

PART O: MIDDLETON FAMILY TRUST

Submitter **Middleton Family Trust (Submission 338)**

Further Submissions

Remarkables Park Limited (FS1117.45) support,
Hansen Family Partnership (FS1270.75) support,
Oasis In The Basin Association (FS1289.24) oppose,
Queenstown Airport Corporation (FS1340.79) oppose,
Queenstown Park Limited (FS1097.150) support.

53. PRELIMINARY MATTERS

53.1. Subject of Submissions

295. These submissions related to an area of approximately 94.5ha between Lake Johnston and Tucker Beach Rd.

53.2. Outline of Relief Sought

296. Middleton Family Trust (338.2) sought the rezoning of 94.5 ha of land. It sought a combination of 76 ha Low Density Residential and 18 ha Rural Residential. Based on approximate yield calculations, the area of LDRZ could enable 1,156 dwellings and the RR 31 dwellings, over and above the notified Rural Zone. A proposed road access was identified within the submission, extending from Ladies Mile over Ferry Hill passing above and to the east of Lake Johnson to the proposed LDR zone.

297. Associated with the rezoning Submission 338.5 also opposed the ONL location on the submitter's land and requested that it be amended to reflect that approved by Environment Court decision C169/2000; and sought that the UGB line be aligned with the boundaries of the proposed LDRZ.

53.3. Description of the Site and Environs

298. The original submission site is on the northern slopes of land between Ferry Hill and the unnamed hill to the west, and generally to the north of Lake Johnson. It crosses a ridgeline and the northern part of the submission site lies on the slopes and terraces facing Tuckers Beach and the Shotover River valley.

299. The original submission site is shown on Figure 6-18 below.

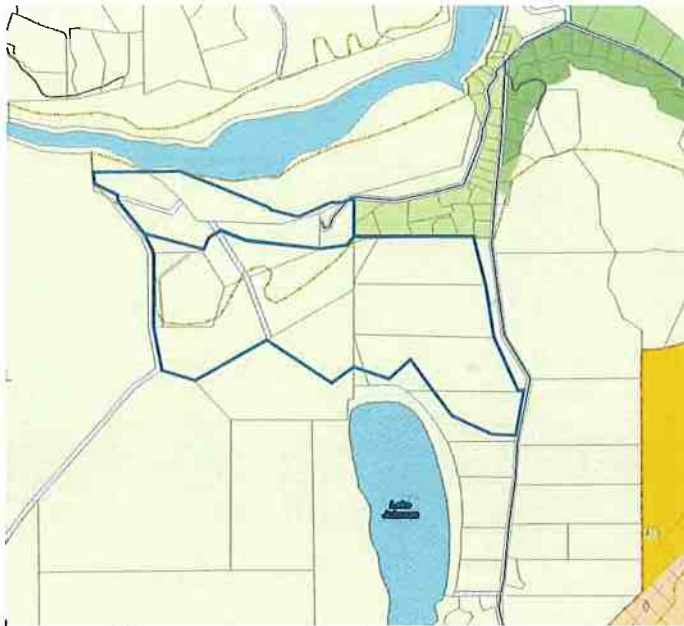


Figure 6-18 – Original Submission site in blue outline. The ONL is shown as a brown dashed line

- 300. The smaller polygon towards the top of the image is the proposed Rural Residential Zone. The larger polygon is the proposed Low Density Residential Zone.
- 301. A proposed road access was identified within the submission, extending from the Eastern Arterial (Hawthorne Drive) roundabout with SH6 and climbing steeply over Ferry Hill before descending and passing above and to the east of Lake Johnson to the proposed LDR zone. The location of this proposed road is shown on Figure 6-19.



Figure 6-19 – Location of proposed road (blue line)

53.4. Effect of Stage 2 of the PDP.

- 302. Since the submission was lodged and heard in the Stream 13 hearings, the Wakatipu Basin variation has been notified as part of Stage 2 of the variation. Some of this submission site is within the variation. As a result, the submission in respect of that part of the site is deemed to be a submission on the variation⁸⁶ and cannot be heard and decided in Stage 1. The southern boundary of the Wakatipu Basin variation is the ONL line which can be seen on Figure 6-18 above. All of the requested Rural Residential zone and part of the requested LDR zone is

⁸⁶ Pursuant to Clause 16B of the First Schedule to the Resource Management Act 1991

now included in the Wakatipu Basin variation and that part of the submission is deferred to the Stage 2 hearings. Only the part of the submission site outside of the Variation (within the ONL as notified) is considered in the balance of this recommendation.

