

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Stage 2 including
variations to Stage 1 of
the Proposed District
Plan

**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 AND OTHER MATTERS**

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MAY IT PLEASE THE PANEL

1. This memorandum is filed on behalf of Queenstown Lakes District Council (**Council**). Its purpose is to advise the Hearing Panel (**Panel**) of a specific category of submissions received in relation to Stage 2 that are not considered to be “on” the Proposed District Plan (**PDP**) as notified in Stage 2, and simultaneously to advise that Council does not intend to prepare recommendations or file technical evidence on these submissions. Council seeks that the Panel issue a minute, confirming that it will not hear these submissions or any evidence on these submissions (as listed in **Appendix 1**).
2. In addition, we foreshadow additional categories of submissions received that are not considered to be “on” Stage 2 of the PDP and will be dealt with in due course. We also provide an update on the proposed grouping of topics for the Stage 2 hearings.

Background / explanation

3. During Stage 1 of the PDP, the Council put forward its position on whether certain submissions were “on” Stage 1 of the PDP as notified, through both s42A reports, legal submissions and memoranda. At one point and to provide clarity for both the Council and submitters moving forward through the hearing process, the Panel through a Minute (**2017 Minute**) advised of the approach it would take to several notations and annotations shown on the planning maps.¹ This 2017 Minute included advice from the Panel that it would not hear submissions or evidence from the Council or submitters in relation to particular areas of the District, as the Panel’s view was that those particular areas of the District had not been notified on the Stage 1 plan maps, and did not form part of Stage 1 of the PDP.
4. Council considers that such direction on one specific category of submissions would be extremely valuable at the outset of the Stage 2 process. If the Panel confirms that it agrees with the Council’s approach, this will save the Council (and consequentially relevant submitters) considerable time and money in that it will not need to prepare recommendations and supporting technical evidence that ultimately address out of scope submissions. This will also allow the Council

1 Minute concerning annotations on maps, dated 12 June 2017.

to focus on the significant number of submissions that are “on” the PDP as notified in Stage 2.

5. Council’s approach is consistent with the Panel’s Stage 1 approach, as outlined in its 2017 Minute.
6. The Council’s reporting officers and technical experts are commencing preparation of their reports at this time. They will not prepare recommendations or technical evidence on the submissions listed in this memorandum, unless the Panel indicates it does not agree with the Council’s position on the listed submissions not being “on” Stage 2 of the PDP. Should the Panel indicate that it does not agree with Council regarding a number of complex submissions and consider them to be ‘on’ the PDP, Council would appreciate an opportunity to consider and comment on the timing and resourcing implications in preparing for the Wakatipu Basin hearing stream.

Legal Principles / Case Law regarding Scope

7. Council has addressed the Panel in detail on matters pertaining to scope during the course of Stage 1 hearings. For convenience however, those submissions are again expressed here. The legal principles regarding scope and the Panel's powers to recommend (and subsequently the Council's power to decide) are:

7.1 a submission must first, be *on* the proposed plan;² and

7.2 a decision maker is limited to making changes within the scope *of the submissions made on the* proposed plan.³

8. The meaning of “on” was considered by a superior court in *Palmerston North City Council v Motor Machinists Ltd*,⁴ where the High Court firmly endorsed the two-limb approach from *Clearwater Resort Limited v Christchurch City Council*.⁵ The two questions that must be asked are:

8.1 whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and

2 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7.

3 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

4 [2014] NZRMA 519.

5 HC Christchurch AP34/02, 14 March 2003.

- 8.2** whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.
- 9.** A submission can only fairly be said to be “on” a proposed plan (in this case, as notified in Stage 2) if it meets both of these limbs. The High Court in *Motor Machinist* clearly confirms that “on” should *not* be treated as meaning “in connection with”. The principles that underlie these decisions are those of fairness and due process, which are embodied in the RMA by its emphasis on public participation in decision-making.
- 10.** Council’s position is that the identified submissions do not address the change to the pre-existing status quo advanced through the PDP as notified in Stage 2 (which includes consideration of the variation to Stage 1 text, also notified as part of Stage 2).

