

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of the Queenstown Lakes
Proposed District Plan

DECISION RELATING TO SUBMISSIONS NOT "ON" STAGE 2

Introduction

1. In a Minute dated 16 April 2018 ("the Minute") I identified 16 submissions that I considered, in a preliminary manner, to not be "on" Stage 2 of the District Plan Review. I provided the reasons for my preliminary view in respect of each of those submissions and provided the submitters the opportunity to lodge submissions, and the opportunity for the council to reply to any submissions so lodged.
2. I have been delegated the Council's powers to make procedural decisions in relation to the Stage 2 hearings, including the power to strike out submissions under section 41D of the Act.

Legal Principles Regarding Scope

3. I set out in the Minute the criteria I consider can be distilled from *Palmerston North CC v Motor Machinists Ltd*¹ in determining whether a submission is "on" a plan change or plan.
4. In summary these are:
 - a) the focus of a submission must be on "specific provisions of the proposal";²
 - 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;³
 - 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;⁴

¹ [2014] NZRMA 519

² *Ibid* at [38]

³ *Ibid* at [76]

⁴ *Ibid* at [81]

- 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.⁵

How to Deal with Submissions Not “on” Stage 2

5. In the Minute I noted that the most appropriate way to deal with any submissions that were not “on” Stage 2 was to strike them out under section 41D of the Act. Neither the Council nor any of the submitters have taken issue with that approach.
6. I therefore will consider in terms of section 41D those submissions I identified in the Minute where my preliminary view was that they were not “on” Stage 2.

No Comment Received

7. No submissions or comments were received from:

Submission Number	Submitter
2246.1	J & L Bagrie
2251.1	R & J Kelly
2253.1	D Stanhope & G Burdis
2541.1	G Burdis
2542.1	D Stanhope
2034.1	M Paulin
2199.2	K Harford
2326.1	G Oudhoff & J Hennessy
2325.2	D Crawford

8. For the reasons set out in the Minute those submissions are struck out under section 41D of the Act as they are not “on” Stage 2 of the District Plan Review and consequently disclose no reasonable or relevant case.

⁵ Ibid at [81]

Middleton Family Trust (Submissions 2332.2 & 2332.10)

9. Middleton Family Trust (Submissions 2332.2 and 2332.10) filed submissions accepting that the ONL line relevant to the submissions could not be amended and withdrew the two submissions. I need deal with those no further.

P Blakely and M Wallace (Submission 2499.6)

10. P Blakely and M Wallace (Submission 2499.6) accepted that this submission was not "on" Stage 2 and that it should be struck out. I therefore strike out Submission 2499.6 under section 41D of the Act.

Queenstown Central Limited (Submission 2460)

11. In the Minute I sought clarification from the Council as to the parts of Submission 2460 (lodged by Queenstown Central Limited) that the Council considered were not on Stage 2. In a memorandum dated 1 May 2018 the Council clarified that the points of the submission it considered to not be on Stage 2 were: 2460.1, 2460.3, 2460.5 and 2460.11.
12. In a memorandum dated 3 May 2018, counsel for the submitter advised that the submitter accepted the views of the Council and suggested that those points could be struck out or held over for consideration when the review process specifically deals with the Frankton Flats B Zone.
13. As there is no specific timeframe (that I am aware of) for the Frankton Flats B Zone to be brought into the District Plan Review I consider the more sensible course of action at this stage is to strike out the submission points. Accordingly, I strike out Submissions 2460.1, 2460.3, 2460.5 and 2460.11 under section 41D of the Act.

Vanderwood Trustees et al (Submission 2523.1)

14. The Minute dated 16 April 2018 noted that this submission appeared to seek to extend the Rural Residential Zone onto land which has an unchallenged proposed Rural zoning. It would also appear to involve an amendment to the Landscape Classification Line at this point.
15. A submission received from the submitters' consultant planner (dated 24 April 2018) suggested that the line in the submission relief reading "A suggested adjustment is shown in the green area in the Fig to the left" and the figure referred to, could be struck out.

