

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of the Queenstown Lakes
Proposed District Plan

AND

IN THE MATTER Stream 14: Wakatipu Basin

DECISION ON REQUEST TO STRIKE OUT S2663 IN PART

Introduction

1. The Council has requested that part of Submission 2663 lodged by Aircraft Owners and Pilots Assn of New Zealand (AOPANZ) be struck out under section 41D of the Act¹.
2. A minute dated 15 September 2018 provided the submitter with an opportunity to respond to this request, and the Council the opportunity to reply to any response received. In this minute I provided my preliminary views on the issues to assist the submitter. I now have before me the response of the submitter dated 21 September 2018 and the Council's reply dated 27 September 2018.
3. The Council has delegated its powers to make procedural decisions in respect of Stage 2 of the PDP to me under section 34 of the Act. That includes the powers provided under section 41D of the Act to strike out submissions.

Background

4. Chapter 24 – Wakatipu Basin was publicly notified on 23 November 2017 as part of Stage 2 of the PDP. Submissions closed on 23 February 2018.
5. The public notice identified Chapter 24 in the following way:

A new Wakatipu Basin Chapter and zone and related provisions, including:

- *Introduction of a new Wakatipu Basin Rural Amenity Zone, including a Lifestyle Precinct that will provide for subdivision of land in the precinct to an average lot size of 1 hectare with a minimum lot size of 0.6ha.*

¹ Memorandum of Counsel on Behalf of Queenstown Lakes District Council Seeking to Strike Out Part of a Submission Point Under Section 41D of the RMA, dated 14 September 2018

- *For all other areas of the Wakatipu Basin Rural Amenity Zone, subdivision of land under 80 hectares will be a non-complying activity.*
- *The new zone is a variation to land notified in Stage 1 of the Proposed District Plan as Rural, Rural Lifestyle and Rural Residential within the Wakatipu Basin area.*

6. In addition to the public notice, on 23 November 2017 all submitters on Stage 1 of the PDP were sent a copy of a memorandum of counsel explaining the contents of Stage 2². In relation to the Wakatipu Basin, this memorandum contained the following³:

A new Wakatipu Basin Chapter 24 will be notified. Proposed Chapter 24 provides a framework of objectives, policies, zones and rules for the Wakatipu Basin. The Wakatipu Basin Rural Amenity Zone and the Wakatipu Basin Lifestyle Precinct will be notified on the planning maps. All of the Wakatipu Basin Rural Amenity Zone will cover land previously notified in Stage 1, and therefore will be a variation to the planning maps as far as the Rural, Rural Lifestyle and Rural Residential zones previously notified for this land in Stage 1 will be replaced with the proposed Wakatipu Basin Rural Amenity Zone and Wakatipu Basin Lifestyle Precinct.

The proposed new zone will be located on planning maps 10, 13, 13d, 15, 26, 27, 28, 29, 30, 31, 31a, and 39.

7. The memorandum also stated⁴:

For the purposes of submissions, the intention is that submitters make a separate submission for any of the six discrete Stage 2 topics that interest them (which may contain numerous submission points), whether their area of interest is new PDP (Stage 2) chapters, or variations to the PDP (Stage 1).

8. I note that APOANZ lodged a submission and further submission on Stage 1⁵. It did not lodge a submission on Stage 2 in the period between 23 November 2017 and 23 February 2018, although it does record that it received the Council's memorandum⁶.

9. During the hearing of submissions, it became apparent that Table 24.2 had been inadvertently omitted from Chapter 24 when it was first notified. As a result, the

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

³ Ibid at paragraphs 22 and 23

⁴ Ibid at paragraph 6

⁵ Submission 211 and FS1066

⁶ AOPANZ Response to Submission by Counsel Seeking to Strike Out, dated 21 September 2018 at paragraph 5

Council notified, as a variation to Chapter 24, the five rules⁷ in Table 24.2 for submissions on 9 August 2018.

