
PO Box 201, Queenstown 9348
DX Box ZP95010 Queenstown
p + 64 3 450 0700 | f + 64 3 450 0799
maree.baker-galloway@al.nz | roisin.giles@al.nz

**anderson
lloyd.**

May it please the Panel

Introduction

- 1 This synopsis adopts two points from the legal submissions are made on behalf of the submitters listed in **Appendix A**, in regards to their submission on wāhi tūpuna matters for Stream 16 of the Proposed District Plan (**PDP**) review. The sections adopted related to section 87BB, and integration with the plan architecture generally:
- 2 Paragraphs 59 to 61 regarding possible use of section 87BB:

Permitted activity status for certain activities

[59] An additional mechanism to give effect to s 6(e) while not requiring unreasonable and inefficient consenting and consultation processes is to make clear an alternative pathway whereby an activity requiring consent will have permitted activity status if non-compliance with the provisions of wahi tupuna are 'marginal' or 'temporary' in nature and do not result in adverse effects that are minor or more than minor.

[60] This is in accordance with the pathway provided by s87BB RMA, which provides that activities are permitted if:

- (a) *The activity would be a permitted activity if not for a marginal or temporary non-compliance with requirements, conditions and permissions specified in the PDP;*
- (b) *Any adverse effects of the activity are no different in character, intensity, or scale than they would be in the absence of the marginal or temporary non-compliance;*
- (c) *Any adverse effects of the activity on a person are less than minor; and*
- (d) *The consent authority, in its discretion, decides to notify the person proposing to undertake the activity that the activity is a permitted activity.*

[61] Clarity as to when the criteria of s 87BB are met would go some way to achieve a more efficient planning regime to the extent that landowners would not be required to obtain consent for marginal or temporary breaches that do not result in adverse effects. For example, if an Affected Party Approval is provided by Manawhenua, then the effects on Manawhenua cannot be taken into account, theoretically rendering the non compliance marginal, and effects less than minor. Clarity on an option such as this to

use section 87BB would be of assistance to plan users and decision makers.

- 3 Paragraph 34 onwards regarding integration:

Lack of integration with the PDP in Stage 1

[34] Implementation of s 6(e) requirements should have been integrated into the PDP framework in Stage 1 at the same time as the strategic chapters, in particular chapter 5. Having left integration of s 6(e) requirements until this late stage of the PDP review has resulted in poor planning outcomes whereby the provisions of Chapter 39 do not integrate well with the rest of the PDP, do not sit logically within the PDP chapters, and duplicate existing provisions.

- 4 Supplementary to the above is the ongoing work associated with the Environment Court's Topic 2 decision on landscape. As part of this ongoing work is the Court's direction that there be expert caucusing in order to inform the Court's final determination as to the Values Identification Framework for insertion into the plan, and that will inform subsequent plan changes as priority landscapes are then subject to this assessment and values identification. This relates to landscape but obviously many values associated with wāhi tūpuna will be very relevant to that assessment, and in terms of the overall plan architecture, it will be important for there to be comprehensive integration between these wāhi tūpuna provisions that those subsequent process arising out of the interim decision *UCESI v QLDC Dec No [2019] NZEnvC 205*.

Dated this 7th day of July 2020

Maree Baker-Galloway

Maree Baker-Galloway/Roisin Giles
Counsel for the Submitters

Appendix A – Submitters represented

- 5 CHARD FARM LIMITED (3299) – Kawarau River Gorge overlap with active winery
- 6 BALLANTYNE BARKER HOLDINGS LIMITED (3336) – Rural land – deer farming and rural living – adjacent to Cardrona River
- 7 CRIFFEL DEER LIMITED (3337) - Rural land – deer farming and rural living – adjacent to Cardrona River
- 8 HANSEN FAMILY PARTNERSHIP (3295) – Rural land behind Queenstown Hill and surrounding Lake Johnson
- 9 SOHO SKI AREA AND BLACKMANS CREEK NO. 1 LP (3305) (FS3419) – Rural land, base of access road to ski area, adjacent to Cardrona River
- 10 MT CHRISTINA LTD (3303)(FS3416) – Rural Residential Zone
- 11 GLENDU BAY TRUSTEES LTD (3302) – Rural zone but consented for golf course and 42 visitor accommodation/residential buildings
- 12 ALISTER MCCRAE & DR PENNY WRIGHT (3268) - Rural zone
- 13 QUEENSTOWN COMMERCIAL PARAPENTERS (FS3432) – Commercial parapenter operations on Ben Lomond
- 14 FARROW FAMILY TRUST (FS3420) – Kingston Settlement Zone – residential development
- 15 KELVIN CAPITAL LIMITED AS TRUSTEE FOR KELVIN GORE TRUST (FS3446) – Kelvin Peninsula – Lower Density Suburban Residential