

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of the Queenstown Lakes
Proposed District Plan

AND

IN THE MATTER of the Variation of Chapter
24 Notified on 9 August
2018

**MINUTE CONCERNING AN APPLICATION TO STRIKE OUT PART OF
SUBMISSION 2663**

Introduction

1. On 9 August 2018 the Council notified a variation to Chapter 24 of the PDP to insert Table 24.2 which had been inadvertently omitted from Chapter 24 when it was notified on 23 November 2017.
2. Table 24.2 is titled “Activities in the Wakatipu Basin Lifestyle Precinct” and lists five (5) activities and the activity status for those activities within the Wakatipu Basin Lifestyle Precinct.
3. On 14 September 2018 the Council, through a Memorandum of Counsel, has requested that parts of a submission lodged on this variation be struck out under section 41D of the Act as not being “on” the variation.
4. Prior to deciding on this request, I will set out my initial thoughts on whether the submission is “on” the variation and provide the submitter the opportunity to respond to both the application and my initial thoughts.

Legal Principles Regarding Scope

5. I have previously¹ set out the criteria I consider can be distilled from *Palmerston North CC v Motor Machinists Ltd*² in determining whether a submission is “on” a plan change or plan, including a variation.
6. In summary these are:

¹ Minute Regarding Submissions the Council Considers to Not be “On” Stage 2 of the PDP, dated 16 April 2018

² [2014] NZRMA 519

- a) the focus of a submission must be on “specific provisions of the proposal”;³
- 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;⁴
- 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;⁵
- 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.⁶

7. In her memorandum, counsel has referred specifically to the criteria in (a) and (c) above in support of the application to strike out parts of the submission.

Submission 2663

8. This submission has been lodged by the Aircraft Owners and Pilots Association of New Zealand (“the submitter”). Relevant to this application, the submission states the following:

- 2. *This submission related to the policy framework for informal airports within the Wakatipu Basin Rural Amenity Zone and the Wakatipu Basin Lifestyle Precinct. ... As a consequence of Rule 24.4.28 (informal airports in the Precinct) not being notified with the rest of Chapter 24, the AOPA did not have the opportunity to submit on the broader policy and standards framework applicable to informal airports in chapter 24. Given this, the AOPA submits now on the implications and interrelationship between Rule 24.4.28, the policies supporting informal airports in the Basin, and the standards applicable to informal airports. ...*
- 3. *... We assume the reasoning relating to control of informal airports in the Wakatipu Basin Rural Amenity*

³ Ibid at [38]

⁴ Ibid at [76]

⁵ Ibid at [81]

⁶ Ibid at [81]

Zone is similar to that expressed in the Rural Zone S32 report as part of Stage 1 of the Plan review. ...

6. *... furthermore whether the standards applicable to permitted informal airports (24.5.14) are appropriate for the Basin / Precinct Zones.*
7. *... In the Amenity Zone the proposal is that there should be 500m set back from any other zone or the notional boundary of any neighbouring residential dwelling. The problem with that approach is that it is generally impossible to comply with it. ...*
11. *... the noise limits prescribed in Chapter 36, table three would by themselves achieve this objective in the Wakatipu Basin, to protect residential amenity. We understand that this table would apply by virtue of 36.3.2.9.*
12. *An alternative but more complicated approach would be to apply the Amenity Zone proposals to the entire Basin with the minimum setback distance reduced to 150m.*

Chapter 24 Provisions Relating to Informal Airports

9. When Stage 2 was notified in November 2017, Chapter 24 provided for informal airports as a permitted activity (Rule 24.4.12 in Table 24.1). This activity was subject to the standards in Rule 24.5.14. Non-compliance with these standards required consent as a discretionary activity. The policy framework for these rules is explicitly provided by Policies 24.2.2.6 and 24.2.3.1, although various other policies relating to non-residential activities are also relevant.
10. With the notification of the variation in August 2018, informal airports within the Wakatipu Basin Lifestyle Precinct were classified as discretionary activities (Rule 24.4.28 in Table 24.2).
11. The relationship between the rules in Table 24.1 and Table 24.2 is explained by General Rule 24.3.3.1. This provides that the specific rules for the Precinct in Table 24.2 prevail over the general rules in Table 24.1. In the absence of specific rules in Table 24.2, the rules in Table 24.1 apply in both the Amenity Zone and the Precinct.

Effect of the Variation

12. By notifying Table 24.2 in the August variation, the Council introduced five specific rules applying only in the Wakatipu Basin Lifestyle Precinct that effectively replaced the relevant general rules in Table 24.1 which would otherwise apply in both the Amenity Zone and the Precinct. No changes were made to the objectives and policies, nor were any changes made to the standards in Table 24.3.
13. Thus, in respect of informal airports, the effect of the variation is that, rather than them being permitted activities in the Amenity Zone and the Precinct subject to the standards in Rule 24.5.14, within the Precinct that activity is a discretionary activity. No change has been made to the activity status of informal airports in the Amenity Zone, nor to the standards applying to that permitted activity.

Preliminary Conclusions

14. Without deciding the issue, it does appear to me that there is no scope for the submitter to seek to amend the objectives and policies relating to informal airports, or the activity status of informal airports in the Wakatipu Basin Amenity Zone, or the standards applying to informal airports in the Wakatipu Basin Amenity Zone.
15. It also appears to me that it is open to the submitter to seek that, in the Wakatipu Basin Lifestyle Precinct only, the noise limits prescribed in Chapter 36 table 3 apply in place of Rule 24.4.28. It also appears to me that it is open to the submitter to seek that the provisions for informal airports in the Wakatipu Basin Amenity Zone apply in the Precinct.

Timetable for Submissions

16. The submitter is entitled to lodge submissions in response to the Council's application and in relation to my preliminary conclusions. Any such submissions are to be lodged with the Council by **12 noon on Friday 21 September 2018** (DP.Hearings@qldc.govt.nz).
17. The Council will have until **12 noon on Thursday 27 September 2018** to file and serve any reply submissions if they are necessary.

15 September 2018



Denis Nugent
Hearing Panel Chair