

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

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Stream 14:
Wakatipu Basin hearing
and transferred Stage 1
submissions related to
Arrowtown and Lake
Hayes

**OPENING REPRESENTATIONS / LEGAL SUBMISSIONS FOR
QUEENSTOWN LAKES DISTRICT COUNCIL**

Hearing Stream 14 – Wakatipu Basin

5 July 2018

 **Simpson Grierson**
Barristers & Solicitors

S J Scott / C J McCallum
Telephone: +64-3-968 4018
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140

MAY IT PLEASE THE PANEL:

1. INTRODUCTION

1.1 The scope of this hearing requires some explanation given the notification of the Proposed District Plan (**PDP**) in two stages and the variation notified in Stage 2 are both of relevance to this hearing. The matters that require the Panel's recommendations include submissions¹:

- (a) made on the Wakatipu Basin Chapter 24 text, notified in Stage 2 of the PDP;
- (b) made on the consequential variations made to Chapters 2 (the definition of 'site'), 22, 27 and 36;²
- (c) seeking that additional objectives and policies be added to Chapters 3 and 6 of the PDP to ensure the higher order policy support for Chapter 24;
- (d) on plan map annotations, including submissions seeking:
 - (i) rezonings of the Wakatipu Basin Rural Amenity Zone (**Amenity Zone**) and Wakatipu Basin Lifestyle Precinct (**Precinct**) (together referred to as the **Zone**) as notified in Stage 2;
 - (ii) rezoning of other land notified in Stage 1, generally located at Arrowtown and Lake Hayes;
 - (iii) new bespoke or Special Zones over the land described in (i) and (ii); and
 - (iv) landscape annotations and the Urban Growth Boundary (**UGB**) across these same areas.

1.2 Five issues of a legal nature have been identified in submissions and in preparing Council's recommendations and evidence for the hearing, and are addressed in these submissions:

- (a) Council's recommended changes to Chapters 3 and 6;
- (b) Timing of recommendations on variation to Parts 6.2 and 6.4 of Chapter 6 Landscapes;
- (c) Additional submissions not 'on' variation land;

¹ Including, where relevant, Stage 1 submissions deemed to be on any variation through clause 16B of Schedule 1 of the RMA, as advised by way of Memoranda dated 23 November 2017 and 8 December 2017.

² We return to the variation made to Parts 6.2 and 6.4 of Chapter 6 in Section 3 of these submissions.

- (d) Boxer Hills Trust (2386) – Scope for Future Urban Zone; and
- (e) Proposed Otago Regional Policy Statement.

1.3 Before I turn to these legal issues, some context around the key resource management issues for the Wakatipu Basin variation may be useful context.

1.4 The Chapter and the Zone locations, and Council's recommendations to you, reflect the output of detailed study and analysis undertaken over the two years since the release of preliminary views of a differently constituted Panel. The Council's work has taken into account the Panel's preliminary conclusions that:³

- (a) the fully discretionary regime of the Rural General Zone of the ODP (as also proposed by the PDP) was unlikely to achieve the Strategic Directions of the PDP in the Basin, over the life of the PDP;
- (b) without careful assessment and additional analysis, further development within the Basin has the potential to cumulatively and irreversibly damage the character and amenity values of the Basin; and
- (c) there was some merit in the proposition that the rural character and amenity values of the Wakatipu Basin do not derive predominantly from farming and agricultural activities.

1.5 Ms Gilbert's evidence emphasises the high recreational values of the section 7(c) amenity landscape, generally high aesthetic values (derived from both natural and man-made elements), and its almost unbroken connection with the surrounding ONL / ONF context. She describes her input into the assessment of the rural character of the Basin through the Land Use Study. This includes the identification of 25 Landscape Character Units, the environmental characteristics and amenity values of those units, and consequentially the absorption capability of each unit without affecting the identified values and also without adversely affecting the values associated with the surrounding ONL and ONFs.

