

Before the Queenstown Lakes District
Council

In the matter of The Resource Management Act 1991

And The Queenstown Lakes District Proposed District Plan
Topic 13 Queenstown Mapping – Group 1B (Queenstown
Urban, Frankton and South))

MEMORANDUM OF COUNSEL FOR

F S Mee Developments Co Limited (425 and 429)

Dated 4th August 2017

Counsel:
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MAY IT PLEASE THE PANEL

Introduction

- 1 This Memorandum of Counsel (**Memorandum**) is lodged on behalf of F.S. Mee Developments Co Limited (**Submitter**), being the Submitter under Submissions 425 and 429 lodged to the District Plan Review (**DPR**). This Memorandum formally seeks a waiver of directions and leave for a late request for hearing time and late evidence lodgement in respect of Hearing Stream 13 on the basis set out below.

Reasons

- 2 Counsel has only received instructions from the Submitter within the last week and has had to spend some time getting up to speed with Submissions 425 and 429, and taking instructions with a view to narrowing issues under debate to be able to present an effective case within a short period of time. Counsel apologises on behalf of the Submitter for the fact that no prior request for hearing time has been made. This was due to some unusual family circumstances which resulted in a breakdown in communications between the Submitter and the consultants (previously) engaged by the Submitter who lodged the two Submission 425 and 429 (and who are no longer involved in the process).
- 3 Counsel has been in communication with the DP Hearings staff, resulting in an indicative one hour hearing time being 'pencilled in' on Monday 21 August 2017 at 2pm, pending the lodgement and determination of this request. Counsel appreciates the assistance of Council staff on that point.
- 4 Submissions 425 and 429, in combination, seek the following in respect of different parts of the property known as Deer Park Heights, situated on Peninsula Hill above Kelvin Heights:
 - a) Rezoning of two identified areas from Low Density Residential (**LDR**) to Medium Density Residential (**MDR**);
 - b) Rezoning of one identified area from LDR to Local Shopping Centre (**LSC**);
 - c) Rezoning of two identified areas from Rural to LDR;
 - d) Rezoning of one identified area from LDR to High Density Residential (**HDR**).

- 5 This Memorandum now addresses each of those requested rezonings to summarise the Submitter's position in relation to both the relevant submission lodged and this request for hearing time and presentation of evidence.

LDR to MDR

- 6 Submission 425 requests rezoning of two areas from LDR to MDR. Council's s.42A Report and related expert evidence support each rezoning to MDR which has been requested. The Submitter's position in relation to these two rezoning requests is:

- a) The Submitter relies on Submission 425 which is reasonably detailed, and on the Council s.42A Report, as evidence which supports these rezonings;
- b) The Submitter proposes to have Mr Baxter present at the hearing in order to formally table as evidence the Baxter Design Group Site Assessment and Recommendations dated October 2015 which accompanied Submission 425, and to answer any questions from the Commission;
- c) The Submitter does not otherwise seek to present any additional evidence.

MDR to LSC

- 7 The Submitter's position in relation to that part of Submission 425 which requests rezoning of one area from LDR to LSC is exactly the same as in respect of the two LDR to MDR rezonings addressed above. The Submitter does not otherwise seek to present any additional evidence.

Rural to LDR

- 8 Submission 425 requests a rezoning of two identified areas from Rural to LDR. Dr Read for the Council supports part of the rezoning requested but not all of it. None of the other Council expert witnesses raise any concerns about this requested rezoning. It would appear that the only issue under debate in relation to this requested rezoning relates to landscape considerations.

- 9 The Submitter's position in relation to this requested rezoning is:

- a) The Submitter wishes to pursue this rezoning request, although possibly only in part.

- b) The Submitter proposes to present summary evidence from Mr Paddy Baxter based upon the Site Assessment and Recommendations dated October 2015 which accompanied Submission 425;
- c) It is likely that further consultation with Mr Baxter between the date of this Memorandum and the hearing date may result in an amended proposal being presented by the Submitter within the scope of the original submission;
- d) The Submitter does not otherwise seek to present any additional evidence.