16. In its memorandum dated 9 May 2018, the Council recorded that it understood this to be a concession and acceptance that this part of the relief be struck out.
17. I confirm my preliminary view that this part of the submission be struck out under section 41D of the Act, for the reasons set out in the Minute. I do note that the remaining relief can only involve any adjustment to the zone boundaries within the land proposed to be zoned Wakatipu Basin Rural Amenity Zone.

Second Kawarau Bridge Group (Submission 2568) (referred to as K Sharpe in the Minute)

18. The Minute noted this submitter sought the designation for a second crossing of the Kawarau River. The letter received from the group objected to the submission being struck out but provided no reasons as to why it should be considered "on" Stage 2.
19. As counsel for the Council noted in her memorandum, designations were dealt with in Stage 1 and the decisions/recommendations issued in respect of those. Additionally, the submission seeks actions from the Council under the Local Government Act, not the Resource Management Act. This process is not the appropriate process to request the Council to initiate planning for an engineering scheme. I am not aware of any provision of the Act that enables a submitter to require a council or requiring authority to issue a notice of requirement.
20. For those reasons Submission 2568 is struck out under section 41D of the Act as it is not "on" Stage 2 of the District Plan Review and consequently discloses no reasonable or relevant case.

Upper Clutha Environmental Society Inc (Submission 2016.2)

21. Mr Haworth, on behalf of the Society, has lodged very full submissions explaining why he considers the Society's submission in "on" Stage 2. It appears from these that it is his understanding that the Council has sought the Society's entire appeal be struck out.
22. As counsel for the Council notes in her reply memorandum, the only part of the Society's submission that the Council took issue with is that seeking that the Council undertake a planning study in the Upper Clutha of similar scope to that undertaken in the Wakatipu Basin. In my Minute I noted that the Upper Clutha zoning (other than that relating to the Council's reserves) is not

affected by Stage 2, and that it is not within the Hearing Panel's powers to require the Council to initiate a planning study.

23. Counsel for the Council has noted that the Stage 1 Hearing Panel has in fact made a recommendation consistent with that sought by the Society. That panel made that recommendation after hearing evidence relating to the resource management issues in the Upper Clutha. The Stage 2 hearings do not provide scope for that evidence to be reheard.
24. Mr Haworth has also referred me to references in the Stage 2 section 32 reports of monitoring reports of the District's rural area as a basis for claiming the Upper Clutha area is within scope of Stage 2. I do not accept that submission. Counsel for the Council notes that the contents of a section 32 report can aid the Panel in determining whether a matter is "on" a plan change or variation⁶. I do not see that as meaning that everything mentioned in the section 32 report is "on" the variation. The variation is limited by the actual contents of it. In this case, that limit is evident from the planning maps notified as part of Stage 2.
25. Returning to the criteria set out above derived from the *Motor Machinists* decision:
 - a) The planning study requested does not relate to the specific provisions notified;
 - b) If such a study was undertaken and a variation recommended, a new section 32 analysis would be required to support it. The section 32 analysis supporting Stage 2 does not address those matters;
 - c) The resource management regime of the Upper Clutha is not altered by Stage 2; and
 - d) No incidental or consequential change to Stage 2 is involved.
26. For all of those reasons, I strike out Submission 2016.2 which seeks that the Council initiate a planning study of the Upper Clutha. For clarity I note that the Society's submission supporting the zoning provisions proposed for the Wakatipu Basin in Stage 2 is not struck out.

