

BEFORE THE ENVIRONMENT COURT

ENV-2018-CHC-

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of potential appeals under
Clause 14 of Schedule 1
of the Act against
decisions of the
Queenstown Lakes
District Council on Stage 2
of the Proposed
Queenstown Lakes
District Plan

AND

IN THE MATTER of an application for
waivers and directions
under section 281 of the
Act

BY **QUEENSTOWN LAKES
DISTRICT COUNCIL**

Applicant

**NOTICE OF MOTION ON POTENTIAL APPEALS ON STAGE 2 OF THE PROPOSED
QUEENSTOWN LAKES DISTRICT PLAN**

8 March 2019

Queenstown Lakes District Council

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To: The Registrar
Environment Court
Christchurch

1 Introduction

- 1.1** The decisions by the Queenstown Lakes District Council (**Council**) on Stage 2 of its Proposed District Plan (**PDP**) were issued on 7 March 2019.
- 1.2** It is anticipated that a substantial number of appeals on the Council's decisions on Stage 2 of the PDP will be filed with the Court under clause 14 of Schedule 1 of the RMA.
- 1.3** Accordingly, the Council has filed this notice of motion to:
- (a) provide information to the Court on the PDP process so far, including an outline of the content of, and Council hearings for, Stage 2, and an update on Stage 3;
 - (b) indicate the Council's preliminary thoughts on options for the case management of the Stage 2 appeals (including potential grouping of appeals into topics, and other procedural matters); and
 - (c) seek, pursuant to section 281 of the RMA, various waivers and directions that may assist to streamline the filing and service of any notices of appeal, section 274 notices, and any other Court documentation relating to these appeals.
- 1.4** Broadly, the Council seeks to take a similar approach to case management of Stage 2 appeals as it has taken to Stage 1, with some minor differences in terms of suggested timing.

2. Outline of Stage 2 and Stage 3 of the District Plan Review

- 2.1 The Council's District Plan Review (**DPR**) is being undertaken in stages. The Council publicly notified Stage 1 on 26 August 2015 and Stage 2 on 23 November 2017. It is intended that Stage 3 of the PDP will be notified in the third quarter of 2019.
- 2.2 The Council's Notice of Motion dated 23 April 2018 provided an outline of Stage 1.

Stage 2 of the Proposed District Plan

- 2.3 There are six topics in Stage 2, comprising three new district wide chapters (intended to apply to all land included in the District Plan Review), two new zone chapters (and associated new zones on the Stage 2 plan maps), and new provisions for and/ or variations to various Stage 1 chapters and plan maps.
- 2.4 The details of each topic are as follows (topic names and Stage 2 chapters in **bold font**):
- (a) **Wakatipu Basin (Chapter 24)** and variations to the following Stage 1 chapters: Definitions (Chapter 2), Rural Residential & Rural Lifestyle (Chapter 22), Subdivision and Development (Chapter 27) and Noise (Chapter 36);
 - (b) **Earthworks (Chapter 25)** and variations to the following Stage 1 chapters: Definitions (Chapter 2), Subdivision and Development (Chapter 27) and Jacks Point Zone (Chapter 41);
 - (c) **Transport (Chapter 29)** and variations to the following Stage 1 chapters: Definitions (Chapter 2), Designations (Chapter 37), Rural (Chapter 21), Queenstown Town Centre (Chapter 12), High Density Residential (Chapter 9) and variations to plan maps to correct and update the spatial extent of roads notified in Stage 1;
 - (d) **Signs (Chapter 31)** and variations to the following Stage 1 chapters: Definitions (Chapter 2) and Airport Mixed Use Zone (Chapter 17);

- (e) **Open Space and Recreation (Chapter 38)** and variations to the following Stage 1 chapters: Definitions (Chapter 2), Landscapes and Rural Character (Chapter 6), Subdivision and Development (Chapter 27), Temporary Activities and Relocated Buildings (Chapter 35) and Noise (Chapter 36);
- (f) **Visitor Accommodation Variation** (Variations to the following Stage 1 chapters: Definitions (Chapter 2), Low Density Residential (Chapter 7), Medium Density Residential (Chapter 8), High Density Residential (Chapter 9), Arrowtown Residential Historic Management Zone (Chapter 10), Large Lot Residential (Chapter 11), Business Mixed Use Zone (Chapter 16), Rural (Chapter 21), Rural Residential & Rural Lifestyle (Chapter 22), Gibbston Character Zone (Chapter 23), Jacks Point Zone (Chapter 41), Waterfall Park (Chapter 42) and Millbrook (Chapter 43); and
- (g) **plan maps** for the land currently included in the PDP through Stage 2, showing the zoning for land and various plan map annotations that apply to that land (including proposed Visitor Accommodation Sub-zones).

