

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of the Queenstown Lakes
Proposed District Plan

SECOND DECISION RELATING TO SUBMISSIONS NOT "ON" THE PDP

Introduction

1. The Hearing Panel has received two requests from the Council that submissions be struck out under section 41D of the Act as not being on the Proposed District Plan ("PDP").
2. The first request was made when the Council opened its case for Stream 14¹. Four of these submissions² were lodged on Stage 1 but had been held over to be heard as part of the hearings on the Wakatipu Basin. Submission 501 was also subject to a number of further submissions³. Two of the submissions had been lodged in Stage 2⁴.
3. On 9 July 2018 the Hearing Panel received a Memorandum from the Council⁵ advising of additional submissions⁶ it considered not to be "on" Stage 2 of the PDP, and requesting they be struck out.
4. In a Minute dated 14 July 2018 I set out a timetable for submitters to lodge any submissions in support of a claim that their submissions were "on" the PDP, and the for the Council to lodge any reply.
5. I now have submissions from four submitters lodged in response to my Minute:
 - a) Kirimoko No. 2 Limited Partnership – S2405.1;
 - b) Glen Dene Limited and Mrs Sarah Burdon – S2407.1;
 - c) Remarkables Park Limited – S2468.25; and

¹ Opening Representations/Legal Submissions for Queenstown Lakes District Council: Hearing Stream 14 – Wakatipu Basin, dated 5 July 2018, Section 4, presented on 9 July 2018

² Submissions 239, 404, 501, 528. In each case it was the part of the submission relating to special zones in the ODP.

³ FS1102.4, FS1289.4, FS1189.11, FS1195.10 and FS1270.84

⁴ Submissions 2353 and 2577

⁵ Memorandum of Counsel on Behalf of the Queenstown Lakes District Council Regarding a Category of Submissions That Are Not on Stage 2 of the PDP, dated 6 July 2018 and lodged on 9 July 2018

⁶ Submissions 2103.1, 2325.2, 2405.1, 2407.1, 2452.1, 2468.25, 2492.8, 2506.1 and 2599.1

d) Teece Irrevocable Trust No. 3 – S2599.

6. I also have the Council's reply dated 30 July 2018.

7. I have been granted the Council's powers in relation to procedural matters concerning the PDP process, including the powers under section 41D.

Legal Principles Regarding Scope

8. I have previously⁷ set out the criteria I consider can be distilled from *Palmerston North CC v Motor Machinists Ltd*⁸ in determining whether a submission is “on” a plan change or plan.

9. In summary these are:

a) the focus of a submission must be on “specific provisions of the proposal”;⁹

b) variations to the proposal which have not been evaluated in the section 32 analysis are unlikely to be addressing the change to the pre-existing status quo;¹⁰

c) if the resource management regime for a site is not altered by a plan change, then a submission seeking a new management regime for that site is unlikely to be “on” the plan change;¹¹

d) incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial section 32 analysis is required to inform affected persons of the comparative merits of that change.¹²

No Comment Received

10. No submissions or comments were received from:

Submission Number	Submitter
239	Don Moffat and Brian Dodds
404	Sanderson Group Limited

⁷ Minute Regarding Submissions the Council Considers to Not be “On” Stage 2 of the PDP, dated 16 April 2018

⁸ [2014] NZRMA 519

⁹ *Ibid* at [38]

¹⁰ *Ibid* at [76]

¹¹ *Ibid* at [81]

¹² *Ibid* at [81]

501	Woodlot Properties Limited
528	Shotover Country Limited
2353	Sean Brennan
2577	Kirstie Jean Brustad
2103.1	Kingston Holiday Park Limited
2325.2	David Crawford
2452.1	Nirvana Trust
2492.8	Cardrona Alpine Resort Limited
2506.1	Arthurs Point Partnership

11. The parts of submissions 239, 404 and 528 which relate to the Shotover Country Special Zone, and that part of submission 501 which relates to the Quail Rise Special Zone, are not "on" the PDP as they apply to land not included in the PDP to date.
12. Submission 2353 seeks a review of the Gibbston Character Zone, a matter dealt with in Stage 1. Submission 2577 in part seeks amendments to Chapter 21. This chapter has been dealt with in Stage 1 also. In both cases the matters raised by the submitters are beyond the matters included in Stage 2.
13. For submissions 2103.1, 2325.2, 2452.1, 2492.8 and 2506.1 I agree with the reasons given by the Council in its 6 July 2016 Memorandum.
14. For those reasons the submissions or relevant parts of the submissions listed above are struck out under section 41D of the Act as disclosing no reasonable or relevant case. Further submissions FS1102.4, FS1289.4, FS1189.11, FS1195.10 and FS1270.84 are consequentially struck out.

