

**BEFORE AN INDEPENDENT HEARING PANEL
APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL**

UNDER THE Resource Management Act 1991

IN THE MATTER of a Variation to the proposed Queenstown Lakes District Plan (Te Pūtahi Ladies Mile) in accordance with Part 5 of Schedule 1 to the Resource Management Act 1991

**MEMORANDUM OF COUNSEL ON BEHALF OF THE ANNA HUTCHINSON FAMILY
TRUST REGARDING FURTHER MATERIL FILED BY SUBMITTERS**

DATED: 23 JANUARY 2024

Counsel acting:
JAMES WINCHESTER
BARRISTER
P 06 883 0080
M 021 303 700
Joll Commons
Level 1, 17 Joll Road
PO Box 8161, Havelock North 4130
jameswinchester.co.nz

MAY IT PLEASE THE HEARING PANEL

1. This memorandum is filed on behalf of the Anna Hutchinson Family Trust (**Trust**), a submitter on the Variation, and relates to material of concern to the Trust which has been filed with the Council's Hearings Administrator by a number of further submitters (**further material**). The further submitters are residents on Spence Road.

2. The further material which is of concern to the Trust is as follows:
 - (a) an e-mail dated 8 January 2024 from Graeme Rodwell¹;
 - (b) an e-mail dated 29 December 2023 from Dan and Mitzi Cole-Bailey²;
 - (c) a letter dated 30 December 2023 from Hans and Dorothy Arnestedt³; and
 - (d) a statement dated 28 December 2023 from Mitzi Cole-Bailey.

3. The purpose of this memorandum is not to seek any directions from the Hearing Panel (**Panel**), nor to seek the opportunity to respond to the substance of the material referred to in paragraph 2 above. Rather it is to record the Trust's concerns about the procedural irregularity of this material having been filed for the Panel's consideration, and advise of the Trust's position that the Panel should disregard this material.

4. As a preliminary observation, the material lodged contains a number of assertions and opinions which are inaccurate, disputed and lack any evidential foundation. The further material is both unfair and clearly prejudicial to the Trust's interests.

5. The apparent basis for the material being filed is that the further submitters wish to comment further on both procedural and substantive matters concerning the Trust's case, a considerable time after the presentation of

¹ Further submitter 143

² Further submitter 147

³ Further submitter 144

that case has concluded. If the Panel was to allow this opportunity and have regard to this information, it would call into question the integrity of the Streamlined Plan Process (**SPP**) and provide an unfair and open-ended opportunity for individuals seek to advance their views in a manner contrary to the Panel's directions and the principles of natural justice.

6. On behalf of the Trust, it is submitted that:

- (a) the further submitters were expressly given notice by the Trust of its submission and requested relief so that they could participate in the SPP if they wished;
- (b) the relevant individuals who have sought to volunteer the further material all made further submissions in opposition to the Trust's relief and therefore have had the opportunity to participate in the SPP;
- (c) the relevant individuals engaged experienced legal counsel and a senior planning expert to advance their views on both procedural and substantive matters (indeed the further submissions were filed by their legal counsel);
- (d) the planning expert engaged by the relevant individuals engaged in conferencing in accordance with the Panel's directions and expectations, and reached agreement with the Trust's planning witness on a range of matters – including on setback issues which are again put in issue through the further material;
- (e) the relevant individuals appear to have elected, on a fully informed basis, to *not* appear and give evidence to the Hearing Panel⁴ (it is reasonable to assume that they were given advice about this choice by their legal counsel);
- (f) the consequence of this choice is that the filing of the further material is not contemplated by and is in fact in contravention of the Panel's directions regarding filing of evidence and further information;

⁴ See Arnestedt letter dated 30 December 2023, and Mitzi Cole-Bailey statement page 1 "*I chose not to speak at the hearing process*".

- (g) any concerns expressed regarding the alleged procedural unfairness of the manner in which the Trust's case has been advanced need to be seen against that context, and the fact that rather than the Trust being able to "... *submit responses to questions or supply further information at will*"⁵ such information has been provided at the specific request or direction of the Panel;
- (h) receiving further, uninvited material from lay submitters in the circumstances is therefore very different to an ongoing process of expert engagement or an invitation to provide further expert evidence on discrete issues; and
- (i) the suggestion that the submitters need to have a further opportunity to present their case to provide an even playing field⁶ has no merit nor reasonable basis in fact, and of course is at odds with the reality that the relevant individuals *did* choose to run their case using lawyers and experts.

7. It is submitted to be apparent that, rather than there being any unfairness to the further submitters as a consequence of the SPP process to date, it is the Trust that would suffer unfairness in the event that the Panel received and/or had any regard to the further material sought to be volunteered.

8. The integrity of the SPP process and any decisions made should not be placed at risk by allowing such material to be submitted in a manner that is both procedurally unfair and prejudicial.

DATED this 23rd day of January 2024



James Winchester
Counsel for the Trust

⁵ E-mail from Mitzi Cole-Bailey dated 29 December 2023

⁶ Ibid