2.5 Submissions on Stage 2 of the PDP closed on 23 February 2018. In total, 650 submissions (containing 15,602 submission points) and 100 further submissions were lodged with the Council.

2.6 The Council appointed a Panel of Commissioners (**Panel**) to hear submissions and make recommendations on Stage 2 of the PDP. The hearings were held between July and November 2018 and the Council's decisions on the Panel's recommendations were made on 7 March 2019.

Stage 3 of the Proposed District Plan

2.7 Stage 3 of the PDP is intended to be publicly notified for submissions in the third quarter of 2019. The provisions intended to be notified cover the following nine topics:

- (a) Affordable and Community Housing;

- (b) Sites of significance to iwi (mapping and rules);
- (c) Township Zones;
- (d) Gorge Road Natural Hazards, and Residential and Business Mixed Use Zones;
- (e) Industrial Zones;
- (f) Rural Visitor Zones;
- (g) Design Guidelines for the Residential and Business Mixed Use Zones (PDP Chapters 7, 8, 9 and 15);
- (h) Ballantyne Road Mixed Use Zone; and
- (i) Three Parks.

2.8 The Council anticipates holding hearings for Stage 3 in the first and second quarters of 2020.

3. Case management options for the Stage 2 appeals

3.1 The Council intends to publicly notify its decisions on Stage 2 on or around 21 March 2019. The appeal period in relation to those decisions would close on 7 May 2019, with the section 274 period ending in early June 2019.

3.2 As with the Stage 1 appeals, the Council will be required to undertake a number of tasks immediately after any appeals are served on the Council (and again after associated section 274 notices are served), as follows:

- (a) review all notices of appeal (and associated section 274 notices) to identify the relevant topics covered by each notice of appeal (and 274 notice);

- (b) identify whether further particulars are required in relation to certain appeals so that the Council will be able to formulate a position on those appeal points;
- (c) for the purpose of completing its annotation of the Stage 2 PDP provisions and maps, the Council will need to establish whether certain parts of the PDP are subject to appeal or are beyond challenge (and therefore deemed operative in terms of section 86F of the RMA). This step involves preparation and maintenance of an Appeals Version of the PDP chapters and an electronic plan viewer; and
- (d) identify and advise the Court of any jurisdictional issues that should be addressed prior to or alongside any mediation.

3.3 The Council seeks to assist the Court by developing case management options for the Stage 2 PDP appeals (drawing on the Council's learnings from the Stage 1 process) that will take into account:

- (a) whether it is appropriate to hear certain appeals separately, or group appeals together for mediations and/or hearings;
- (b) whether any particular sequencing of appeals (or groups of appeals) is appropriate; and
- (c) whether mediation would be of benefit for certain appeals (or groups of appeals), and if so, Council will liaise with the parties involved in relation to the likely timeframe required to prepare for any mediation.

3.4 It is anticipated that, following consideration of the above, the Council would prepare and file, after conferring with all parties involved in the appeals, a reporting memorandum recommending an approach to the case management of the Stage 2 PDP appeals.

3.5 The Council respectfully seeks a period of approximately eight weeks following the close of the section 274 period to undertake the above tasks, such that its first reporting memorandum is provided on or around 2 August 2019.

- 3.6** The Council's reason for seeking this amount of time is that Council officers and other parties will be preparing for and attending Stage 1 mediations, and possibly hearings, over this same time period. Mediation on Topic 16 of the Stage 1 rezoning appeals is set down for four weeks during June and July 2019. During this time, Council officers will also be preparing for mediations on other Stage 1 topics scheduled for July – November 2019. Further, the Council anticipates that hearings on Stage 1 appeals that were not resolved through mediation are likely to take place in the second half of 2019. Finally, Council officers will also be preparing plan provisions and section 32 evaluation reports and completing pre-notification consultation for Stage 3.
- 3.7** The Council also notes that the Stage 1 mediation timetable for the second half of 2019 is somewhat tentative at this point, as it involves topics which in the Council's view are not suitable for mediation until the Court has issued its interim decisions on some of the Strategic Topics in Stage 1. However, by the end of July 2019 the Council anticipates that the Stage 1 mediation timetable for the remainder of the year will be relatively settled. Accordingly, a date of 2 August 2019 for the Council's first reporting memorandum on Stage 2 would allow the Council to propose a clear case management timetable for Stage 2, with reference to the timing of the Stage 1 mediations.
- 3.8** The Council respectfully requests that the Court consider issuing a direction on the basis that the Council's first reporting memorandum should be filed on or around 2 August 2019, after which time case management directions could be issued.
- 3.9** The following part of this notice addresses specific matters related to the above.