1.6 The notified provisions of the Variation represent a location-specific planning regime that has taken into account whether there is any capacity for further development over the wider amenity landscape of the floor of the Basin, and

3 Memorandum (of the Panel) concerning PDP provisions affecting Wakatipu Basin, dated 1 July 2016.

the need to have particular regard to the maintenance and enhancement of those amenity values. Consequentially, the Council has notified an Amenity Zone, and a Lifestyle Precinct to identify where rural residential lifestyle development should be located.

1.7 The Council's four planning witnesses have endeavoured to point out key outstanding matters in their one-page highlight summaries. Of note, key matters are understood to be:

- (a) whether the Amenity Zone provides for sufficient opportunities for rural living, and in particular whether the 80ha minimum allotment size is inappropriate;
- (b) whether existing development rights afforded through ODP zones should be continued in a largely unmodified form;
- (c) whether the policies are too restrictive in terms of seeking to protect landscape character and visual amenity, rather than adhering to s7(c) of the RMA that has regard to the maintenance and enhancement of amenity values; and
- (d) the wording of new objectives and policies in Chapters 3 and 6 of the PDP.

1.8 In terms of the application of zones on the plan maps, at a general level (and not commenting on every area of disagreement):

- (a) the location of the Amenity Zone and the Precinct within the Basin (including between some submitters), including in some instances whether the ODP or PDP framework is more appropriate;
- (b) the addition of a number of new Resort or bespoke zones; and
- (c) the approach to take to the Lake Hayes/Ladies Mile area.

2. COUNCIL'S RECOMMENDED CHANGES TO CHAPTERS 3 AND 6 OF THE PDP

2.1 Mr Barr's section 42A report⁴ identifies that a number of submissions lodged on the variation request amendments to provisions that are located in chapters that were subject to Stage 1 hearings, and Stage 1 decisions on the PDP (ie. Chapter 3 Strategic Directions, Chapter 6 Landscapes and Chapter 21 Rural

⁴ In Section 38.

Zone). The intention behind the relief is to allow integration of the Zone with the PDP and to provide higher order policy support. With the exception of Parts 6.2 and 6.4 of Chapter 6, these chapters were not subject to the variation.

2.2 For the same or similar reasons other submissions notably seek that new provisions be added to Chapter 3 Strategic Directions and Landscape Chapter 6 of the PDP.

2.3 In the period between notification of the variation and this hearing, the Council has issued a decision on Stage 1 of the PDP (which excludes Parts 6.2 and 6.4). Although counsel is not aware of the full extent of appeals at the time of filing these submissions, it is understood that significant parts of Chapters 3, 6 and 21 of the PDP are now subject to appeal.

2.4 The timing and interrelationship of the dual processes is complex and careful consideration is required given the Panel is *functos officio* in respect of the decisions version of Chapters 3 and 6. Mr Barr's recommendations on Chapters 3 and 6 reflect the following:

- (a) there is agreement between submitters and Mr Barr that the decisions version of Chapter 6 does not provide sufficient higher order policy support for Chapter 24;
- (b) those two chapters are now (I understand) largely subject to appeal, and the process for any further changes to them is prescribed by the RMA. Consent orders or decisions issued by the Environment Court may order changes to the decisions text, or after hearing an appeal, the Environment Court may direct the council to prepare changes to the PDP through section 293;⁵
- (c) the Panel does not have any legal ability to revisit the PDP decisions version text through its recommendations on Stage 2 of the PDP, consequentially nor does the Council in its subsequent decision; and
- (d) importantly, it is agreed that jurisdiction (and scope) exists to insert new provisions into Chapters 3 and 6 to the extent that such amendments do not impact the application of Stage 1 provisions, and apply to the area of land covered by the Zone.

⁵ A clause 16A variation, initiated only by the council, is the other option, which would then require another separate process to this hearing stream (and separate again to the appeals).