Submissions not “on” PDP Plan Maps

- 11.** The identified submissions (listed in **Appendix 1**) seek to change/amend the zoning of land, and/or annotations on the plan maps over land that was *not* notified on the plan maps as part of Stage 2 of the PDP. In other words, this land is *not* subject to either the Wakatipu Basin Rural Amenity Zone (or Precinct), one of the Open Space and Recreation Zone types, or subject to a change to the plan maps due to the update to showing ‘roads’ on the plan maps (and subsequently zoning some land where roads have been stopped since Stage 1 notification), as on the Stage 2 plan maps.
- 12.** As there is no change to the pre-existing status quo of land subject to these submissions through notification of Stage 2 of the PDP, Council is approaching these submissions as not “on” Stage 2 of the PDP. This is considered to be consistent with the approach foreshadowed by the Panel in its 2017 Minute.
- 13.** Council notes that submitters will still have a right to be heard on any part of these submission that seek changes to the Stage 2 / variation text, as that part of their submission is “on” the PDP Stage 2 as notified.
- 14.** One other submission requires mention. The Middleton Family Trust (#2332.1) has made a submission seeking a rezoning land generally located between Lake

Johnson and the Shotover River in the Tucker Beach area. The majority of the land subject to this rezoning submission has been notified in Stage 2, however one portion has not. This latter portion has been subject to a submission and hearing through the Stage 1 Queenstown Hearing Stream 13. Council wishes to reserve its position on this portion of Middleton Family Trust's Stage 2 submission until the Panel's recommendations on Stage 1 are received.

OTHER MATTERS

Relevance of Submissions seeking Visitor Accommodation Sub-Zones

15. Submissions seeking that a Visitor Accommodation Sub-Zone (**VA Sub-zone**) be added to land that is not "Stage 2 land" as notified on the Stage 2 PDP plan maps, will be evaluated and recommendations made. As previously indicated to the Panel in our Memorandum of 23 November 2017, because of the more complex staged approach to the review, Council will consider such submissions (except over land excluded from the plan review altogether) to avoid any suggestions of undue prejudice.⁶ A number of submitters have made discrete submissions to this effect, and recommendations on them will be made.
16. However, that is not the case where the submitter has also sought to rezone the underlying zone, which was a matter for Stage 1 of the PDP. For example, in addition to seeking a new VA Sub-zone (or something similar) some submissions also seek to amend the underlying zone framework for land that was notified in Stage 1 and will be subject to Stage 1 decisions, under the veil of seeking a new "VA Sub-zone". They have therefore challenged the underlying Rural Zone (a Stage 1 matter), instead seeking a type of urban zone that accommodates the VA Sub-zone, or they essentially seek a new bespoke zone to replace their Stage 1 rural zone, such as the Rural Visitor Zone (Operative).
17. As these submissions would be heard in the second Stage 2 hearing, alongside the Stage 2 Visitor Accommodation provisions, Council intends to file a supplementary memorandum listing these submissions and its position on scope. These types of submissions, that otherwise fall within the category explained above, are not included in **Appendix 1**.

⁶ 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, at paragraph 13.

Reservation of position in relation to other categories of submissions not considered to be “on” Stage 2 of the PDP

18. In addition to the VA Sub-zone submissions mentioned above, the Council notes that it has identified further submissions (and/or parts of submissions) that are not considered to be “on” Stage 2 of the PDP. The Council reserves its position on these submissions, and will provide a supplementary memorandum listing those submissions at a later date, or address them during the course of the hearing if appropriate. At this stage, the Council has focused on the submissions included in **Appendix 1** given their size and significance for the first, Wakatipu Basin hearing.
19. By way of example, submissions seek to change Stage 1 PDP text that has not been varied as part of Stage 2 of the PDP. In particular, such submissions include changes to Chapter 3 Strategic Directions, Chapter 6 Landscapes, Chapter 21 Rural Zone and Chapter 27 Subdivision and Development.
20. Another category of submissions are those that relate to matters that sit outside the jurisdiction of a district plan (for example, Local Government Act rating matters).

