

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource
Management
Act 1991

AND

IN THE MATTER of the Proposed
District Plan

**MEMORANDUM OF COUNSEL / SUBMISSIONS FOR QUEENSTOWN
LAKES DISTRICT COUNCIL REGARDING PROPOSED REGIONAL POLICY
STATEMENT**

3 March 2017

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MAY IT PLEASE THE PANEL:

1. This memorandum relates to the Otago Proposed Regional Policy Statement (**PRPS**).
2. The Hearing Panel (**Panel**) in its First Minute concerning the PRPS¹ provided guidance as to how it expected to deal with decisions on the PRPS. The Panel confirmed that from the date of the First Minute, it expected the Council and submitters to refer to the Decisions Version of the PRPS in giving both evidence and legal submissions. It confirmed also that for those hearing streams that had already been heard before 7 October 2016, that the Panel would provide the Queenstown Lakes District Council (**Council**) and submitters the opportunity to address the implications of the PRPS Decisions Version on the submissions and evidence heard, taking account of the appeals lodged.
3. In its Second Minute² the Panel directed the Council to provide written submissions on whether the Decisions Version of the PRPS changes any of the Council's recommendations already made to the Panel. The Panel in its Second Minute clarifies that it is only requesting submissions on how the changes from the Notified version to the Decisions version of the PRPS, and any change in the status of those provisions (taking account of the appeals lodged), affect the submissions and evidence presented at the hearings to the extent that they are relevant to the case previously presented, not new or additional evidence or submissions on the PRPS more generally.³

Background

4. The PRPS was notified for public submissions on 23 May 2015. Decisions on submissions were notified on 1 October 2017.
5. Council's recommendations on Hearing Streams 1 to 5 were therefore made before the Decisions Version was released. Recommendations on Hearing Stream 6 were also made before the Decisions Version was released, and at the time of filing the Council's reply, the appeal period had not closed and

1 Dated 7 October 2016.

2 Dated 8 February 2017.

3 At paragraph 4.

Council was not in a position to give evidence on the Decisions Version of the PRPS.

6. Except for the following, recommendations on Hearing Streams 07 to 10 have considered the implications of the PRPS Decisions Version:

- 6.1 Designations;
- 6.2 Waterfall Park Zone;⁴ and
- 6.3 Whole of Plan.

7. A number of appeals have now been filed against various PRPS Decisions Version objectives and policies. The Otago Regional Council has issued a copy of the PRPS dated 14 February 2017 that sets out which provisions of the PRPS have been appealed. The majority (but not all) of PRPS provisions are under appeal.

Requirement to "have regard to" the PRPS Decisions Version

8. Section 74(2)(a)(i) of the RMA provides that when preparing a district plan a territorial authority shall 'have regard to' any proposed regional policy statement.
9. All of the Decisions Version of the RPS remains proposed, as under Schedule 1 of the RMA a proposed policy statement remains 'proposed' up until the point in time that it becomes operative in terms of clause 20.⁵ Through clause 20 of Schedule 1, an approved RPS becomes an operative policy statement on a date which is to be publicly notified. It is understood that the Regional Council has decided not to notify the parts of the PRPS that are not subject to appeal, and therefore the relevant legal test for all of the PRPS Decisions Version, is still 'have regard to' in s74(2)(a).

What does "have regard to" mean for the Panel?

10. In *Winstone Aggregates Limited v Papakura District Council*⁶ the Environment Court considered that 'to have regard to' a proposed regional policy statement,

⁴ At section 2, page 2, the s42A notes that the RPS is currently under review but does not say that the Decisions Version has been considered.

⁵ Section 86F of the RMA does not apply, as there are no rules in a policy statement.