10. It is the submission lodged by APOANZ on this variation dated 5 September 2018⁸ which the Council is challenging.

Legal Principles Regarding Scope

11. I have previously⁹ set out the criteria I consider can be distilled from *Palmerston North CC v Motor Machinists Ltd*¹⁰ in determining whether a submission is “on” a plan change or plan.
12. In summary these are:
- a) the focus of a submission must be on “specific provisions of the proposal”;¹¹
 - 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;¹²
 - 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;¹³
 - 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.¹⁴

Discussion

13. Relevant to this application, AOPANZ’s 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*

⁷ Rules 24.4.25, 24.4.26, 24.4.27, 24.4.28 and 24.4.29

⁸ Submission 2663

⁹ Minute Regarding Submissions the Council Considers to Not be “On” Stage 2 of the PDP, dated 16 April 2018

¹⁰ [2014] NZRMA 519

¹¹ *Ibid* at [38]

¹² *Ibid* at [76]

¹³ *Ibid* at [81]

¹⁴ *Ibid* at [81]

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 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.*
14. 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.
15. 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).
16. 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.

17. 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.
18. 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.
19. It appears from the response provided by AOPANZ on 21 September, that AOPANZ chose not to lodge submissions on Chapter 24 when it was notified in November 2017. This may have been a result of misinterpretation of the public notice and Council's memorandum on the Association's part. However, I do note that three parties lodged submissions on Rule 24.4.12¹⁵ and two parties lodged submissions on Rule 24.5.14¹⁶.
20. The notification of Table 24.2 on 9 August 2018 did not provide a second opportunity for anyone to lodge submissions on any objectives and policies in Chapter 24, or on any rule other than Rules 24.4.25, 24.4.26, 24.4.27, 24.4.28 and 24.4.29, irrespective of their reasons for not lodging a submission during the period from 23 November 2017 to 23 February 2018. As I stated above, the focus of a submission must be on the specific provisions of the proposal – that is, Rules 24.4.25, 24.4.26, 24.4.27, 24.4.28 and 24.4.29.
21. AOPANZ have claimed that there was no the Section 32 Report in respect of the informal airport provisions. Ms Scott has drawn my attention to the contents of the Section 32 Report made available at the notification of Chapter 24¹⁷. While that document does not contain extensive discussion specific to informal airports, a cursory examination of Chapter 24 would have identified that specific rules were proposed for them in the Wakatipu Basin.
22. AOPANZ have also suggested that it would be denied an effective opportunity to participate in the process if the broadly stated parts of its were struck out. The

¹⁵ Submissions 2231.16 and 2433.3 opposing the rule, and Submission 2540.25 supporting it

¹⁶ Submissions 2276.18 and 2097.6

¹⁷ Reply Submissions for Queenstown Lakes District Council Responding to Submitter 2663 Regarding Strike Out, dated 27 September 2018, at paragraphs 14 to 16

opportunity for the Association to participate in the process was provided on 23 November 2017. It chose not to take up that opportunity. I am satisfied that the Council gave adequate notice, both in the public notice on 23 November 2017 and in the memorandum issued on the same day, that submitters would need to make submissions on Stage 2 provisions if they wished to participate in the process.

23. The Hearing Panel has held three weeks of hearings solely on Chapter 24 and zoning in the Wakatipu Basin. These concluded on 26 July 2018. I accept Ms Scott's submission that to hold a new hearing on the objectives and policies relating to informal airports and Rules 24.4.12 and 24.5.14 would be unfair to those submitters already heard, and on the Council, in terms of inconvenience, cost and delay.
24. As I noted in the Minute of 15 September 2018, 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. I also noted 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. Such an outcome would be achieved by deleting Rule 24.4.28.
25. Having considered the material provided by AOPANZ and the Council's reply I am satisfied that those alternate reliefs are all that are available to AOPANZ and that various other amendments proposed to other provisions in Chapter 24 should be struck out as disclosing no reasonable or relevant case, and that it would be abuse of the hearing process to allow those parts of the submission to be taken further.

Decision

26. For the reasons set out above, the parts of Submission 2663 lodged by Aircraft Owners and Pilots Assn NZ that do not relate directly to Rule 24.4.28 are struck out under section 41D, and relief available to the submitter is limited to, in the alternative:
 - a) in the Wakatipu Basin Lifestyle Precinct only, the noise limits prescribed in Chapter 36 Table 3 (Rules 36.5.10 and 36.5.11) apply in place of Rule 24.4.28;
or
 - b) that Rule 24.4.28 be deleted and the provisions for informal airports in the Wakatipu Basin Amenity Zone apply in the Wakatipu Basin Lifestyle Precinct.

30 September 2018

A handwritten signature in blue ink, appearing to read "Nugent", written in a cursive style.

Denis Nugent
Hearing Panel Chair