

BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2020] NZEnvC 156

IN THE MATTER of the Resource Management Act 1991
AND of appeals under clause 14 of the First
Schedule of the Act
BETWEEN DARBY PLANNING LIMITED
PARTNERSHIP
(ENV-2018-CHC-150)
and all other appellants concerning Topic 1
of Stage 1 of the Proposed Queenstown
Lakes District Plan
(as set out in the Schedule attached)
Appellants
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner K A Edmonds
Environment Commissioner J T Baines
Hearing: In Chambers at Christchurch
Date of Decision: 21 September 2020
Date of Issue: 21 September 2020

DECISION OF THE ENVIRONMENT COURT
Topic 1: Explanatory text

A: The Queenstown Lakes District Council is directed to make the amendments to Chapters 4, 5 and 6 of the Proposed Queenstown Lakes District Plan and Section 4 of the Operative Queenstown Lakes District Plan as set out in Appendix 1.



B: Costs are reserved.

REASONS

Introduction

[1] This is one of several decisions on appeals from decisions in the review of the Queenstown Lakes District Plan ('ODP'). As noted, this is a partial review and, for convenience, the reviewed provisions of the ODP are referred to as the 'proposed district plan' ('PDP').

[2] This decision follows the court's second Interim Decision relating to Topic 1 ('A Resilient Economy') in Stage 1 of the review.¹ That decision directed Queenstown Lakes District Council ('QLDC') to provide a draft of some explanatory text it proposed for inclusion in PDP Chapters 4, 5 and 6 and the ODP's Section 4 (which is a part of the un-reviewed ODP provisions).² This was to clarify the intended relationship that Chapter 3 has to those Chapters and Section 4. The second Interim Decision directed that this explanatory text provide for cross-referencing to give effect to the court's findings (at [29]-[32]) and in general accordance with the approach that QLDC outlined in its legal submissions.³

[3] QLDC responded to those directions with proposed explanatory text for inclusion in PDP Chapter 1 (Introduction), Chapter 4 (Urban Development), Chapter 5 (Tangata Whenua), Chapter 6 (Landscapes and Rural Character) and ODP Section 4 (District wide issues).⁴

[4] On 7 September 2020, the court issued a Minute identifying some issues with the drafting and proposing some solutions.⁵ By memorandum of 14 September 2020, QLDC reported that it had consulted with relevant parties and largely agreed with what the court identified and proposed. However, it sought the following change to some wording in a provision 1.1B(a):

¹ [2020] NZEnvC 40.

² In fact, the court also referred to Sections 5 and 6 ODP in the second Interim Decision but as the Council correctly points out in its memorandum, that reference was an error as there was no other suggestion that explanatory text was required in any other section except Section 4.

³ [2020] NZEnvC 40 at [33(b)].

⁴ Memorandum of counsel for QLDC dated 8 May 2020 and email of 11 May 2020.

⁵ Minute dated 7 September 2020.



Chapters 3, 4, 5 and 6 apply district wide over Volume A and Volume B land ~~unless Volume A Chapters 3 or 6 specifies exclusions that apply. Where particular landscape related policies are excluded from identified zones, this is specified within Chapters 3 and 6.~~ The principal role of Chapters 3 – 6 collectively is to provide direction for the more detailed provisions related to zones and specified topics contained elsewhere in the District Plan.

Discussion

[5] We acknowledge the improved clarity in QLDC’s drafting, although we consider a further refinement is needed in light of our companion decision on the Exclusion Zone Framework provisions as part of our determination of appeal points on Topic 2: Rural Landscapes. The issue concerns QLDC’s proposed wording “Chapters 3, 4, 5 and 6 apply district wide over Volume A and Volume B land unless Chapters 3 or 6 specifies exclusions that apply”. The more precise effect of the Exclusion Zone Framework is more targeted than that, for instance in qualifying how certain Ch 3 or Ch 6 provisions apply. Hence, we determine that this wording should instead be:

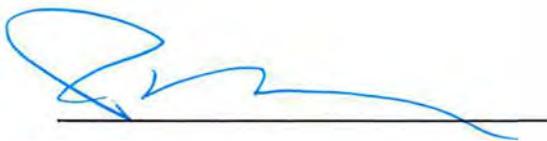
Chapters 3, 4, 5 and 6 apply district wide over Volume A and Volume B land ~~unless~~ except to the extent that either Chapter 3 or Chapter 6 specifies exclusions or qualifications to that application that apply.

Outcome

[6] The explanatory text as proposed by QLDC in its 8 May and 14 September 2020 memoranda of counsel and as modified in the manner shown at [5] (‘Modified Explanatory Text’) is confirmed as appropriate.

[7] QLDC is directed to amend the relevant chapters to include the Modified Explanatory Text and report back when that is completed.