Kirimoko No. 2 Limited Partnership – S2405.1

15. Kirimoko No. 2 Limited Partnership ("Kirimoko") seeks that the land in Wanaka known as Sticky Forest be rezoned from Rural to a mixture of Nature Conservation Zone and Recreation Zone. The Council noted that the zoning of this land was dealt with in Stage 1 and the Council confirmed the Rural Zone on the land. It also noted that on the Stage 2 maps, as notified, the zoning of this land was not amended by Stage 2. The Council also noted that Mr Beresford, who lodged a submission on the zoning of this land in Stage 1, had not lodged a further submission on Submission 2405.1.

16. Kirimoko have responded to the zoning issue as follows:

Of particular relevance to the assessment of this matter is the fact that the majority of the land affected by the proposed Nature Conservation and Informal Recreation Zones was notified in the PDP Stage 1 planning maps with a different zone type, typically the rural zone or low density suburban zone. An example is shown on the maps attached as appendix 1.¹³ If the Council is correct in its complaint that land zoned in stage 1 cannot be the subject of stage 2 than that would have wider implications for stage 2 than simply KLP2's submission.

Where the new zones in the Open Space chapter replace a zone notified in Stage 1, the new zones are a variation to the PDP (Stage 1) planning maps. It should therefore follow down that given most of the land effected [sic] by the Nature Conservation and Informal Recreation Zone sits over Stage 1 land there should be an ability to amend and / or extend the zones across areas of Stage 1 land through the submission process. It would seem unreasonable that the Council's proposed variation to Stage 1 zoning should not extend to submitters seeking amendments to the extent of these zones. The area of land subject to the KLP2 submission directly adjoins the proposed Nature Conservation Zone of the Wanaka lake margin and the Informal Recreation Zone on the eastern edge of the Peninsula Bay subdivision. The proposed zoning sought by KLP2 is an extension of this zoning.

17. As the Council noted in reply, Kirimoko is relying on the fourth category of the *Motor Machinist* decision as summarised in paragraph 9(d) above. The Council relied on my assessment in the May decision¹⁴ as to the meaning of "incidental and consequential".¹⁵
18. The relevant part of my May decision read:

My view is that the term "incidental and consequential" means a minor extension to align with property boundaries or such like. It should be an amendment that is not inconsistent with the overall regime proposed by the variation, as assessed in the section 32 report. I consider that a wholesale rezoning of a substantial area of land that was specifically excluded from the variation cannot be incidental and consequential. ¹⁶

¹³ Appendix 1 contained the version of Map 19 notified for Stage 1 (dated 13-6-2016) and Map 19 as notified for Stage 2 (dated 1-11-2017)

¹⁴ Decision Related to Submissions Not "on" Stage 2, dated 16 May 2018

¹⁵ Memorandum of Counsel on Behalf of the Queenstown Lakes District Council Responding to Submitters' Memoranda regarding why their Submissions are "on" Stage 2 of the PDP, Hearing Stream 15, dated 30 July 2018, at paragraph 7

¹⁶ Decision Relating to Submissions Not "on" Stage 2, dated 16 May 2018, at paragraph 37

19. Also relevant to the Kirimoko submission is the Zone Purpose¹⁷ of the Open Space and Recreation Zones as notified. This stated in the second sentence of the opening paragraph:

The zones apply to Council administered reserves, and do not apply to water bodies (including surface of water), Conservation Land (including lakes and rivers) or private open space.

20. The limitation of the application of the Open Space and Recreation Zones to land in Council ownership or under its administration is reinforced in the Section 32 Evaluation Report¹⁸.