⁶ EnvC A096/98.

in the context of section 72(2)(a)(i) of the RMA, means to give that document material consideration. However, the provisions of the document need not necessarily be followed.⁷ In the context of resource consent appeals, the Court has defined the legal test as meaning "give genuine attention and thought to the matter".⁸

11. In that case, a proposed regional policy statement was beyond challenge (all appeals were resolved), but not yet operative. The Court took the proposed regional policy statement into consideration but did not require the proposed district plan in question to be consistent with it.
12. The Panel therefore has an obligation to give the PRPS Decisions Version material consideration when making its recommendations on submissions on the Natural Hazards chapter. However, the Panel is not under any obligation to ensure that the various chapters give effect to (or implement)⁹ the PRPS under section 75(3)(c) of the RMA.
13. In the *Winstone Aggregates* case the Environment Court noted that, despite being mindful of the desirability of striking a balance between obligations and functions in the present and the future:¹⁰

[41]... the Act does not require that a proposed district plan be consistent with a proposed regional policy statement. Should a district plan be found to be lacking in consistency at some future time, mechanisms exist within the Act for initiating changes, where appropriate...

14. The Council submits that, in accordance with the reasoning in the *Winstone Aggregates* case, the relationship between the PDP and the PRPS will need to be assessed in detail at the time that appeals on the PRPS are resolved or subject to Environment Court decisions, and more particularly when the RPS is made operative by the Regional Council, whether in whole or in part. If there are any inconsistencies between the provisions in the two documents at this stage then a plan change or variation to the PDP may be required. However, as the final outcome of the RPS remains uncertain this is not a matter that can be practically addressed at this point in time.

7 EnvC A096/98, 14 August 1998 at [41].

8 Environment Court decision in *Marlborough Ridge Ltd v Marlborough District Council* (1997) 3 ELRNZ 483 and *Unison Networks Ltd v Hasting District Council* [2011] NZRMA 394, at [70].

9 *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*, [2014] 1 NZLR 593 at [77]

10 EnvC A096/98, 14 August 1998 at [41]

Designations – have "particular regard to"

15. The relevant legal test for the designations chapter, is to consider the effects on the environment of allowing the requirement, having particular regard to the PRPS.
16. In the context of a resource consent decision,¹¹ have particular regard to has been held to give genuine attention and thought to the matter, on a footing that the legislation has specified it as something important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion.

Implications of PRPS Decisions Version to Council recommendations in Hearing Streams 01 - 05

17. These submissions now turn to address the implications of any changes made to the PRPS in the Decisions Version, to recommendations made in Hearing Streams 01 to 06, and to the three chapters in subsequent hearings where the PRPS Decisions Version has not been considered.
18. Council has carried out a review of the changes from the notified version to the Decisions Version of the PRPS that are relevant to these recommendations and submissions and asked relevant authors to confirm:
 - 18.1 whether Council's recommendations and submissions (including section 32 assessments) should be amended in response to the regional council's decisions on the PRPS, taking into account the extent of the subsequent appeals; and
 - 18.2 what (if any) amendments to the recommendations and submissions, that make up the Council's position on these matters are needed to address the changes.

¹¹ *Marlborough District Council v Southern Ocean Seafoods Ltd* [1995] NZRMA 220, noting this is a resource consent decision.

19. The results of this review are summarised in **Appendix 1** and show that no amendments to the recommendations and submissions are supported at this time, because one or more of the following applies:

- 19.1** the decisions on the PRPS retained the intent and direction of the notified provisions in the main; and/or
- 19.2** the decisions in several cases strengthens the support from the RPS for the Council's recommendations and submissions on the PDP; and/or
- 19.3** the relevant provisions of the PRPS are subject to appeals that could result in substantive changes to the PRPS such that they can only be given limited weight at this time.

