

**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 Table 24.2 of the
Proposed District Plan
notified on 9 August
2018

**MEMORANDUM OF COUNSEL ON BEHALF OF THE QUEENSTOWN LAKES
DISTRICT COUNCIL SEEKING TO STRIKE OUT PART OF A SUBMISSION POINT
UNDER SECTION 41D OF THE RMA**

14 September 2018

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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 respectfully seek that the Chair of the Panel strike out, under section 41D of the Resource Management Act 1991 (**RMA**), part of the submission by Aircraft Owners and Pilots Assn of New Zealand (#2663) as not being “on” Table 24.2 of the Proposed District Plan provisions as notified on 9 August 2018, and consequentially disclosing no reasonable or relevant case.
2. In summary, Council seeks that the submission and the relief sought, is struck out as far as it seeks changes to the provisions that apply to the wider Wakatipu Basin Rural Amenity Zone. The submission as it applies to the Wakatipu Basin Lifestyle Precinct, are accepted to be ‘on’ the provisions notified on 9 August 2018.

Legal principles

3. The legal principles regarding scope and the Panel's powers to recommend (and subsequently the Council's power to decide) are:
 - 3.1 a submission must first, be *on* the proposed plan; and
 - 3.2 a decision maker is limited to making changes within the scope of the submissions made on the proposed plan.
4. The first principle is relevant in this application for strike out. The meaning of “on” was considered by a superior court in *Palmerston North City Council v Motor Machinists Ltd*,¹ where the High Court firmly endorsed the two-limb approach from *Clearwater Resort Limited v Christchurch City Council*.² The two questions that must be asked are:
 - 4.1 whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and
 - 4.2 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.

1 [2014] NZRMA 519.

2 HC Christchurch AP34/02, 14 March 2003.

5. The Chair has helpfully distilled the criteria that can be taken from *Motor Machinist* in paragraph 9 of its Second Decision relating to submissions not “on” the PDP, dated 2 August 2018.³ Those criteria are adopted here. Of most relevance in this application are (a) and (c):

5.1 (a): the focus of the submission is not on “specific provisions of the proposal”, where it attempts to change provisions that apply to the wider Amenity Zone; and

5.2 (c): the resource management regime for the wider Amenity Zone is not altered by the provisions notified on 9 August 2018, so the submission seeking that a different management regime be applied to that wider area, cannot be on the notified provisions.

Notification of provisions on 9 August 2018 – Activities in the Wakatipu Basin Lifestyle Precinct

6. On 9 August 2018, the Council notified “Table 24.2 – Activities in the Wakatipu Basin Lifestyle Precinct”. As the Chair is aware, this table was inadvertently omitted from Chapter 24 – Wakatipu Basin, when it was first notified on 23 November 2017.

7. The only provisions that were notified on 9 August 2018, were five activity rules, all sitting within Table 24.2. It is submitted to be clear that the five rules relate only to the Wakatipu Basin Lifestyle Precinct. This is what the heading of the table says. A copy of the notified provisions is set out below:

Table 24.2 - Activities in the Wakatipu Basin Lifestyle Precinct		Activity Status
24.4.25	Residential Flat not exceeding 150m ² gross floor area that is not attached to the principal Residential Unit but is not separated from the principal Residential Unit by more than 6 metres.	D
24.4.26	Residential Flat not exceeding 150m ² gross floor area that is not attached to the principal Residential Unit and is separated from the principal Residential Unit by more than 6 metres.	NC
Non-residential activities		
24.4.27	Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, or any activity requiring an Offensive Trade Licence under the Health Act 1956. Excludes activities undertaken as part of a Farming Activity, Residential Activity or as a permitted home occupation.	PR
24.4.28	Informal airports.	D
24.4.29	Clearance, works within the root protection zone or significant trimming of exotic vegetation that is of a height greater than 4 metres. Discretion is restricted to: <ul style="list-style-type: none"> • The extent of clearance. • Trimming and works within the root protection zone. 	RD

3 <https://www.qldc.govt.nz/assets/Uploads/Procedure-2nd-Decision-Striking-Out-Submissions-2-8-18.pdf>

8. Any submission must therefore be on the specific provisions that were notified on 9 August 2018, and in Council's submission, that is limited to Activities located in the Wakatipu Basin Lifestyle Precinct.

Aircraft Owners and Pilots Assn of New Zealand (#2663)

9. The Aircraft Owners and Pilots Assn of NZ has filed a submission on the provisions that were notified on 9 August 2018. The submission attempts to submit on Informal Airports within the Wakatipu Basin Lifestyle Precinct, as well as the wider Wakatipu Basin Rural Amenity Zone.

10. The submission is submitted to be misleading in its Introduction, where it says that it did not have the opportunity to submit on the broader policy and standards framework applicable to informal airports in Chapter 24. Council considers it to be clear that Informal Airport rules were notified in the Amenity Zone on 23 November 2018. In particular, the following provisions were included in the notified text on 23 November 2017:

- 10.1 Policy 24.2.2.6;
- 10.2 Policy 24.2.3;
- 10.3 Table 24.1 Activity Rule 24.4.12; and
- 10.4 Table 24.3 Standard 24.5.14.

11. The Rule that was missing from the notified standards in Table 24.2 was Standard 24.2.28, which states that informal airports are a discretionary activity in the Lifestyle Precinct. Therefore, a person could not have known about informal airports in the Lifestyle Precinct being a discretionary activity, and in the absence of the rule would have been right to understand that informal airports are permitted, however subject to standards 24.5.14.

12. The submission seeks the following relief:

- 11. *The Association submits that as in other districts 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 within the minimum setback distance reduced to 150m.*
13. Another way of interpreting/summarising this relief, is:
- 13.1 that Rules 24.2.28 and 24.5.14 (informal airports) are deleted in both the Lifestyle Precinct and Amenity Zone, and are instead controlled by the noise limits prescribed in Chapter 36, table 3; and
- 13.2 apply Standard 24.5.14 to the Lifestyle Precinct (in addition to the Amenity Zone) but that the minimum setback distance be reduced from 500m to 150m.
14. It is certainly accepted and not disputed that the Association has scope to submit on Discretionary Activity, Informal Airports rule 24.4.28 (as it applies to the Lifestyle Precinct on the plan maps). That part of the submission is accepted, but any changes and relief should be restricted to the area of land zoned on the plan maps with Lifestyle Precinct, only.
15. The Council respectfully considers that the submission as it attempts to relate to the wider Amenity Zone, is not on the Lifestyle Precinct submissions notified on 9 August 2018, and should be struck out as disclosing no reasonable or relevant case.
16. Council respectfully requests an urgent decision from the Chair, so that a correct summary of submissions can be notified (for further submissions).

DATED this 14th day of September 2018



S J Scott
Counsel for Queenstown Lakes District
Council