- 2.5** The Council's recommendation is to add new provisions to Chapter 6 of the PDP that apply to the Wakatipu Basin Rural Amenity Zone (only). This has required careful consideration given the form of the decisions version of Chapter 6, where Policy 6.3.3 is that a separate regulatory regime is to be provided for a number of zones which are not zoned "Rural Zone" on the plan maps, and therefore cannot be one of the three Rural Zoned landscapes specified in Policy 6.3.1 - ONF, ONL or Rural Character Landscape (but are still a section 7(c) landscape). Policy 6.3.3 also is that the ONF/ONL/Rural Character Landscape categories and policies of the chapter related to each of those categories do not apply, *unless otherwise stated*.
- 2.6** The decisions version then provides specific policies for these different areas, including "Rural Character Landscapes". The new Policy 6.3.XA and Policies recommended by Mr Barr are intended to ensure that there are policies in Chapter 6 that apply to the Wakatipu Basin Rural Amenity Zone, as a rural character landscape that is not zoned 'Rural Zone', in the PDP.
- 2.7** In effect, this would mean that Policies 6.3.19 – 6.3.29⁶ would apply to Rural Character Landscapes outside of the Wakatipu Basin Zone, and Council's intention is it will allow mediations on the Stage 1 appeals, to continue along in the second half of 2018.
- 2.8** For these reasons, there are fundamental jurisdictional issues with the Mr Farrell's requests⁷ to amend the PDP Stage 1 decisions text.

3. TIMING OF RECOMMENDATIONS ON VARIATION TO PARTS 6.2 AND 6.4 OF CHAPTER 6 LANDSCAPES

- 3.1** Mr Barr's section 42A report⁸ addresses submissions lodged on the variation to Parts 6.2 and 6.4 of Chapter 6, as well as Stage 1 submissions deemed to be on that variation. This variation was located within the "Open Space and Recreation" document, and evaluated in the section 32 report for the topic.
- 3.2** The variation text is also shown in Mr Barr's s42A and rebuttal recommended provisions, with no recommended changes. It is understood that no evidence

6 Excluding 6.3.27 which in the PDP decisions version already applies specifically to the Wakatipu Basin.

7 For example his Table 1 on page 18 of his evidence for Wakatipu Equities Limited and Slopehill Properties Limited, dated 13 June 2018.

8 In Section 37.

has been filed by submitters that recommends any further changes to Parts 6.2 and 6.4.

3.3 In light of the need to consider the higher order policy support for Chapter 24, Mr Barr evaluated the submissions made on Parts 6.2 and 6.4 in preparing for this hearing. It has transpired that the issue was not specifically included on the Notice of Hearing, nor are the submissions listed in the submissions tables attached to Mr Barr's section 42A report. There are approximately 30 submitters on Parts 6.2 and 6.4, and although it is understood that 28 of them have been invited to the hearing given interest in other parts of the PDP, it is Council's preference that this variation be heard in Hearing Stream 15. Council therefore seeks that no recommendation be made on Mr Barr's section 42A report, Section 37, in this Hearing Stream.

4. ADDITIONAL SUBMISSIONS IDENTIFIED THAT ARE NOT 'ON' LAND VARIED IN STAGE 2 OR ON TEXT WITHIN THE SCOPE OF STAGE 2 / THE VARIATION

4.1 On 17 May 2018, the Chair of the Panel struck out a number of submissions/part submissions under section 41D of the RMA as not being "on" Stage 2 and consequentially disclosing no reasonable or relevant case.⁹

4.2 In preparing evidence and recommendations for this hearing, the Council has identified five other submissions that also fall into this category:

- (a) Sean Brennan (2353) – although purporting to submit on the Wakatipu Basin variation, Mr Brennan actually seeks that the Gibbston Character Zone (which is subject to the Stage 1 PDP decision and has not been re-notified as part of the variation) is reviewed;
- (b) Don Moffat and Brian Dodds (239) – the part of the submission that relates to land currently zoned as Shotover Country Special Zone (**SCSZ**) in the Operative District Plan (**ODP**). This land hasn't yet been notified into the PDP;
- (c) Sanderson Group Limited (404) – the part of the submission that relates to land zoned as SCSZ in the ODP;

⁹ Decision relating to submissions not "on" Stage 2 dated 17 May 2018.