303. The part of the submission site transferred to Stage 2 is shown in Figure 6-20.

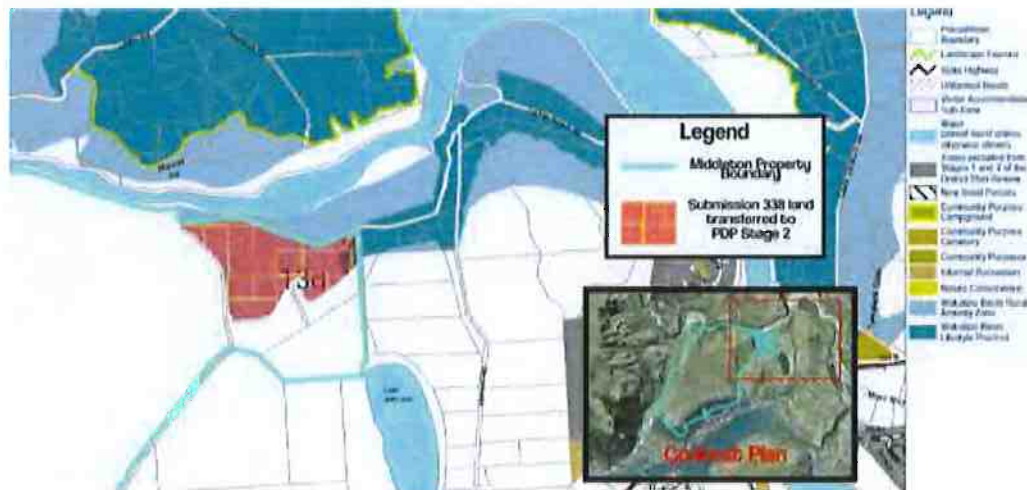


Figure 6-20 – Part of Submission 338 transferred to Stage 2.

54. THE CASE FOR REZONING

54.1. Submitter

304. The case for the submitter largely centred on the perceived importance of substantially increasing the supply of residential land available for development in Queenstown. Evidence for the submitter by Mr Nick Geddes was to the effect that there is a large demand for housing sites and that a great deal of zoned residential land is being withheld by owners. Mr Geddes relied heavily on the NPSUDC 2016 which requires the Council to make available an adequate supply of serviced and available land for urban growth.

305. Mr Geddes acknowledged that adverse environmental effects might occur, particularly to the landscape, but that this could be mitigated to an extent by setting aside sensitive areas such as escarpments, and by planting.

306. Mr Geddes also said that though some natural hazards exist on the site these would be capable of being assessed and managed through the subdivision and consenting process.

307. At paragraph 5.42 of his evidence he stated

I accept that it is important to manage activities towards the protection of the areas single biggest asset the environment. However, I consider primary importance must also be placed on the needs of the community and the higher order provisions in the Act which include the provision of the social and economic wellbeing of a community as well as the preservation of landscapes.

308. Essentially this is an overall judgement approach, relying on section 5 of the RMA to bolster the conclusions he had also reached under the NPSUDC 2016. Mr Geddes found support for his approach in objectives in Chapter 3 of the PDP, particularly Objectives 3.2.6.1 and 3.2.6.2

which directly correlate to the obligations, objectives and policies of the NPSUDC 2016 discussed earlier.

309. Other expert evidence for the submitter was given by Mr Jason Bartlett on transport, and Mr Chris Hansen on servicing and infrastructure. Mr Bartlett said that two access roads would potentially be available to the new residential area, one via the new road over Ferry Hill to the Hawthorne Rd roundabout, and the second via Tucker Beach Rd to SH6. He acknowledged that both would increase traffic through those intersections and that further study would be required to establish whether either of these intersections would have the capacity to handle the additional traffic. He recognised that other development proposals at North Frankton would also be relying on the Hawthorne Drive roundabout and there may not be capacity for both those developments and the current proposal. He described intersection improvements already under consideration by NZTA at the Tucker Beach Rd intersection with SH6.
310. Mr Hansen said that it would be feasible to construct urban services for wastewater, stormwater, water supply, electricity and communications on the site and that the Council's wastewater treatment plant would have capacity to service the site after already-planned upgrades which would provide greater capacity and safety there.