⁶ Memorandum of Counsel on Behalf of the Queenstown Lakes District Council Responding to Submitters' Memoranda Regarding Why Their Submissions are "on" Stage 2, 9 May 2018, at paragraph 13

Glenpanel Developments Limited (Submission 2548.1)

27. As noted in the Minute, this submission has sought inclusion of a new zone on land in Ladies Mile which was not the subject of rezoning under Stage 2.
28. Counsel for the submitter has lodged extensive submissions in support of the proposition that the submission in "on" Stage 2. Counsel for the Council has provided submissions supporting my preliminary view as set out in the Minute.
29. Counsel for the submitter relies on a number of processes outside of the resource management regime applying to the relevant land in coming to her conclusion that the status quo of the land is akin to the zoning sought by Glenpanel.
30. In my view, the zoning situation for this land is quite clear. It is zoned Rural General under the Operative District Plan, and the proposed District Plan proposes that it be zoned Rural. The submissions relating to the proposed zoning have yet to be heard. While the policy approach taken by the Council to the land under other legislation may be a relevant matter when considering the submissions on the proposed Rural zoning, I do not consider that changes the resource management status quo of the land.
31. I am also unaware of any provision of the Resource Management Act or case law which states that Council policies under other legislation provide the legal foundation for a submission under clause 6 of the First Schedule to the Act where the Council has explicitly decided not to include the land within the relevant variation or rezoning.
32. Counsel for the submitter has referred me to *Albany North Landowners v Auckland Council*⁷ as supporting the proposition that scope in a review is generally broader than a narrow variation. Ms Hill did not direct me to any particular passage in that decision, but having reviewed it, I conclude that the comments of Whata J at paragraph 130 are most apposite to the situation we are dealing with here.
33. Stage 2 is not an entire district plan review and is quite unlike the process undertaken by the Independent Hearing Panel hearing submissions on the Auckland Unitary Plan under specific legislation. Stage 2, insofar as it relates to the application of new zoning regimes for parts of the Wakatipu Basin and the Council's reserve land, is a variation of the zoning regime proposed in Stage 1. Thus, the conclusions reached in the section 32 analysis supporting

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[2017] NZHC 138

Stage 2 that the land in Ladies Mile not be altered by the variation, in my view, define the extent of the variation by specifically excluding that land.

34. Counsel for the submitter also places much reliance on the inclusion of Landscape Classification Unit 10 in Schedule 24.8 in the variation. In the Minute I stated:

In my view, the inclusion of Ladies Mile within Schedule 24.8 does not bring the land within Stage 2. The provisions of Chapter 24 require that in giving effect to the objectives and policies or assessment criteria in any particular case, reference should be made to the landscape characteristics set out in 24.8. Schedule 24.8 in itself does not provide the basis for the application of the zonings. Part of Landscape Character Unit 10 Ladies Mile is zoned Wakatipu Basin Rural Amenity. Thus, the schedule is relevant to assessment of activities in that area. If the land which is the subject of this submission remained Rural, as proposed by the PDP, the provisions of Schedule 24.8 would not apply to it.

35. Counsel for the Council agrees with that reasoning.
36. Counsel for the submitter appears to rely on the fact that other submitters have sought to amend the contents of Schedule 24.8 as supporting her contention that it brings the land within Stage 2. I see no logical connection. LCU 10 would, if ultimately adopted, be relevant to applications for resource consent to that part of the Wakatipu Basin Amenity Zone that lies within it. Clearly submitters may want to alter the wording to amend how that affects the consideration of such applications. The presence of such submissions does not alter the fact that the land in question was not subject to a rezoning in Stage 2.
37. Counsel for the submitter also considers the rezoning sought in the submission is incidental and consequential. 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. Any other approach could lead to widespread extensions of zoning being requested, such as the Gibbston Valley for instance, or the land within the Wakatipu Basin proposed to be zoned Rural but within the Outstanding Natural Landscape Category.

38. Finally, I agree with Ms Scott for the Council that hindsight does not provide basis for scope.
39. For all the reasons set out above and, in the Minute, I strike out Submission 2458.1 under section 41D of the Act as not being "on" Stage 2 and consequentially disclosing no reasonable or relevant case.

17 May 2018



Denis Nugent
Hearing Panel Chair