- (d) Shotover Country Ltd (528) – the part of the submission that relates to land zoned as SCSZ in the ODP; and
- (e) Woodlot Properties (501)¹⁰ – the part of the submission that relates to land zoned as Quail Rise Specific Zone (**QRSZ**) in the ODP.

4.3 Brustad et al (2577) have requested amendments to the Chapter 21 Rural Zone assessment matters.¹¹ The correct time to make this submission was in Stage 1, when the Chapter 21 Rural Zone, was notified. There is no scope for this Stage 2 submission. The consequence of the Council's variation to the plan maps is that the Zone merges in and becomes part of the PDP, and the PDP has effect as if it had been so varied. The Rural Zone no longer applies to the area of land covered by the Zone.¹²

4.4 This can be distinguished between submissions lodged in Stage 1 on the Rural Residential and Rural Lifestyle zone text, where those submissions were specifically focused on the zones as located in the Wakatipu Basin. These submissions are deemed to be on the variation and have been transferred over to this hearing.

5. BOXER HILLS TRUST (2386) – SCOPE FOR FUTURE URBAN ZONE

5.1 Mr Jeffrey Brown, on behalf of Boxer Hills Trust, has suggested in his evidence that (subject to there being scope) a future urban zone should be considered for the Boxer Hill site. Putting the merits of the relief to one side, Mr Langman in his supplementary rebuttal evidence¹³ has confirmed he holds concerns as to the scope to include such a 'future urban zone' over the land in question. The submission sought an amended Precinct zone (still sitting within the Wakatipu Basin chapter, which is a rural chapter) – there is no suggestion of an urban zone.

5.2 Council expects the submitter will identify or justify the scope in their submission to provide for a future urban zone over the land in question. That argument will be responded to in the Council's, if the submitter pursues this new relief through the hearing.

10 Including related further submissions Bob and Justine Cranfield (1102.4), Oasis in the Basin Association (1289.4), FII Holdings Ltd (1189.11), The Jandel Trust (1195.10) and Hansen Family Partnership (1270.84).

11 Mr Farrell has also recommended changes to Chapter 21 in his evidence.

12 RMA Schedule 1, Clause 16B.

13 Dated 29 June 2018, at paragraph 3.6.

6. PROPOSED OTAGO REGIONAL POLICY STATEMENT

6.1 The Environment Court has recently made a number of consent orders that direct changes to the decisions version of the proposed Otago Regional Policy Statement (**pORPS**). All of the consent orders are **attached** to these legal submissions at **Appendix A**:

- (a) Chapter 1;
- (b) Kai Tahu Chapter 2;
- (c) Natural Hazards;
- (d) Climate Change;
- (e) Energy;
- (f) Urban Growth Development;
- (g) Hazardous Substances;
- (h) Public Access;
- (i) Historic Heritage;
- (j) Dry Catchments;
- (k) Commercial Activities;
- (l) Industrial Activities; and
- (m) Tourism and Outdoor Recreation.

6.2 The Regional Council has recently filed other consent memoranda with the Court, and a decision also will be issued on some specific parts of the pORPS that went to hearing.

6.3 The Regional Council has advised Council that it had previously not intended to make the pORPS operative in part, but that position is now under review.

6.4 Council's evidence has 'had regard to' the decisions version of the pORPS. As of 28 June 2018 this version has been amended by the directions of the Environment Court set out in each of the consent orders. Council's planning witnesses are prepared to discuss the bearing of relevant changes to the pORPS with the Panel during the course of the hearing. I foreshadow that there is also the potential for the pORPS to have been made operative in part¹⁴ by the time the Panel issues its recommendations (and the Council then makes a decision). This would mean the 'give effect to' legal test would apply for the part of the pORPS that was made operative.

14 Or even possibly in full, depending on timing.

6.5 I also welcome a discussion with the Panel as to how this change to the higher order policy statement can be addressed from a procedural perspective in relation to this hearing.

7. COUNCIL WITNESSES

7.1 A memorandum of counsel was filed on 29 June 2018 regarding the hearing time for the Council's case and proposed order.

DATED this 5th day of July 2018



S J Scott / C J McCallum
Counsel for the Queenstown Lakes
District Council