DATED this 3rd day of March 2017



S J Scott
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APPENDIX 1

Review of Changes from Notified Version to Decisions Version of PRPS

		S42A Recommendations and submissions on notified PRPS (and paragraph reference)	Revised Recommendation on decisions version PRPS
Hearing Stream 01 – Introduction and Strategic Directions			
1	Introduction	N/A, except that 1.6.11 states that the Plan must give effect to the Regional Policy Statement	N/A
3	Strategic Directions	Paragraphs 5.10-5.12 Section 32 report (Appendix 3), page 4	No change to recommendations No change to recommendations
4	Urban Development	Paragraphs 5.10-5.12 Section 32 report (Appendix 3), at page 4	No change to recommendations No change to recommendations
5	Tangata Whenua	Addressed only in section 32 report (in Appendix 3), at pages 3-5, where it is confirmed that the chapter has regard to the PRPS.	No change to recommendations
6	Landscape	Paragraph 5.5 Section 32 report (Appendix 3), at pages 7-10	No change to recommendations No change to recommendations
Hearing Stream 02 – Rural			
21	Rural Zone	Paragraph 5.1(e) at page 8 Section 32 report (Landscape Appendix 3), at pages 7-10	No change to recommendations No change to recommendations
22	Rural Residential and Lifestyle	Paragraph 5.1(e) at page 6 Section 32 report, (Appendix 3) pages 6-7	No change to recommendations No change to recommendations

23	Gibbston Character Zone	Paragraph 5.1(e) at page 5 Section 32 report (Landscape Appendix 3), at pages 7-10	No change to recommendations No change to recommendations
33	Indigenous Vegetation and Biodiversity	Paragraph 5.1(h) at page 7 Section 32 report (Appendix 3), pages 4-5	No change to recommendations No change to recommendations
34	Wilding Exotic Trees	Paragraph 5.1(e) at page 5 Section 32 report (Appendix 3), pages 5-6	No change to recommendations No change to recommendations
Hearing Stream 03 – Heritage and Protected Trees			
26	Historic Heritage	Paragraph 5.7 at page 8 Section 32 report (Appendix 3), page 4	No change to recommendations No change to recommendations
32	Protected Trees	Paragraph 5.6 at page 6 Section 32 report (Appendix 3), pages 4-5	No change to recommendations No change to recommendations
Hearing Stream 04 - Subdivision			
27	Subdivision	Paragraph 5.1(g) at page 8 Section 32 report (Appendix 3), pages 6-8	No change to recommendations No change to recommendations
Hearing Stream 05 – District Wide Matters			
30	Energy and Utilities	Paragraph 5.18 at page 10 Right of Reply para 7.8 Section 32 report (Appendix 3), page 3	No change to recommendations No change to recommendations No change to recommendations
35	Temporary Activities	Paragraph 5.7 at page 6 Section 32 report (Appendix 3), pages 3-4	No change to recommendations No change to recommendations
36	Noise	Paragraph 5.2(e) at page 5 Section 32 report (Appendix 3), pages 3-4	No change to recommendations No change to recommendations

Hearing Stream 06 - Residential			
7	Low Density Residential	Paragraph 5.1(k) at pages 8-9 Right of Reply para 13.8 Section 32 report (Appendix 3), pages 4-5	No change to recommendations No change to recommendations No change to recommendations
8	Medium Density Residential	Paragraph 5.1(j) at page 9 Section 32 report (Appendix 3), pages 4-5	No change to recommendations No change to recommendations
9	High Density Residential	Paragraph 5.12 at page 7 Section 32 report (Appendix 3), page 9	No change to recommendations No change to recommendations
10	Arrowtown Residential Historic Management Zone	Paragraph 5.1(f) at page 5 Section 32 report (Appendix 3), pages 4-5	No change to recommendations No change to recommendations
11	Large Lot Residential	Paragraph 5.1(k) at page 5 Section 32 report (Appendix 3), page 5	No change to recommendations No change to recommendations
Hearing Stream 07 - Designations (have particular regard to)			
37	Designations	No reference to PRPS	No change to recommendations
Hearing Stream 09 – Resort Zone			
42	Waterfall Park Zone	No reference to PRPS	No change to recommendations
Hearing Stream 10 – Whole of Plan			
Various	Whole of Plan	No reference to PRPS	No change to recommendations