

IN THE MATTER of the Resource  
Management Act 1991

AND

IN THE MATTER of the Queenstown Lakes  
Proposed District Plan  
("PDP")

AND

IN THE MATTER of Further Submission 2821  
by Millbrook Owner-  
Members Committee

### **DECISION ON APPLICATION TO STRIKE OUT FURTHER SUBMISSION**

#### **Introduction**

1. The Hearing Panel has received an application from R & M Donaldson ("the Donaldsons") that Further Submission 2821 lodged by Millbrook Owner-Members Committee ("MOMC") be struck out.
2. I have been delegated the Council's powers under section 34A of the Act to make procedural decisions in relation to the PDP hearing process, including the powers under section 41D to strike out submissions.
3. I provided MOMC the opportunity to respond to the application. This response was received on 24 August 2018. Counsel for the Donaldsons provided reply submissions on 29 August 2018.

#### **Background**

4. On 26 July 2018 the Council notified an addendum to the Summary of Decisions Requested on Stage 2 of the PDP. The Summary had been notified on 12 April 2018, but the Council had discovered that, although the full submissions were made publicly available at that time, parts of two submissions had been omitted from the Summary. Notification of the addendum was undertaken in July to ensure that the requirements of clause 7 of the First Schedule to the Act were complied with.
5. One of the submissions included in the addendum was that part of Submission 2295 lodged by Millbrook Country Club Limited ("MCCL") relating to the application for the Wakatipu Basin Lifestyle Precinct ("the Preconct")

to three areas of land described in the submission as Areas A, B and C. These areas were described in the submission both by reference to the relevant legal descriptions and identifying the relevant areas on a plan included in the submission.

6. MOMC lodged Further Submission 2821 in support of part of this submission.

#### **Further Submission 2821**

7. The further submission specified that MOMC wished to make no further submission in respect of Areas A and C listed in Submission 2295. In paragraph 2 the further submission stated MOMC's support for MCCL's submission regarding Area B.
8. Further Submission 2821 then, in paragraphs 3, 4 and 5, submitted that the same principle (no further building platforms) should apply to Lot 3 DP 20693 (the Donaldson land), including reference to Submission 2135.

#### **Application to Strike Out Further Submission**

9. In summary, the reasons given in the application for striking out the further submission are:
  - a) No part of the MCCL submission that was omitted from the Summary of Submissions in April 2018 relates to the Donaldsons' land, whether by reference to the Donaldsons as owners, legal description or by identification on the map in the submission;
  - b) The lack of reference to the Donaldsons' land in the MCCL submission means the further submission is not "on" Submission 2295;
  - c) There is no scope to include reference to the Shepherd submission (#2135) within the further submission;
  - d) To file a submission seeking a rezoning of the Donaldsons' land, MOMC would have needed to seek a waiver of time to lodge a late submission. No such waiver has been sought and, in any event, as the hearing has already been held, it would be inappropriate to grant such a waiver.

### **MOMC Response**

10. MOMC's position was that the map included in the MCCL submission should be read as including the Donaldsons' land within Area B, although the response goes on to state:

*“the method of description does not change the purpose of the Committee’s submission which is to extend the boundary of Area B to the north as described.”*

11. MOMC also stated that it was not seeking relief in relation to the Shepherd submission, merely incorporating the quoted wording within their own submission.
12. MOMC also clearly state that they do not consider they require any waiver, as raised in the Donaldsons' application.

### **Donaldson’s Reply**

13. In the reply submissions, counsel for the Donaldsons referred me to the table in the Millbrook submission which identified the sites it referred to both by legal description and by owner, and noted that the Donaldsons' land was not included within that table.

### **Discussion**

14. It is long established law that a further submission cannot go beyond the original submission<sup>1</sup>. In addition, the prescribed form<sup>2</sup> makes it clear that a further submission may only support or oppose a submission and may only seek that a submission (in whole or in part) be allowed or disallowed.
15. Submission 2295 is clear in its intent. It seeks that three pieces of land be rezoned and identifies those pieces by legal description in a table contained on page 2, and by labelling the relevant sites on a map included on page 3 of the submission. As the Donaldsons' application and reply submissions state, the Donaldsons' land is neither listed in the table of legal descriptions, nor labelled on the map. Nowhere else in the submission is any mention made of the Donaldsons' land.
16. Additionally, when MCCL's submissions on Stage 2 are considered in full, it can be seen that MCCL supports the proposed zoning of the Donaldsons' land, albeit with the application of additional zone provisions. Thus, MOMC

---

<sup>1</sup> *Offenberger v Masterton DC W53/96*

<sup>2</sup> Resource Management (Forms, Fees, and Procedure) Regulations 2003, Form 6

are incorrect in asserting that MCCL's submission seeks the removal of the Precinct from the Donaldsons' land. If MOMC is suggesting the submission should be extended, as suggested by the paragraph from their response quoted above, such a suggestion is beyond what a further submission can seek.

17. It is clear that paragraphs 3, 4 and 5 of Further Submission 2821 relate to matters not raised in the original submission. It is not open to the MOMC to broaden the scope of the original submission.
18. While the Donaldsons' application seeks that the entire further submission be struck out, I am satisfied that paragraph 2 is a valid further submission supporting part of Submission 2295.

### **Decision**

19. For the reasons set out above, paragraphs 3, 4 and 5 of Further Submission 2821 lodged by Millbrook Owners-Members Committee are struck out under section 41D as disclosing no reasonable or relevant case.

31 August 2018



Denis Nugent  
Hearing Panel Chair