54.2. Oasis in the Basin

311. Oasis in the Basin (Oasis) is a small group of people who are recreational users of the Lake Johnson area and have concerns about the effects of any potential development on the natural values of the area. Evidence for the Association was given by Mr Warwick Goldsmith, a resident of the area, Mr Stephen Skelton, a landscape architect and Mr Andy Carr, a traffic engineer.
312. Mr Goldsmith said that Oasis was not opposing any development that would be outside the ONL. As we have noted earlier, this would be in the northern part of the submission site that has been overtaken by the Wakatipu Basin Variation, and that part of the submission is now deferred to the Stage 2 hearings.
313. Mr Goldsmith said that Lake Johnson is a hidden jewel in the middle of the Wakatipu Basin that is well used by the public for walking, photography, fishing and canoeing, and that it has potential for more use as Queenstown grows and with improvements to access, directions, promotion and management. He said that the enjoyment of the area is heavily dependent on the outstanding natural values of the surrounding area including the submission site. The proposed LDR development would be clearly visible from the vicinity of the site and would severely compromise the quiet enjoyment of its values.
314. Mr Skelton discussed the glacial origins of the lake and the surrounding mountains. He said the lake was virtually invisible except from above, and the openness of the surrounding hills added to the sense of quiet isolation at the lake. He said that although the submission site was in a pastoral farm, the open and relatively unmodified nature of this meant that the land and its glacial formation remained very legible. He described how the site provided a pleasant open foreground to views from the Shotover valley and Wakatipu Basin to the north which helped to frame the views through to the much appreciated Remarkable Mountains to the south. From the south the site is part of a pleasant open and rural edge to the Frankton Flats. He considered the ONL was correctly placed east of Hansen Road where the submitter seeks to have it relocated, as it generally follows the topographic transition between the glacier overridden schist landform and the alluvial fans and terraces bordering the Shotover River. He

considered that the proposed road up the side of Ferry Hill would be an unacceptable intrusion into the ONL there.

315. Overall, he considered that development of the scale proposed would have very high adverse effects on the character and quality of the ONL as it would enable built development to cloak and modify the legible landform, would result in a significant loss of the rural character of the landscape and would impinge on the natural, open character of Lake Johnson. The visual amenity as experienced from public and private places north and northeast of the site would be adversely affected to a moderate to high degree as the rural context and open, natural character of the slopes which hold the Basin would be greatly degraded and the type of development proposed would detract from the distant views of the dramatic mountains.
316. Mr Carr discussed the roading implications of the proposal. He said that the proposed road up Ferry Hill would be steep and high, rising at least 100 metres to the highest point and very expensive to construct. It was his opinion that if the development was to proceed then access should be confined to the Tucker Beach Road end of the site, provided that the proposed improvements to its intersection with SH6 take place. He considered that upgrade would enable the intersection to easily absorb the increased traffic. We note, however, that under the Wakatipu Basin Variation, most of the intervening land is proposed to be zoned Wakatipu Basin Rural Amenity, which is proposed to have a very low density of one household per 80 ha. This may make it uneconomic to build a road across that land to reach what remains of this submission site.
317. Mr Jeffrey Brown, a planning consultant, gave evidence for Oasis. He said that the LDR zoning is proposed on land that is reasonably close to Frankton Corner and to the Frankton Flats zones, and that it could provide for a large number of residential sites which would contribute to the housing needs of the District. This would be a positive effect of the proposal. He accepted that the land may be able to be efficiently accessed and serviced, although there was insufficient information to determine if the traffic and infrastructure effects would be adverse or not.
318. The land is within the ONL. He agreed with Mr Skelton and Dr Read for the Council that the LDR zoning in this location, and the access road to it, would have very high or significant adverse effects on the landscape values of the ONL, and on the rural amenity values of Lake Johnson and its environs. He agreed with Mr Goldsmith that the zoning would also urbanise an existing undeveloped area and would foreclose the opportunity for Lake Johnson, its margins and its wider naturalness to be an undeveloped and remote "getaway" close to the urban settlement areas of Queenstown and Frankton. Overall, the very high (or significantly) adverse effects of the LDR zoning on the landscape values of the area outweighed any positive effects of the zoning, in his view.
319. He analysed the higher order strategic objectives and policies in Chapter 3 of the PDP, particularly those relating to urban growth and landscape protection and concluded that that the LDR zone would not fulfil the PDP's Strategic Direction goals of "strategic and integrated management of urban growth" or "distinctive landscapes are protected from inappropriate development".