Submissions seeking to “amend” their stage 1 submission

21. Council also wishes to bring to the attention of the Panel Chair, that some submitters have asked that their “Stage 1 submission” be amended (or alternatively that the amended submission be accepted for Stage 2). The submissions Council is currently aware of are submission 2489 (Ladies Mile Consortium), and 2548 (Glenpanel Development Limited) filed in relation to land located adjacent to Ladies Mile. This land has *not* been notified on the Stage 2 PDP plan maps.
22. In relation to the request to amend their Stage 1 submissions, Council’s position is that:
 - 22.1 these submissions seek relief that is outside the scope of their primary Stage 1 submissions;

- 22.2** that there is no power or function within the RMA that allows the Panel to accept “amendment” of a submission, that enlarges / goes beyond the scope of the primary submission; and
- 22.3** these submitters need to seek leave to file a late submission on Stage 1 of the PDP.
- 23.** In support of this position, we refer to a Minute of the Chair that was issued in response to a similar request in Stage 1.⁷ The Chair confirmed that it is always permissible for a submitter to narrow their relief, but it is not open to a submitter to materially change or enlarge their relief, because of the potential prejudice to persons who may have opposed the change or enlargement (citing the *Motor Machinist* as authority).
- 24.** The Chair confirmed it was not aware of any jurisdiction within the RMA to “amend” a submission beyond the scope of the submission as filed. The correct approach would be to lodge a new submission (which in this instance would be out of time and an application would need to be made by the submitters), and the Council would then need to publicly notify a summary of the submission in accordance with Clause 7 of the First Schedule and allow 10 working days for further submissions to be lodged.
- 25.** Council therefore respectfully requests that the Chair needs to make a decision on whether he agrees to waive or extend time limits in respect of the lodgement of submissions and further submissions.⁸ If the Chair accepts the late Stage 1 submissions, then they should be notified as such.

Update on proposed order and groupings of topics for the stage 2 hearings

- 26.** By way of memorandum dated 23 November 2017,⁹ the Council advised the Panel that, subject to the volume and nature of the submissions actually received, it intended to hold two hearings on Stage 2 submissions:
- 26.1** one dealing with the district wide topics (ie. earthworks, signs, transport including the planning maps where affected, and visitor accommodation); and

⁷ Decision on application to amend submission or lodge late submission. Hearing Stream 13 Submission 425. 20 September 2017.

⁸ Under the Chair’s delegated powers (as per s34A of the Act) in relation to procedural matters for the hearings, including the Council’s powers under section 37.

⁹ At paragraphs 7-8.

- 26.2** the other dealing with the text and geographic area (ie. rezoning submissions) for Chapter 24 Wakatipu Basin and Chapter 38 Open Space and Recreation Zone.
- 27.** This position has now been updated in that submissions on the text and geographic area (ie. rezoning submissions) for Chapter 38 Open Space and Recreation Zone, will now be heard alongside the district wide hearing.
- 28.** As indicated at paragraph 15 of that same memorandum, there are a number of residual Stage 1 submissions that are still to be heard. These relate to land or annotations that was *not* notified in Stage 2 of the PDP, and for example includes the location of the Outstanding Natural Features and Landscapes in the Wakatipu basin and Crown Terrace, zoning in the remaining rural areas outside of the new Wakatipu Basin Rural Amenity Zone, and in urban Arrowtown. Council's intention remains to hear these submissions alongside the Wakatipu Basin hearing.
- 29.** The Wakatipu Basin hearing will be heard first.