For the court:



J J M Hassan
Environment Judge



SCHEDULE**List of Appellants**

ENV-2018-CHC-056	Upper Clutha Environmental Society Incorporated
ENV-2018-CHC-082	Kawarau Jet Services Holdings Limited
ENV-2018-CHC-084	FII Holdings Limited
ENV-2018-CHC-092	Trojan Helmet Limited
ENV-2018-CHC-093	Queenstown Airport Corporation Ltd
ENV-2018-CHC-098	Friends of the Wakatipu Gardens and Reserves and Associated Residents
ENV-2018-CHC-101	Universal Developments Limited
ENV-2018-CHC-106	Te Anau Developments Limited
ENV-2018-CHC-119	Halfway Bay Lands Limited
ENV-2018-CHC-124	Waterfall Park Developments Limited
ENV-2018-CHC-126	Remarkables Park Limited
ENV-2018-CHC-127	Queenstown Park Limited
ENV-2018-CHC-131	Real Journeys Limited
ENV-2018-CHC-134	Ngai Tahu Tourism Limited
ENV-2018-CHC-137	Coneburn Preserve Holdings Limited & Others
ENV-2018-CHC-138	Real Journeys (trading as Go Orange Limited)
ENV-2018-CHC-146	Real Journeys Limited (trading as Canyon Food and Brew Company Limited)



Appendix 1

Chapter 1 of the Proposed Queenstown Lakes District Plan is to be amended by inserting the following explanatory text after the Purpose section in Chapter 1:

1.1B Structure of the District Plan

The Council has undertaken the review of the 2007 District Plan by way of a series of plan changes (referred to as a Proposed District Plan), notified in a series of stages from August 2015.

The District Plan consists of two volumes, separated by geographic area, and these areas are categorised by way of separate zones that fall into one of Volume A or Volume B. Volume A is the land that has been reviewed (for convenience referred to as the proposed district plan, until such time it is made operative), while Volume B contains land that to date has not been reviewed.

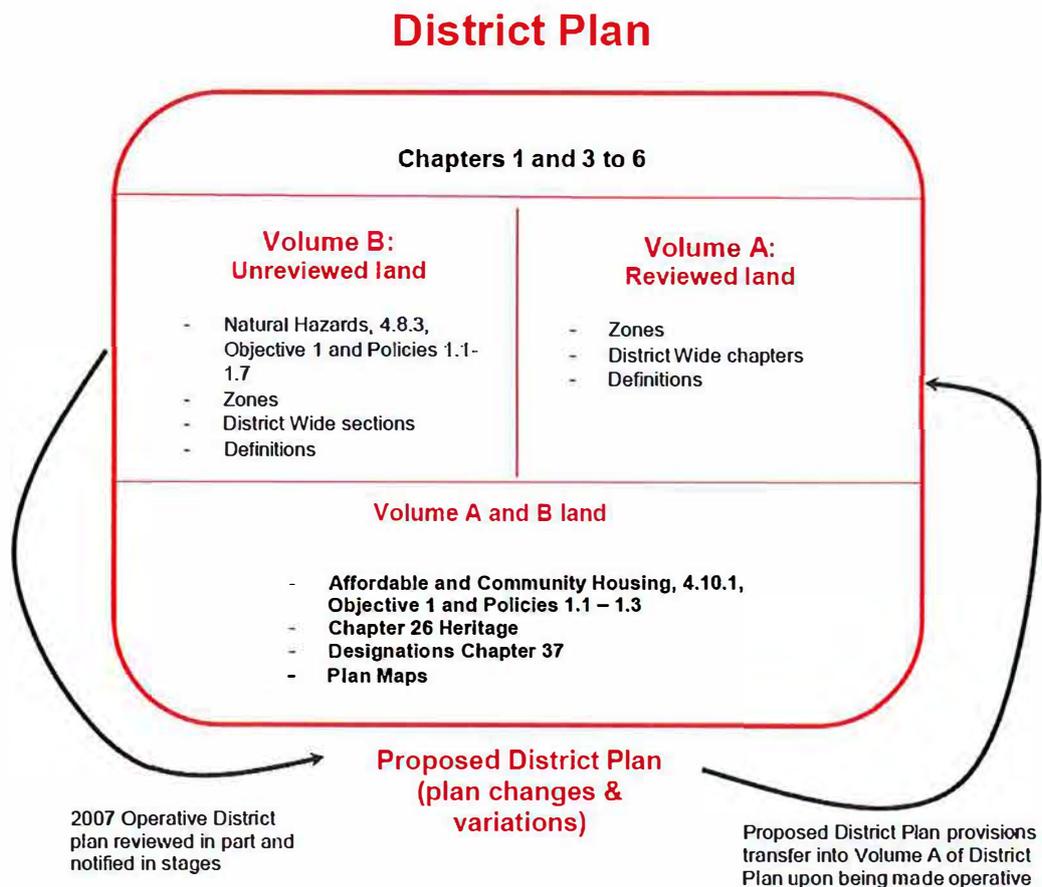
The relationship between the two volumes is as follows:

- a. *Chapter 3 provides overarching strategic direction for the Queenstown Lakes District. The Chapter 3 strategic objectives and policies are further elaborated on in Chapters 4 and 5 that provide more detailed objectives and policies for urban development and tangata whenua. Chapter 6 provides more detailed policies for landscapes and rural character. Chapters 3, 4, 5 and 6 apply district wide over Volume A and Volume B land except to the extent that either Chapter 3 or Chapter 6 specifies exclusions or qualifications to that application. The principal role of Chapters 3 - 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan.*
- b. *Volume A consists of the zone and district wide chapters notified as plan changes (referred to as the proposed district plan), that have worked their way through the RMA Schedule 1 process and been made operative pursuant to Clause 17 of Schedule 1 of the RMA.*
- c. *Volume B of the District Plan consists of the zone chapters, or specific areas not yet reviewed or notified as the Proposed District Plan, and all relevant parts of the 2007 District Plan district wide chapters that need to remain to regulate district wide issues as they relate specifically to those Volume B provisions.*
- d. *Chapters 3, 4, 5 and 6 have encompassed the 2007 District Plan Section 4 (District Wide Issues) with the exception of the following two objectives:*



- *Natural Hazards Objective 4.8.3(1) and Policies 1.1 to 1.7 (Section 4.8), which still applies as a relevant district wide objective to Volume B zones.*
 - *Affordable and Community Housing Objective 1 and Policies 1.1 – 1.3 (Section 4.10), which still applies to both Volume A and B zones.*
- e. *There is one designations chapter in the District Plan.*
- f. *The Volume A Heritage Chapter 26 includes listed heritage items. Some of these are located over Volume B land, and therefore Volume A District Wide Chapter 26 applies over Volume B land.*
- g. *The plan maps show both Volume A and Volume B land.*

The following diagram shows the Queenstown Lakes District Plan and the relationship between Volume A and Volume B.



Chapter 4 of the Proposed Queenstown Lakes District Plan is to be amended by inserting the following explanatory text under a new heading "Application of this Chapter", following Section 4.1 (Purpose):

4.1.2 Application of this Chapter

Chapter 1 (Introduction) provides an explanation of the structure of the District Plan including the application of the strategic chapters of the District Plan applying across the Queenstown Lakes District, and the two-volume approach consisting of Volume A and Volume B.

Chapter 3 provides overarching strategic direction for the Queenstown Lakes District. The Chapter 3 strategic objectives and policies are further elaborated on in Chapter 4, which provides more detailed objectives and policies for urban development. Chapter 4 applies district wide over Volume A and Volume B land. The principal role of Chapters 3 to 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan.

Chapter 5 of the Proposed Queenstown Lakes District Plan is to be amended by inserting the following explanatory text under a new heading "Application of this Chapter", following Section 5.1 (Purpose):

5.1.2 Application of this Chapter

Chapter 1 (Introduction) provides an explanation of the structure of the District Plan including the application of the strategic chapters of the District Plan applying across the Queenstown Lakes District, and the two-volume approach consisting of Volume A and Volume B.

Chapter 3 provides overarching strategic direction for the Queenstown Lakes District. The Chapter 3 strategic objectives and policies are further elaborated on in Chapter 5, which provides more detailed objectives and policies for tangata whenua. Chapter 5 applies district wide over Volume A and Volume B land. The principal role of Chapters 3 to 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan.



Chapter 6 of the Proposed Queenstown Lakes District Plan is to be amended by inserting the following explanatory text under a new heading “Application of this Chapter”, following Section 6.1 (Purpose):

6.1.2 Application of this Chapter

Chapter 1 (Introduction) provides an explanation of the structure of the District Plan including the application of the strategic chapters of the District Plan applying across the Queenstown Lakes District, and the two-volume approach consisting of Volume A and Volume B.

Chapter 3 provides overarching strategic direction for the Queenstown Lakes District. The Chapter 3 strategic objectives and policies are further elaborated on in Chapter 6, which provides more detailed policies for landscapes and rural character. Chapter 6 applies district wide over Volume A and Volume B land, with the application of location specific policies as set out in the chapter. The principal role of Chapters 3 to 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan.

Section 4 of the Operative Queenstown Lakes District Plan is to be amended by inserting the following explanatory text by way of a new Introduction section that will sit above the only remaining text in Section 4, being the objectives and policies referred to:

Chapter 1 (Introduction) provides an explanation of the structure of the District Plan including the application of the strategic chapters of the District Plan applying across the Queenstown Lakes District, and the two-volume approach consisting of Volume A and Volume B.

The provisions in this Section 4, District-wide issues, apply as follows:

- *4.8 Natural Hazards, 4.8.3, Objective 1 and Policies 1.1 to 1.7 apply as a relevant district wide objective and policies to Volume B zones.*
- *4.10 Affordable and Community Housing, 4.10.1, Objective 1 and Policies 1.1 to 1.3 apply as a relevant district wide objective and policies to Volume A and Volume B zones.*