54.3. Council

320. The evidence for the Council was given by Dr Marion Read on landscape, Ms Wendy Banks on transport, Mr Ulrich Glasner on infrastructure, Mr Glen Davis on ecology and Ms Kimberley Banks on planning.

321. Mr Glasner was not able to support the zoning in the absence of detailed modelling to demonstrate the feasibility of providing services.
322. Mr Davis did not oppose the proposal in the absence of any significant indigenous vegetation communities on the site.
323. Ms Wendy Banks opposed the submission based on the size of the area sought for residential zoning. She identified that the anticipated vehicle trips generated by the proposed rezoning would account for 69% of the total existing trips on the Hawthorne Drive roundabout. We note that the reduced size of the site we are now dealing with would reduce that proportion, but it would obviously remain a very relevant issue especially given the likelihood of other developments at North Frankton also having to rely on that roundabout.
324. Dr Read opposed this submission in part. Dr Read opposed the proposed LDRZ, but was however not opposed to the areas of RR zoning. Given that we are considering only part of the proposed LDRZ and not the northern area which contains the balance of the LDRZ and all of the proposed RR, we take that to mean that Dr Read opposed the remaining part of the submission in full.
325. Dr Read identified the location as being within the backdrop to highly valued views within the Wakatipu Basin, including those seen from Littles and Domain Roads. It was her opinion that the LDRZ would have significant adverse effects on the character and quality of the landscape. Additionally, she considered the proposed access road crossing the upper terraces of Ferry Hill and around Lake Johnson to also have significant effects on the ONL as seen from both the Wakatipu Basin and from within Frankton.
326. In her planning report, Ms Kimberley Banks acknowledged that the proposal would on face value have some merit in terms of connectivity and proximity to services, amenities and existing residential areas. However, in her opinion the provision of housing capacity was not the sole consideration in the application of zoning, and in this instance she considered that Goal 3.2.5 of the PDP "*the protection of our distinctive landscapes from inappropriate development*" in combination with Goal 3.2.4 to be of greater comparative significance. She did not accept a pressing need to realise this scale of capacity, where realising this is likely to come only with significant costs to the landscape. She believed that such an intensity of development in this location to be inappropriate and therefore she recommended that we reject the areas of proposed LDRZ.
327. Ms Rosie Hill, legal counsel for Oasis also discussed the latter point extensively in legal submissions. She said that the NPSUDC 2016 has to be read in conjunction with Part 2 of the RMA. The NPSUDC 2016 does not address the values in section 6 of the RMA at all. In this case the relevant subsection is s6(b), the protection of outstanding natural landscapes from inappropriate development. The Council is required to give effect to the NPSUDC 2016 but also to Part 2. In her view, the submitter had not provided sufficient evidence of a compelling need to rezone this land despite the existence of the ONL. She referred to the evidence of Mr Phil Osborne for the Council on dwelling capacity, which was to the effect that there was sufficient zoned and available residential land to satisfy the requirements of the NPSUDC 2016. She submitted we should prefer Mr Osborne's evidence to that of Mr Geddes, because of its greater rigour and Mr Osborne's better qualifications to carry out such research. She pointed out that the Council is completing a detailed assessment of development capacity as required by the NPSUDC 2016 and is due to report on this by December 2018. Consequently she said

that the submitter had not made out a case that in this instance the needs for further residential land in Queenstown should overcome the requirements of Part 2 of the RMA and the relevant landscape identification and protection objectives in Chapter 3 of the PDP.