DATED this 12th day of April 2018



S J Scott / C J McCallum
Counsel for Queenstown Lakes District
Council

APPENDIX 1

Point	Category	Name	Organisation	On Behalf Of	SupportOppose	Submission Summary
2016.2	7-Planning Maps > 7.20-Stage 2 Map 18	Haworth Julian	Upper Clutha Environmental Society		Oppose	That the Council prepare a land use planning study undertaken by the same people as was the Wakatipu Basin planning study, and notify a variation to the Proposed District Plan amending the rural zoning of the Upper Clutha Basin in the same manner as for the Wakatipu Basin by Chapter 24.
2034.1	6-Visitor Accommodation - Variation	Max Paulin			Other - Please clearly indicate your position in your submission below	That the Northlake development be classified as Low, Medium or High Density Residential as soon as possible.
2199.2	6-Visitor Accommodation - Variation	Kerry Harford			Oppose	That the Remarkables Park Zone or those areas individually owned as residential properties have the same rules apply as the Low Density Residential Zone.
2246.1	7-Planning Maps > 7.35-Stage 2 Map 31a	Nick Geddes	J & L Bagrie	Clark Fortune McDonald & Associates	Oppose	Opposes the unidentified zoning on the subject site.
2251.1	7-Planning Maps > 7.35-Stage 2 Map 31a	Nick Geddes	R & J Kelly	Clark Fortune McDonald & Associates	Other - Please clearly indicate your position in your submission below	Opposes the unidentified zoning shown on the Stage 2 maps on the Ladies Mile and Arrowtown Precincts and that this land is zoned for residential living.
2253.1	7-Planning Maps > 7.15-Stage 2 Map 13d	Nick Geddes	D M Stanhope & G Burdis	Clark Fortune McDonald & Associates	Oppose	Opposes the unidentified zoning on the land located on the subject site.
2254.1	7-Planning Maps > 7.33-Stage 2 Map 30	Nick Geddes	L M Topp	Clark Fortune McDonald & Associates	Oppose	That the land located to the south of Alec Robins Road (zoned Rural PDP Stage 1) is rezoned to Wakatipu Basin Rural Lifestyle Precinct.
2260.3	1-Chapter 24 - Wakatipu Basin Rural Amenity Zone	Alan Hamilton			Oppose	That the position of the ONL line on the family property be changed to the toe of Morven Hill rather than the irrigation race.
2261.3	1-Chapter 24 - Wakatipu Basin Rural Amenity Zone	Ann Hamilton			Oppose	That the ONL line on Doonholme Farm is re-addressed and moved to align with the current paper road at the base of Morven Hill.
2325.2	7-Planning Maps > 7.23-Stage 2 Map 20	David Crawford			Oppose	That Anderson Road should be zoned Medium Density Residential.
2326.1	7-Planning Maps > 7.15-Stage 2 Map 13d	Jenny Carter	Gerry Oudhoff and James Hennessy	JCarter Planning Limited	Oppose	That the boundaries of the Wakatipu Basin Rural Amenity Zone are extended south of the Kawarau River so that it is recognised that the submitters' property at 247 Kingston Road and the surrounding land is able to absorb development.
2332.2	1-Chapter 24 - Wakatipu Basin Rural Amenity Zone	Nick Geddes	Middleton Family Trust	Clark Fortune McDonald & Associates	Oppose	That the Landscape Category Boundary is amended to reflect that approved by Environment Court Decision C169/2000.
2332.10	7-Planning Maps > 7.34-Stage 2 Map 31	Nick Geddes	Middleton Family Trust	Clark Fortune McDonald & Associates	Oppose	That the Landscape Category Boundary is amended to reflect that approved by Environment Court Decision C169/2000.
2412.2	7-Planning Maps > 7.15-Stage 2 Map 13d	Graeme Todd	Maxwell Campbell Guthrie	Todd and Walker Law	Oppose	That the ONL line as it relates to the submitter's land (described as Lots 1, 2 & 3 DP344972 located on Morven Ferry Road) be relocated to the location shown in the Operative District Plan.
2439.3	1-Chapter 24 - Wakatipu Basin Rural Amenity Zone	Susan May Todd			Oppose	That the position of the ONL line on the submitter's land (68 Hogan's Gully Rd) be changed to the toe of Morven Hill rather than the irrigation race.
2460.3	3-Chapter 29 - Transport > 3.4-29.4 - Rules - Activities > 3.4.1-29.4 - Table 29.1	Gerard Thompson	Queenstown Central Limited	Barker & Associates	Oppose	submitter opposes 29.4.10 and seeks that the Frankton Flats B zone is exempt from these rules
2471.3	7-Planning Maps > 7.17-Stage 2 Map 15	Maree Baker-Galloway	Rock Supplies NZ Limited	Anderson Lloyd	Oppose	That Map 15 excludes the Gibbston Character Zone from the Outstanding Natural Landscape Classification.