21. I am satisfied that the Kirimoko submission fails to be “on” Stage 2 of the PDP for three reasons:

- a) It is attempting to rezone land that was zoned Rural as part of the Stage 1 process and that zoning was confirmed in the Council's decisions on Stage 1;
- b) Although the land in question is bounded on two sides by Open Space and Recreation Zones, the extension sought by the submission is neither incidental, nor consequential. The area sought to be rezoned would be considerably larger than the two zoned areas proposed in Stage 2; and
- c) The land in question is not owned or administered by the Council and thus the rezoning sought is inconsistent with the provisions of the Section 32 Evaluation Report and the express provisions of Chapter 38.

22. Kirimoko have suggested that as Stage 2 has amended Stage 1 zoning, the effect of Stage 2 is to open up the Stage 1 zoning to review¹⁹. I consider that misinterprets the effect of a variation. A variation supplants the previously proposed provision as from the date of notification. Thus, while the Open Space and Recreation Zones have in most cases replaced the Rural Zone, the point at which that replacement occurred was in November 2017, prior to the Council's decisions on Stage 1. It would be an abuse of process to allow a submission on Stage 2 to revisit a zoning confirmed in Stage 1, except in those circumstances where the submitter on Stage 1 had sought an outcome that could only be implemented through the Stage 2 process. That circumstance does not apply to this submitter.

¹⁷ Section 38.1

¹⁸ See Section 5, page 26

¹⁹ Memorandum Regarding Submissions ‘on’ Stage 2 of the PDP Kirimoko No. 2 Limited Partnership (#2405.1), dated 23 July 2018

23. For those reasons Submission 2405.1 is struck out under section 41D of the Act as disclosing no reasonable or relevant case.
24. For completeness, I note that the Council raised the issue of the land owners' representative not having lodged a further submission in relation to the Kirimoko submission. The suggestion in the Council's Memorandum as to the reasons for that can only be considered conjecture and I have not considered that suggestion nor the issue of a lack of further submission being lodged.

Glen Dene Limited and Mrs Sarah Burdon – S2407.1

25. First, it is apparent from considering the submission as marked up for summarising that the matter at issue is actually S2407.2. The submitter sought that Lot 1 DP 418972 ("Lot 1") be zoned "Community Purpose – Campground". S2407.1 supported the application of the Community Purpose – Campground Subzone on Section 2 BLK II Lower Hawea SD.
26. The Council seeks the submission be struck out for the following reasons²⁰:

This land was previously notified in Stage 2, but there was an error and the Council subsequently withdrew the land from Stage 2 by way of decision dated 8 February 2018. Given the specific withdrawal of Lot 1 from the Stage 2 plan maps, Council considers there is no longer scope for consideration of the submission over Lot 1. Council's position is the part of the submission on the land that was withdrawn from the variation, is not on Stage 2.

27. Glen Dene Limited's submissions²¹ in support of its positions focused on the Section 32 Evaluation Report and the lack of further submissions opposing the submission. In particular, counsel for Glen Dene Limited submitted that the Section 32 Evaluation Report did not distinguish between campgrounds that were council-owned and those that were privately owned.
28. Glen Dene Limited lodged similar submissions on Stage 1 seeking the application of the Rural Visitor Zone to Lot 1 and the Council-owned campground. The notification of Stage 2 overtook that process with the consequence that the Hearing Panel was only able to make recommendations on the parts of the submissions relating to the privately-owned land. In considering this issue, the Hearing Panel was mindful of the Council's undertaking contained in the Memorandum dated 23 November 2017 that the "Council will receive and consider submissions in Stage 2, that

²⁰ Memorandum of Counsel on Behalf of the Queenstown Lakes District Council Regarding a Category of Submissions That Are Not on Stage 2 of the PDP, 6 July 2018 at Appendix 1

²¹ Submissions of Glen Dene Limited and Mrs Sarah Burdon, dated 23 July 2018

ask for the Visitor Accommodation to be applied over land that has not otherwise been notified in Stage 2 with the Visitor Accommodation Sub Zone (except across land that is excluded from the plan review altogether ...)"²².

29. Having considered all the issues in relation to Lot 1, the Hearing Panel noted:

*We find it would be more efficient and effective (as a means to achieve the objectives of the PDP) for the submitters to take up the Council's offer to consider expansion of the area zoned Open Space and Recreation Purposes Camping Sub-Zone as part of the Stage 2 Variation hearing process.*²³

30. I have noted above in respect of the Kirimoko decision that the Open Space and Recreation Zones are explicitly defined as only applying to Council owned or administered reserves, both in Chapter 38 and the Section 32 Evaluation Report. However, in itself, that does not preclude this submission being considered.