LDR to HDR

- 10 Submission 429 requests the rezoning on an identified area of land zoned LDR, located above that part of Peninsula Road which adjoins the Kawarau Falls Village, to HDR. The only concerns relating to that proposed rezoning identified in the Council expert witness evidence and s.42A Report relate to location (in terms of traffic), ecological (in relation to lizards) and potential hazards.
- 11 The Submitter's position in relation to this rezoning request is:
 - a) The first two matters of concern detailed above will be addressed in legal submissions;
 - b) The Submitter will seek to present a short brief of evidence relating to hazards, being primarily geotechnical stability;
 - c) The Submitter will seek to have Mr Baxter attend the hearing to formally table, as evidence, the original Baxter Design Group Assessment and Recommendations dated October 2015, which accompanied Submission 429, and to answer any questions from the Commission;
 - d) The Submitter will otherwise rely on the information detailed in Submission 429 and the Council's s.42A Report and accompanying expert reports, and will not seek to present any additional evidence.

Other Considerations

- 12 From consideration of the matters detailed above it will be apparent that, with one exception, the Submitter does not seek leave to present any evidence beyond evidence which the Council's expert witnesses have already seen and considered. The one exception relates to hazard evidence in relation to the requested HDR zoning. In respect of that evidence:

- a) That evidence has yet to be commissioned, so Counsel does not know what it will contain;
- b) Given the very limited timeframe available, the evidence will be short and focused;
- c) Counsel anticipates that the Council may wish to seek leave for an evidential Right of Reply in relation to that evidence;
- d) Counsel for the Submitter would have no objection to such leave being granted by the Commission;
- e) It is anticipated that this evidence would be of assistance to the Commission in carrying out its statutory functions in respect of this requested rezoning.

13 Taking into account all of the above, Counsel advises and submits that:

- a) Counsel proposes to lodge legal submissions in the normal manner, so as to enable the Commission to pre-read these before the hearing date. Under these circumstances, it is anticipated that they will be relatively short.
- b) Assuming the original Submissions 425 and 429 have been pre-read, including the accompanying landscape assessments, the only new or revised summary evidence to be presented at the hearing would relate to landscape (in respect of the Rural to LDR rezoning) and hazard (in respect of the LDR to HDR zoning).
- c) The one hour's hearing time requested should be adequate for that purpose.

14 Counsel appreciates the concession that will be required from the Commission to allow the hearing time requested at this late stage. Counsel has gone to considerable effort, in discussions with the Submitter, to limit the amount of additional material the Commission will have to consider and therefore to enable presentation of the case for the Submitter (covering its six separate rezoning requests) within one hour.

15 Counsel further submits that there will be no prejudice arising for Further Submitters from this request for the following reasons:

- a) Further Submitters are still submitters according to the Commission's Eighth, Ninth, and Tenth Procedural Minutes in respect of timetabling requirements for hearings including Hearing Stream 13. Therefore those submitters would have requested hearing time and lodged

evidence as if they were original submitters, and on the assumption that Submissions 425 and 429 would be pursued as submitted;

- b) Some of those submitters have requested hearing time in respect of the Submitter's rezoning requests in any event;
- c) Save for the above exception as to hazard evidence, no new evidence is being presented such that further submitters would be prejudiced by not being able to respond through rebuttal evidence;
- d) Neither of the two Further Submitters who have requested hearing time and have lodged evidence, being Queenstown Airport Corporation and the Lakeland Park Christian Camp, have raised any concern or lodged any evidence in relation to the hazard issue relevant to the requested rezoning from HDR to LDR.

Amended Address for Service

16 Counsel assumes that the current Address for Service in respect of Submissions 425 and 429 is care of Bonisch Consultants, being the planning firm which lodged Submissions 425 and 429. Bonisch Consultants are no longer involved in relation to Submissions 425 and 429.

17 Counsel requests that Council's records be amended so that the Address for Service for Submissions 425 and 429 is:

c/- Warwick Goldsmith
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Queenstown
E: Warwickgoldsmith@gmail.com

18 If a postal address is also required, that is P.O. Box 213 Queenstown.

Dated this 4th day of August 2017



Warwick Goldsmith

Counsel for F S Mee Developments Co Limited