

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 Hearing Stream 12-
Upper Clutha Mapping

MINUTE CONCERNING CONTENT OF COUNCIL REPLY

1. At the conclusion of the Upper Clutha Mapping hearing on 14 June, we discussed with Mr Barr our intention to review our notes of the hearing and provide to Council a list of matters on which we request feedback as part of the Council reply. We have now completed that task and our list of legal and evidential issues follows.
2. As we told Mr Barr, we emphasise that we are not suggesting that these are the only matters on which the Council reply. The Council of course retains the freedom to reply on all matters canvassed at the hearing which have not already been addressed in the Council's legal submissions or evidence. Indeed, we anticipate that the Council will wish to provide a view in all instances where submitters shifted ground materially at the hearing, compared to the positions stated in precirculated evidence.
3. We have separated the matters of particular interest to us under two categories:
 - General matters, applying to a number of submissions;
 - More submission specific issues.

General Matters

4. The Hearing Panel requests feedback from Council as part of its reply of the following matters:

- (i) Is the Council still of the view (as expressed in opening submissions) that where a submitter seeks to apply an 'operative' zone to land within the PDP, the Hearing Panel should recommend to Council that the land in question be notified as part of Stage 2, but that the status quo zoning should be retained in the interim, given the lack of certainty that it provides to submitters? Is it relevant that some sites the subject of submissions (e.g. at Hawea) have both an operative zone and a PDP zone over them?
- (ii) In relation to the geographical areas withdrawn from the PDP by virtue of Council's 16 March 2017 resolution, how is it that the PDP maps might continue to show notations such as ONL and ONF lines over that land (as suggested in opening submissions for Council)? In particular, is the maintenance of ONL (or ONF) lines on that land consistent with the terms of the Council's resolution and the legal effect of withdrawal of the land from the PDP? If the Council believes that there is sound reason to maintain the ONL/ONF lines, is there a risk that in the specific instance of Peninsula Bay Joint Venture, that submitter might have been misled by the terms of the Council's resolution (and/or the terms in which that resolution was communicated to the submitter) when it failed to lodge the expert evidence previously foreshadowed in communications with the Hearing Administration staff, and that it ought now to be given the opportunity to call evidence in support of its submission that the location of the ONL line across its land should be altered? Further, failing reconvening of the hearing for this purpose, on what basis should the Hearing Panel determine a position on the Peninsula Bay Joint Venture submission given that the Council's section 42A Report and accompanying evidence did not appear to address that submission?
- (iii) Please clarify the Council's view as to the ambit of the "*urban environment(s)*" in the Upper Clutha area for the purposes of the NPSUDC 2016. In particular, does the NPS definition of urban environment, with its reference to "*land containing, or intended to contain, a concentrated settlement of 10000 people or more*" mean that Hawea and/or Luggate area within the Wanaka urban environment? If so, does that mean that the land between Hawea and Wanaka (for instance) is likewise part of the Wanaka Urban Environment? Put another way, how "*concentrated*" does

the settlement of people need to be to qualify? – Are the rural lifestyle zoned areas on Riverbank Road, for instance, part of the Wanaka Urban Environment, and if they are, does that mean that the rural zoned land between those rural lifestyle areas and the UGB are likewise part of the Wanaka Urban Environment? If rural lifestyle areas are insufficiently “concentrated” for this purpose, would rural residential areas qualify? Likewise, taking the proposed Lake Mackay Station Rural Residential Zone on the margins of Luggate, if recommended, would it extend any “concentrated settlement” of which Luggate forms part? Alternatively, if the more correct focus is from the recognisably urban parts of Wanaka outwards, how far does one go in each direction before the land ceases to contain or be intended to contain a concentrated settlement of the required size?- to the UGB, or beyond it, and if beyond it, how far beyond it?

- (iv) Projecting forward to Stage 2 of the PDP process, how does Council see submissions seeking rezoning of current ODP Zones, where the relief sought is a Stage 1 PDP Zone e.g. land currently zoned Township where a submitter seeks a Low Density Residential Zone. Will that be possible, or is it the Council’s view that such a submission would be out of scope? Would it make a difference if the future rezoning application seeks some local variation to the zone provisions the outcome of the PDP Stage 1 process (e.g. with additional standards)?
- (v) Please clarify the interrelationship between infrastructure provision and rezoning. Specifically, where an Urban Zone is sought but no/insufficient capacity currently exists in the infrastructure network and no LTP provision is made for the relevant infrastructure upgrade, is that a fatal flaw for the submitter such that the submission cannot be granted (in the Council’s view) or is the absence of infrastructure provision relevant but not determinative?
- (vi) If the Council’s view is that the NPSUDC requires provision to be made for ‘affordable’ housing (please advise), is the Council satisfied that the PDP as currently framed meets any such obligation, and if not, advise the process and timescale within which it will be addressed?
- (vii) Please provide clarification on the application of the Section 32 tests to zoning requests. In particular, is zoning a method to achieve the broader objectives and policies of the Plan, or is it a method to achieve the zone/sub-zone (as applicable) objectives and policies (which presumably should reflect those broader objectives

and policies). In other words, what is the correct reference point for the section 32 analysis?