Intended topic approach

- 3.10** It is anticipated that notices of appeal on the Stage 2 PDP provisions will involve fewer overlapping issues by comparison with the Stage 1 appeals. This is because the six Stage 2 topics are relatively discrete, and unlike Stage 1, do not involve extensive changes to the strategic provisions.¹ The Council's preliminary view is that breaking the appeals down and grouping them into topics is likely to be helpful in ensuring that the appeals are efficiently

¹ With the exception of the variation text in Chapter 6, and two new policies that each relate to the Wakatipu Basin Zone and the Open Space and Recreation Zone.

managed. At the Council level, hearings were broken into topics in the same way.

- 3.11** The Council respectfully suggests that its first reporting memorandum would be the most appropriate time to propose any finer grained sub-topic or thematic approach within the six Stage 2 topics, after the Council has had an opportunity to understand the appeals.

Mediation

- 3.12** The Council anticipates there will be significant benefits from mediating the Stage 2 appeals. In the Council's view, the Stage 1 mediations to date have been productive and helpful in resolving a large number of appeal points, and significantly refining the issues for those appeal points that were not able to be resolved. The Council also considers that it would be helpful to continue the position paper approach taken in Stage 1.

- 3.13** The Council notes that consideration will need to be given to the timetabling and outcomes of the relevant Stage 1 mediations and hearings, before timetabling mediation on the Stage 2 topics. However, the Council's preliminary view is that Stage 2 mediation could possibly commence in November and December 2019, beginning with the Stage 2 topics involving the fewest variations to Stage 1; that is, Earthworks and Signs. The Council would address potential timetabling in more detail in its first reporting memorandum.

- 3.14** Drawing on learnings from the Stage 1 mediations, the Council's preliminary view is that it would be helpful to continue the position paper approach.

Preliminary jurisdictional issues

- 3.15** As with Stage 1, the Council anticipates that a number of jurisdictional issues may arise out of the appeals (such as issues of parties' standing to appeal) that may most appropriately be dealt with through applications to the Court prior to mediations.

- 3.16** It is the Council's intention to identify such issues and apply to the Court for appropriate orders as quickly as possible following the close of the appeals

period and prior to the commencement of mediations. Other parties may also wish to make similar applications during this time.

3.17 The Council respectfully suggests that jurisdictional issues be approached in tranches, with a date for strike out applications being set first in respect of the Earthworks and Signs topics, and later dates for each of the remaining four topics. The Council would address potential timetabling in more detail in its first reporting memorandum.

4. Application for waivers and directions under section 281 of the RMA

4.1 The Council seeks that the same general approach be taken to Stage 2 in terms of waivers and directions for service of appeals and section 274 notices, with the aim of streamlining the process and enabling electronic service, and using the Council's website to make appeals and section 274 notices available to the public.

4.2 Drawing on learnings from Stage 1, the Council respectfully seeks a small amount of additional time for uploading appeals and section 274 notices to its website, and directions addressing the manner in which electronic documents are named and served. This is because in Stage 1, a significant amount of the Council's website maintenance time was spent in re-naming and separating pdfs and requesting missing appendices, before appeals and section 274 notices could be uploaded in a logical and helpful format.

4.3 The Council seeks the following waivers and directions pursuant to section 281 of the RMA in respect of the potential appeals on its decisions on Stage 2 of the PDP:

(a) **Notices of appeal:**

(i) any notice of appeal (in relation to the Council's decisions on the provisions of Stage 2 of the PDP) must be:

- lodged with the Environment Court electronically by email to: Christine.McKee@justice.govt.nz and by posting a hard copy to: PO Box 2069, 20 Lichfield Street, Christchurch;

- served on the Council electronically by email to dpappeals@qldc.govt.nz; and
 - served on the person who made the original submission which is the subject of the appeal, and every person who made a further submission on the same original submission;
- (ii) the requirement to serve a copy of any notice of appeal and attachments on every person who made a submission on the provision or matter to which the appeal relates is waived. The related written notice requirement (“Advice to recipients”) is also waived;
- (iii) any notice of appeal must be in pdf format, with a title following the format NOTICE OF APPEAL BY [NAME OF APPELLANT]. Any appendices must be separate pdfs, with titles following the format APPENDIX [1] TO NOTICE OF APPEAL BY [NAME OF APPELLANT];
- (iv) service of the notice of appeal on every other person (not being an original or further submitter – all of whom are to be served in accordance with paragraph 4.3(a)(i) above) who made a submission on a provision or matter to which the appeal relates will be deemed to be effected by the Council uploading copies of all notices of appeal onto its website within five working days after the appeal period closes.
- (b) **Section 274 notices:**
- (i) any section 274 notice must be:
- lodged with the Environment Court electronically by email to Christine.McKee@justice.govt.nz;
 - served on the Council electronically by email to dpappeals@qldc.govt.nz; and
 - served on the appellant electronically on any email address provided in the notice of appeal;