54.4. Discussion of Planning Framework

328. Recommended Objective 3.2.2 is that *Urban growth is managed in a strategic and integrated manner*. Under this, Objective 3.2.2.1 requires that *Urban development occurs in a logical manner so as to:*

- *promote a compact, well designed and integrated urban form;*
- *build on historical urban settlement patterns;*
- *achieve a built environment that provides desirable, healthy and safe places to live, work and play;*
- *minimise the natural hazard risk, taking into account the predicted effects of climate change;*
- *protect the District's rural landscapes from sporadic and sprawling development; and*
- *ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in;*
- *contain a high quality network of open spaces and community facilities; and.*
- *be integrated with existing, and planned future, infrastructure.*

329. Objective 3.2.5 is: *The retention of the District's distinctive landscapes*. Objective 3.2.5.1 is: *The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration*.

54.5. The Operative and Proposed Otago Regional Policy Statements

330. The Operative Otago Regional Policy Statement must be given effect to⁸⁷. This states

5.4.3 To protect Otago's outstanding natural features and landscapes from inappropriate subdivision, use and development.

331. The related policies identify the characteristics of ONFs and landscapes, but do not identify what is inappropriate. Effectively this restates s6(b) of the RMA, but it remains necessary to determine what is inappropriate, and there is no mandatory guidance here as to what the outcome of the case should be.

332. The Proposed Regional Policy Statement takes a very similar approach. Objective 2.2 and its related policies are;

Objective 2.2

Otago's significant and highly-valued natural resources are identified, and protected or enhanced

Policy 2.2.4

Managing outstanding natural features, landscapes, and seascapes Protect, enhance and restore the values of outstanding natural features, landscapes and seascapes, by:

⁸⁷ Section 75(3)(c) of the RMA

- a. *Avoiding adverse effects on those values which contribute to the significance of the natural feature, landscape or seascape; and*
- b. *Avoiding, remedying or mitigating other adverse effects on other values; and*
- c. *Assessing the significance of adverse effects on values, as detailed in Schedule 3; and*
- d. ...
- e. ...
- f. *Encouraging enhancement of those areas and values.*

333. Schedule 3 contains a set of criteria for assessing the significance of adverse effects.

334. As the proposed RPS is not yet operative, and is subject to appeal, we do not consider it should be given significant weight. In any case, it contains no specific direction that would determine this case. It will still be necessary to consider whether the proposed development would be appropriate in the ONL. At most, the Schedule 3 criteria might assist in that consideration.

55. ISSUES

- a. Landscape
- b. Transport
- c. Dwelling Capacity

56. DISCUSSION OF ISSUES AND CONCLUSIONS

335. As we have already noted the NPSUDC 2016 requires the Council to monitor the availability of land for development and ensure a sufficient amount of land is zoned, serviced and available. We have discussed the NPSUDC 2016 extensively in our introduction to this report.⁸⁸ We concluded in that report that Queenstown has sufficient land available for development for the present. The Council is still carrying out its investigation and reporting required under the NPSUDC 2016. Even if the outcome of the Council's investigation is a conclusion that more land needs to be found, the Council would still need to consider where the most appropriate sites would be, which might or might not include this one. Therefore we do not think it necessary to take any precipitate action on this submission simply to satisfy the perceived shortfall.

336. With regard to landscape, the submitter did not provide any expert evidence on this. The evidence of both Dr Read for the Council and Mr Skelton for Oasis was clear and convincing. Both concluded that there would be significant adverse effects on the ONL from this proposal. We accept and adopt their conclusions.

337. With regard to roading capacity, even Mr Bartlett for the submitter considered that further investigation would be required into the capacity effect at the Hawthorne Drive roundabout before this proposal could go ahead. Ms Wendy Banks for the Council agreed with that. Mr Carr for Oasis in the Basin was more concerned about the difficult alignment of this road, and considered that alternative access to the site should be restricted to via Tucker Beach Rd. Because of the situation with the Wakatipu Basin variation we cannot rely on that alternative at this stage. Therefore the proposal is premature on the roading issue alone.

338. In these circumstances we do not need to discuss servicing or any other issues.

⁸⁸ Report 17-1, Section 3

57. RECOMMENDATION

339. For the reasons set out above, we recommend that:
- a. Submissions 338.2 and 338.5 be rejected; and
 - b. FS1117.45, FS1270.75 and FS1097.150 be rejected; and
 - c. FS1289.24 and FS1340.79 be accepted