- (viii) Please advise any more recent authority than *Hanton v Auckland CC* [1994] NZRMA 289 for the proposition in the Council's opening submissions that the Council (and hence the Hearing Panel) does not stand in the Crown's shoes for the purposes of its Treaty of Waitangi obligations; noting that counsel for M Beresford cited *Ngati Maru ki Hauraki Inc v Kruithof* CIV-2004-484-330 (Baragwanath J) as authority for the opposite conclusion.
- (ix) During the course of the hearing, Ms Banks agreed to provide us with a table for situations where traffic related upgrades she had recommended were in her view critical to a positive zoning recommendation. We request that be included in the Council's Reply. In relation to any situations in this category, please advise the mechanism by which the Hearing Panel could be satisfied the relevant upgrades will be undertaken.
- (x) Mr Barr considered that there were no submissions other than that of M Beresford which required a wider Part 2 consideration but indicated he would need to review the submissions gained with that question in mind. Please confirm, or otherwise, Mr Barr's initial advice.
- (xi) Is it the Council's view that ONLs and ONFs should be determined on landscape advice irrespective of zoning or current use? If not, please provide authority supporting the Council's position.
- (xii) Please confirm the effect of the NZTA Rules (with appropriate cross references) governing the use of existing accesses to limited access roads if the nature and extent of the land use changes?
- (xiii) Does Mr Espie's evidence that he personally has authored approximately 15 landscape reports on rural lifestyle subdivision applications cause Mr Barr to reconsider his evidence that such applications are not normally accompanied by landscape analysis?
- (xiv) Do any adverse effects arise from the potential for 2 household units (through operation of the residential flat provisions in the PDP) to be established on any site, that have not previously been considered in the evidence given by Council

experts? If not, what difference does that consideration make to their recommendations, if any?

- (xv) Please identify the Plan provisions related to roads, in particular where the PDP states that roads are not zoned.

Site and Submitter Specific Issues

5. Addressing the points which have arisen in relation to specific sites and/or submissions:

- (i) What is the Council's position on the scope for Upper Clutha Environmental Society to argue for varied ONL lines at the locations identified in Ms Lucas's evidence?
- (ii) What is the Council's position on the scope to change the notation on the Cooper land from ONF to ONL as Ms Mellsop recommends?
- (iii) What is the Council's position on the scope to shift the ONL line at Bremner Bay as recommended by Ms Mellsop (refer her Evidence in Chief at 6.19).
- (iv) We asked Ms Banks to revert with her view on the difference reducing the size of the Cardrona Valley Road LSCZ as recommended by Ms Jones would make to her West Meadows Road related recommendations. Specifically, what capacity is there to increase traffic demand on West Meadows Road?
- (v) Can Mr Davis please provide a response to Dr Lloyd's view that rabbit control on Mount Iron should only be directed at revegetation areas because, across the ONF more broadly, rabbits are useful as a mechanism to keep down exotic species.
- (vi) Can Council please provide with its reply its analysis of alternative options for the shape of the Cardrona Valley Road LSCZ if its size is reduced as recommended. Please provide those in the form of an overlay on an aerial photo, with the proposed road currently the subject of a resource consent application also shown.
- (vii) What is the Council's view on the scope the Hearing Panel may have to recommend that a rear lane be required in the block bordered by Brownston, Helwick, Union and Dungarvon Streets should the Hearing Panel find merit in the rezoning proposal of Varina Proprietary Ltd.