2489.1	7-Planning Maps > 7.33-Stage 2 Map 30	Maree Baker-Galloway	Ladies Mile Consortium	Anderson Lloyd	Oppose	Rezone the land located adjacent to Ladies Mile State Highway 6 from Stage 1 Rural Zone to Wakatipu Basin Lifestyle Precinct 'A', with provisions to manage density of residential activity and the setback from roads.
2493.1	7-Planning Maps > 7.14-Stage 2 Map 13	Sean Dent	Skyline Enterprises Limited	Southern Planning Group	Oppose	That the Informal Recreation Zone (Chapter 38) Ben Lomond Sub Zone is extended to the north to incorporate area for helicopter arrival and departures.
2499.6	1-Chapter 24 - Wakatipu Basin Rural Amenity Zone	Philip and Mary Blakely and Wallace			Oppose	That the development along the Ladies Mile is rejected.
2523.1	7-Planning Maps > 7.33-Stage 2 Map 30	Hayley Mahon	Vanderwood Trustees et al	John Edmonds + Associates Ltd	Oppose	Zone the land located to the south and upslope of Kavanagh Lane to Rural Residential Zone.
2541.1	1-Chapter 24 - Wakatipu Basin Rural Amenity Zone > 1.8-24.8 - Schedule 24.8 Landscape Character Units	Nick Geddes	Graham Burdis	Clark Fortune McDonald & Associates	Oppose	That the Ladies Mile and Arrowtown Precincts are included in Chapter 24 at the density of residential living recommended by the Wakatipu Basin Landuse Study.
2542.1	1-Chapter 24 - Wakatipu Basin Rural Amenity Zone > 1.8-24.8 - Schedule 24.8 Landscape Character Units	Nick Geddes	Michael Stanhope	Clark Fortune McDonald & Associates	Oppose	That the Ladies Mile and Arrowtonw Precincts are included in chapter 24 at the density of residential living recommended by the Wakatipu Basin Landuse Study.
2548.1	7-Planning Maps > 7.33-Stage 2 Map 30	Maree Baker-Galloway	Glenpanel Development Limited	Anderson Lloyd	Oppose	Rezone the land on the Stage 2 Planning Map 30 located adjacent to Ladies Mile State Highway 6 from Rural (Stage 1) to a mix of Low, Medium and High Density Residential Zoning to provide for urban development. The consequential rules are requested to be located in the Chapter 24 Wakatipu Basin Zone. Consequential amendemts would also be required to the Subdivision and district wide chapters.
2568.1	3-Chapter 29 - Transport	Kirsty Sharpe	Second Kawarau Bridge Group		Other - Please clearly indicate your position in your submission below	The applicant seeks a designation for a roading corridor for a link to the Hawthorne Drive to Kingston Road, via a bridge across the Kawarau river, downstream from the existing Kawarau Bridges at Kawarau Falls.