- (ii) the requirement to lodge a signed original and one hard copy of any section 274 notice with the Environment Court is waived;
- (iii) the requirement for section 274 parties to serve their notice/ form 33 on all other parties is waived;
- (iv) any section 274 notice must be served within 20 working days after the period for lodging a notice of appeal ends. The requirement for section 274 parties to serve their notice within 15 working days after the period for lodging a notice of appeal ends is waived;
- (v) any section 274 notice must be in pdf format, with a title following the format SECTION 274 NOTICE BY [NAME OF PARTY] JOINING [NAME OF APPELLANT]. Any appendices must be separate pdfs, with titles following the format APPENDIX [1] TO SECTION 274 NOTICE BY [NAME OF PARTY] JOINING [NAME OF APPELLANT]. A separate section 274 notice must be filed in respect of each appeal being joined;
- (vi) service of section 274 notices on all other parties will be deemed to be effected by the Council uploading copies of section 274 notices onto its website within fifteen working days after the section 274 period closes.

4.4 The Council seeks the above waivers and directions on the following grounds:

- (a) In total, 650 submissions with 15,602 submission points were received on Stage 2 of the PDP. The waivers and directions will:
 - (i) clarify the requirement for service of documents set out in section 352 of the RMA and reduce the burden on the Council in receiving hard copies of appeal documents;

- (ii) reduce the burden on appellants and section 274 parties, who may be otherwise obliged to serve notice on a significant number of parties;
 - (iii) reduce the administrative burden on the Council's website team by requiring parties to serve documents in a consistent format, and providing a small amount of additional time for uploading; and
 - (iv) address the significant logistical issues for the parties that would otherwise arise, particularly around filing and service of hard copies of documents.
- (b) The Environment Court in *Re Auckland Council*² granted a similar application made by Auckland Council in respect of upcoming appeals on its decisions on the Proposed Auckland Unitary Plan. (The Council's Notice of Motion dated 23 April 2018 attached Auckland Council's application and the Environment Court's decision). The Court identified two relevant aspects of section 281 of the RMA, being that:³
- (i) it does not appear that the Court's jurisdiction is confined to a proceeding already before the Court; and
 - (ii) the Court can waive the requirements of the RMA and make directions in an appropriate case.
- (c) The Environment Court granted the Council's previous application in respect of Stage 1.⁴
- (d) On 21 March 2019 the Council will:
- (i) give public notice of its decisions in the Wanaka Sun, Otago Daily Times, and Queenstown Mountain Scene newspapers (as required by clause 10(4)(b) of Schedule 1 of the RMA); and

² [2016] NZEnvC 153.

³ [2016] NZEnvC 153 at [9] – [10].

⁴ Available on the Council's website: <https://www.qldc.govt.nz/planning/district-plan/proposed-district-plan-stage-1/appeals/>

- (ii) send a letter to all submitters and further submitters on Stage 2 of the PDP containing the information required by clause 11(1) of Schedule 1 of the RMA.

- (e) The Council will subsequently make live a specific webpage on the Council's website, which will contain the Council's decisions and all notices of appeal and section 274 notices served on the Council. As per the above waivers and directions, copies of all notices of appeal will be uploaded within five working days after the appeal period closes, and section 274 notices will be uploaded within fifteen working days after the section 274 period closes, so that any submitters or other persons will be made aware of any appeal and have the opportunity to join any appeal by lodging a section 274 notice with the Court.

- (f) The Council will also upload this Notice to its website, and provide a copy via email to all submitters and further submitters on Stage 2.

- (g) The Council appreciates that this application for waivers and directions under section 281 of the RMA may not be able to be decided prior to 21 March 2019. If the Court is minded to make the above waivers and directions after 21 March 2019 the Council will:
 - (i) upload a copy of the Court's waivers and directions on the Council's webpage; and
 - (ii) serve notice on all Stage 2 PDP submitters (in electronic form, unless no electronic address is available) that the waivers and directions have been made and that they can be found on the Council's website.

- (h) If the Court is minded to grant the above waivers and directions prior to 21 March 2019, the Council would include notice of this fact as part of its public notice of 21 March 2019.

5. Just treatment of parties

- 5.1** The Council acknowledges that the *ex parte* nature of this application is a relevant matter for the Court's consideration. The Council is mindful that it is an objective of the Court's case management set out in paragraph 4.1(a) of the Practice Note to "*ensure the just treatment of all parties.*"
- 5.2** With this factor in mind, the Council contacted a number of Stage 1 parties who it anticipates will also be involved in Stage 2, to advise them of the Council's indicative timeframe for Stage 2 decisions. No opposition was received. Given the overall similarity with the Stage 1 approach, the Council respectfully submits that other parties and potential parties to the Stage 2 appeals would not be prejudiced by the Court granting the waivers and directions sought.
- 5.3** Counsel is also willing to assist the Court by providing any further information that the Court considers would be of assistance, in advance of the appeals being received.

Dated this 8th day of March 2019



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