- (viii) Given the agreement between Ms Mellsop and Mr Field regarding the location of the ONL line on the Sticky Forest Block, what implications does that have for the ONL line on the adjacent Peninsula Bay property (assuming Council's view remains that it should be shown on the face of the PDP maps)?
- (ix) In relation to traffic demand on West Meadows Drive, if Ms Banks' view is that there is some capacity on that road, whether linked to the reduction in size of the Cardrona Valley Road LSCZ or to the modification to the roading network the subject of Ms Nic Blennerhassett's representation, but not enough for all of the rezoning requests (as advised), what is the Council's proposal as to how that capacity might be allocated?
- (x) On the Scurr Heights Block, is the walking track above the zoned development area the same moraine that is protected by a building restriction area above Kirimoko, and if so, would that indicate that a building restriction area should likewise be placed on the Scurr Heights Block? If the answer to the last point is in the affirmative, where exactly should the building restriction area be placed?
- (xi) What is the Council's view on the incremental recreational value of the additional tracks on Mount Iron and Little Mount Iron being proffered by Allenby Farms Limited as part of its proposal, over and above the existing legal easements?
- (xii) Please provide clarification of the reference in Mr Barr's report 2 at 12.33 to the modified McLean scale – what is it, what degree of protection on it is appropriate for Mt Iron and why?
- (xiii) What is the Council's view on references in the PDP and/or the Operative or Proposed Regional Policy Statement to Ngai Tahu/Kai Tahu? Specifically, should such provisions be read as referring to any member or members of the iwi or to Ngai Tahu/Kai Tahu collectively as represented by Te Runanga o Ngai Tahu under the Te Runanga o Ngai Tahu Act 1996.
- (xiv) In relation to Mr Barr's rebuttal evidence at paragraph 11.26, what relevant obligations does the Ngai Tahu Claims Settlement Act impose in relation to the block known as Sticky Forest?
- (xv) In relation to the properties currently zoned Rural Lifestyle immediately west of Riverbank Road, are there grounds to differentiate those properties from the Rural

Lifestyle properties to the east of Riverbank Road, as regards the most appropriate zoning?

- (xvi) As previously requested, can Mr Barr please advise what practical difference it would make to currently Rural Lifestyle Zoned properties at Makarora which have already been subdivided and either have an approved building platform or a constructed house thereon if they were downzoned to a Rural Zoning.
- (xvii) What comment does Mr Barr have on Ms Pennycook's information regarding the current path of (and hazard risk created by) the Makarora River in relation to the areas he has recommended be retained under a Rural Lifestyle Zoning.
- (xviii) What is the Council's view on the proposal discussed with Mr Dippie of Willowridge Limited and with the representatives of the Redai et al group that future development of the currently Rural Zoned land west of Riverbank Road might appropriately be the subject of a structure plan process to guide the nature and timing of its future development? Would it be appropriate to consider a deferred zoning approach in conjunction with that option?
- (xix) What is Council's response to Mr Dippie's evidence that rezoning the lower terrace land being developed by Willowridge Ltd at Luggate would be consistent with the suggestions the Council has made to him regarding the desirability of affordable home options being provided at that location.
- (xx) What is the Council's view regarding the implications of a major Three Parks entrance off the State Highway on the maintenance of the building restriction area currently in place on Allenby Farms land adjacent to the State Highway? Please identify on an appropriate plan where that intersection will be located.
- (xxi) What is the Council's response to the evidence and submissions for Gordon Trust that the purpose of the LSCZ is to cater, among other things, for tourist traffic? What are the implications for Mr Heath's evidence on the desired size of the Cardrona Valley Road LSCZ if that purpose were taken into account. If the Council's view is that no need to factor in tourist traffic, please advise the Council's view as to whether that position is consistent with the role of the LSCZ at Frankton Corner.

- (xxii) The suggestion was made during the course of the presentation for Mr Cooper that SNA E 18B no longer exists. Does the Council have any information that would assist the Panel on this point?
- (xxiii) What is Ms Mellsop's response to Mr Espie's analysis that the river terraces on the Cooper land are not distinctive, given that there are other examples (such as near Red Bridge on the Luggate side of the river and above the Shotover River, next to Domain Road) where similarly legible river terraces have not lead to an ONL classification.
- (xxiv) What is the Council's response to the joint Burden/Glen Dene proposal?
- (xxv) What is Ms Mellsop's response to Mr Espie's analysis suggesting that the terraces identified as marking the ONL line on the Sunnyheights (ex Crosshill) side of the Hawea River confluence are not distinctive, in particular that there are a number of equally legible river terraces above the ONL line.
- (xxvi) Mr Espie gave evidence for Jeremy Bell Investments Limited regarding the visibility of the upper terrace on the submitter's land proposed for rural lifestyle rezoning, distinguishing that land from the rural lifestyle land to the southwest of Mount Barker, because in his view the terrace was not sloping and open to the north. The Hearing Panel members' own observation was that this did not appear to be correct and that at least part of the Upper Terrace both slopes towards and is open to the north when viewed from Smiths Road. Please advise the Council's view on that factual issue, with appropriate supporting material.
- (xxvii) What is the Council's view on the appropriate activity status for clearing of the trees currently on Sticky Forest, assuming Mr Beresford's submission provides scope for a revised rule.
- (xxviii) What reasonable use can be made of the Sticky Forest Block the subject of Mr Beresford's submission under the PDP provisions the Council supports?

6. Lastly, we note for the record that having discussed the point with Mr Barr, we directed that the Council Reply be lodged on or before 10 July 2017.

For the Upper Clutha Mapping Hearing Panel

A handwritten signature in blue ink, appearing to read 'T. Robinson', with a large, stylized flourish extending downwards.

Trevor Robinson (Chair)

20 June 2017