

Record of Decision for Direct Referral

1. This Record of Decision records the Council's decision in respect of an application to Otago Regional Council (ORC) in accordance with s87D of the Resource Management Act 1991 (RMA) that the Council's resource consent application be directed to the Environment Court as the first instance decision-maker.
2. The following resource consent application/s are to discharge treated effluent to the Shotover River via an existing discharge channel:
 - (a) An application for resource consent by QLDC, dated 1 May 2025, to undertake the following activities:
 - i. Discharge treated effluent to the Shotover River; and
 - ii. Construct rip-rap outfall structure in the bed of the Shotover River
3. For background, the discharge of the treated effluent commenced on 31 March 2025 under emergency powers in accordance with s330 of the Resource Management Act 1991 (RMA).
4. The Consent Application/s are sought pursuant to s330A of the RMA, which imposes an obligation to seek consent for the activity retrospectively.

Reasons for Direct Referral

5. Direct Referral is a process under s87D of the RMA. While removing Council hearings from the process, and by making the Environment Court the first instance decision-maker, it will not circumvent the assessment of the application and does not limit public participation in the consenting process.
6. The benefit of the DR process is to ensure a more focussed evaluation of the issues in an experienced and well-resourced Court. It will fully uphold the public participation principles and properly test expert evidence in a manner that is not available under the protocols for a Council hearing. This will likely expedite the matter and provide a robust and fully reasoned decision.
7. As such, the reasons for Direct Referral in this instance should not be confused with a mechanism to avoid, preclude, or fetter public participation in order to achieve a desired outcome. Important reasons for directing the first instance decision to the Court includes:
 - (a) There is significant public interest in this matter given the consents being sought arise from activities associated with the use of emergency works, have been widely

publicised in the media (including at a national level) and are subject to considerable regional and local political and community discussion. Direct Referral would neutralise the rhetoric and provide an independent forum for a decision to be made.

- (b) The Kimi-ākau/Shotover River is a significant natural resource with considerable cultural and community values in addition to its natural values. The gravity of the consent and the consequences for the community of the decision warrants a robust, formal and focused approach to decision-making, which the Court is the most experienced jurisdiction to undertake.
- (c) The discharge of treated wastewater direct to water raises potentially significant cultural issues to be appropriately managed, and as above, needs robust testing through the appropriate jurisdiction.
- (d) The discharge relates to the use of regionally significant infrastructure, and a lifeline utility, which enables the safe treatment and disposal of wastewater from a considerable part of the district's community. It is critical that a first-instead decision on the discharge is robust and well-reasoned.
- (e) There have already been separate legal proceedings (for interim enforcement orders) in relation to the discharge by Aotearoa Water Action Incorporated. A Direct Referral would ensure that there is an independent review of the application by the specialist Court.
- (f) While not related to the emergency works, ORC earlier this year commenced enforcement order proceedings against QLDC in relation to resource consent breaches at/from the Shotover Wastewater Treatment Plant (**SWWTP**). Previously, abatement notices had also been issued. It is appropriate that the Court be the first instance decision-maker where it has previously assisted the parties in the enforcement order process. Further, the Court is already cognisant of the issues, and the background and context of the application, which would lead to a well-informed decision with the assistance of highly skilled technical evidence.
- (g) QLDC very rarely uses the emergency work provisions and, while the use of the provisions is not relevant to this matter, the consents address and authorise the ongoing adverse effects of those works.

- (h) QLDC is presently progressing the development and consenting of the long-term sustainable option for the discharges from the SWWTP (from 31 December 2030). This is a significant and complex process which will involve consent applications to ORC in 2026 (by the end of May 2026). There is the potential for the processes to be conflated and there is considerable benefit to QLDC, ORC and the community in having timely clarity on the interim discharge position from the Court.
8. It is likely that any decision on the resource consent will result in appeal – and the utilisation of the Environment Court through the Direct Referral process (in our opinion) will:
- (a) Provide an efficient and robust first instance decision from a neutral arbiter that is already well acquainted with the context and background of the matter through the enforcement order proceedings.
 - (b) Save time
 - (c) Direct financial and personnel resources where they can be used more effectively for a better outcome.
 - (d) Ensure a simple process, with full public participation rights remaining intact.
9. There is a high likelihood that a decision on the resource consent will result in appeal – and the utilisation of the Environment Court through the Direct Referral process (in our opinion) will provide:
- (a) an efficient and robust first instance decision from a neutral arbiter that is already well acquainted with the context and background of the matter through the enforcement order proceedings
 - (b) efficient use of time
 - (c) the ability to direct financial and personnel resources where they can be used more effectively
 - (d) a simple process, with full public participation rights remaining intact
10. The process is set out in sections 87D-87F, and will require ORC to consent to the request, and then continue to process the application, notify and receive submissions, prepare a report taking into consideration ss104-112 of the RMA and a summary of submissions, prepare the file for the Court, and be a party to the proceedings.
11. For its part, Council will be required to pay the reasonable and actual costs of the Court as first instance decision-maker. If a Direct Referral process is granted by ORC, Council would be legally represented.

Conclusion

12. The request for Direct Referral will be for ORC to approve. This Record of Decision does not assume that Direct Referral will be granted.
13. This record of Decision relates to the Council's decision to make that formal request to ORC, within the timeframe set out under the RMA.
14. The Delegated Officer is the Chief Executive of Council in accordance with his general delegations.

Record of Decision signed by Delegated Officer on behalf of Queenstown Lakes District Council

Date 5 June 2025

A handwritten signature in dark ink, appearing to be 'Mike Theelen', with a long horizontal stroke extending to the right.

Mike Theelen

Chief Executive Officer

Queenstown Lakes District Council