31. What the submitter has sought, both at Stage 1 and in Stage 2, is the ability to provide for visitor accommodation in the form of a camping ground on Lot 1. I consider it would be overly pedantic to strike out this submission because it has phrased its relief in the terms of the zone applied to the substantive part of the existing Hawea camping ground in Council ownership. Without predetermining the outcome of the submission, it appears to me that the relief provides scope for some form of visitor accommodation sub-zone of a type that the Council has undertaken to consider when sought over land zoned in Stage 1.

32. For those reasons I refuse to strike out Submission 2407.2. This raises the issue of timing of evidence given the Council has not given any consideration of this submission in the section 42A Reports. I will deal with that matter at the end of this decision.

Remarkables Park Limited – S2468.25

33. This submission is actually two submissions:
- a) That Part Section 131 Block III Shotover Survey District be zoned Community Purposes Zone; and

²² Memorandum of Counsel on Behalf of Queenstown Lakes District Council Advising Panel on Matters Relating to Stage 2 of the Queenstown Lakes Proposed District Plan, 23 November 2017, at paragraph 13

²³ Report 16.6 Report and Recommendations of Independent Commissioners Regarding Upper Clutha Planning Maps Lake Hawea Campground, 27 March 2018, at paragraph 64

- b) That the height limit for buildings within Part Section 131 Block III Shotover Survey District be increased to 15m and the total ground floor area of buildings provided for on the site be increased to 1500m².
34. The site in question is a block of some 3.34ha located between the land proposed to be zoned Informal Recreation at the end of Widgeon Place, Lake Hayes Estate, and the Kawarau River.
35. The Council have sought the submissions be struck out as:
- a) The land was not notified in Stage 2 and remains part of the land zoned in Stage 1 considered in the Stream 14 hearings; and
- b) The zoning extension is not an incidental or consequential extension of the Community Purposes Zone but a site specific provisions.
36. I first note that both the submitter and the Council have incorrectly identified the proposed Stage 2 zoning of the adjoining land as Community Purposes when it is in fact Informal Recreation. Remarkables Park Limited ("RPL") also claimed that the land had been formerly designated for reserve purposes, but I can find no record of that in the Operative District Plan nor Stage 1 of the PDP.
37. The land in question was zoned Rural in Stage 1. As the Council correctly noted in its memorandum responding to RPL's submissions, hearing of submissions on the zoning of this land was delayed to be heard after the Wakatipu Basin Planning Study was completed. Hearing Stream 14, which has just completed its hearings, has dealt with those Stage 1 submissions so deferred. I note also that a submission lodged by Queenstown Park Limited sought an overlay zone to enable the construction of a gondola between Remarkables Park and the Remarkable Skifield. In part that overlay zone affected this site. That submission was heard in Stream 13 in 2017 and the Council has made its decision on that overlay as part of its Stage 1 decisions in May 2018.
38. This submission is not seeking the extension of an adjacent zone. It is seeking the application of a zone based on a Stage 2 zone over land that was only able to be considered as part of Stage 1, where it was proposed to be zoned Rural. The submitter did not lodge a submission regarding the zoning of this land in Stage 1 and has not sought a waiver to lodge a late submission.

39. For those reasons both parts of Submission 2468.25 are struck out as disclosing no reasonable or relevant case.

Teece Irrevocable Trust No. 3 – S2599

40. This submission relates to a block of land comprising some 278 ha located some 15 km north of Glenorchy (in a direct line). The submission seeks that the Rural Visitor Zone apply to this land, being an extension to the Rural Visitor Arcadia Zone, with bespoke provisions applying.
41. The Council submitted that the site was zoned Rural in Stage 1 (which zoning was uncontested) and that the Visitor Accommodation Variation does not provide an opportunity for submitters to seek rezoning (as opposed to application of a Visitor Accommodation Sub-zone) in Stage 2. The Council did accept that the submitter's request that the OCP Residential Visitor Accommodation and Homestay rules apply to the site were within scope of the Variation.
42. The submitter filed extensive legal submissions in support of its claim that the submission was within scope of Stage 2. In essence, while not resiling from the position that the rezoning sought is in scope, counsel for the submitter notes that the submission would provide scope for the application of a site specific Visitor Accommodation Sub-Zone ("VASZ") on the submitter's land.²⁴
43. In its memorandum in response, the Council maintained its position that the Visitor Accommodation variation did not provide an opportunity for submitters to re-challenge zonings applied in Stage 1. The Council did note that a Visitor Accommodation Sub-Zone would not necessarily alter the underlying zone provisions, and need not be relied upon. For those reasons the Council still sought that the part of the Trust's submission seeking a rezoning be struck out.²⁵
44. I find the Council's position difficult to reconcile with the undertaking the Council gave in its Memorandum dated 23 November 2017, as discussed above with reference to the Glen Dene Limited submission. Although that undertaking was brought about as certain submitters had sought that the Visitor Accommodation Sub-Zone, notified in August 2015 but subsequently withdrawn, be extended onto additional land, there was nothing in the

²⁴ Submissions on Behalf of Teece Irrevocable Trust No. 3 – Submitter 2599, dated 23 July 2018, at paragraph 7.7

²⁵ Memoranda of Counsel on Behalf of the Queenstown Lakes District Council Responding to Submitters' Memoranda regarding why their Submissions are "on" Stage 2 of the PDP, Hearing Stream 15, dated 30 July 2018, at paragraphs 12 & 13

Council Memorandum to suggest the ability to seek a VASZ was limited to those submitters.

45. I am satisfied that a submission seeking to replace the now effective²⁶ Rural Zone applying to this land is not within Stage 2. I do not consider that varying the Rural Zone by including provision for Residential Visitor Accommodation and Homestays, and associated standards, provides scope for the application of a new zone with specific provisions for visitor accommodation. Visitor accommodation is provided for in Rule 21.4.19²⁷ as a discretionary activity. It appears that what the submitter seeks falls within that category, so it cannot be said that the variation has altered the resource management regime for the site in that respect.
46. On the other hand, given the Council's earlier undertaking, the submitter would be entitled to seek the application of a VASZ to the land.
47. I conclude the appropriate response to strike out those portions of the submission which seek to replace the Rural Zone with a visitor accommodation-specific zone (whether called Rural Visitor Zone or otherwise) but leave within the submission the ability to request a visitor accommodation sub-zone with the characteristics outlined in the submission. Whether that is appropriate for this site or not is a matter for the Stream 15 Hearing Panel.

Summary of Decisions

48. For the reasons set out above, the following submissions are struck out under section 41D in full:

Submission Number	Submitter
239	Don Moffat and Brian Dodds
404	Sanderson Group Limited
501	Woodlot Properties Limited
528	Shotover Country Limited
2353	Sean Brennan
2577	Kirstie Jean Brustad

²⁶ There being no appeals challenging the zoning of the land in question.
²⁷ Decisions Version

2103.1	Kingston Holiday Park Limited
2325.2	David Crawford
2405.1	Kirimoko No. 2 Limited Partnership
2452.1	Nirvana Trust
2468.25	Remarkables Park Limited
2492.8	Cardrona Alpine Resort Limited
2506.1	Arthurs Point Partnership

49. For the reasons set out above, Submission 2599 by Teece Irrevocable Trust No. 3 is struck out in part as set out in paragraph 47 above.

Directions as to Timetabling

50. As I alluded to above with reference to the Glen Dene Limited submission, the Council has provided no analysis of these submissions in its section 42A reports. I also received on 2 August 2018 a letter from the consultant for Teece Irrevocable Trust No. 3 seeking the timeline for filing evidence be postponed until the site-specific procedural issues have been resolved. As also noted in that letter, a submitter may lodge an objection against any decision to strike out a submission under section 41D, with a consequent Council hearing and appeal rights. If any timetable is required in those circumstances it will need to be set at the conclusion of any procedural proceedings.
51. Dealing with the two submissions which I have declined to strike out in full:
- a) The Council is directed to file any material in respect of these submissions by 10 August 2018;
 - b) Submitters' evidence is to be lodged by 24 August 2018.
52. The Council can present any rebuttal evidence at the hearing commencing on 3 September 2018.

2 August 2018



Denis Nugent
Hearing Panel Chair