

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

IN THE MATTER of the Resource Management Act 1991 (Act)

AND

IN THE MATTER of Stage 2, Hearing Stream 15

MEMORANDUM OF COUNSEL ON BEHALF OF THE QUEENSTOWN LAKES DISTRICT COUNCIL RESPONDING TO SUBMITTERS' MEMORANDA REGARDING WHY THEIR SUBMISSIONS ARE "ON" STAGE 2 OF THE PDP, HEARING STREAM 15

30 July 2018



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MAY IT PLEASE THE PANEL

1. This memorandum is filed on behalf of Queenstown Lakes District Council (**Council**).
2. Council filed a memorandum on 6 July 2018 that identified a number of submission points that 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 in Stage 2 of the Proposed District Plan (**PDP**). The Hearing Panel Chair set a timetable to give relevant submitters an opportunity to provide reasons as to why their submissions should not be struck out under section 41D of the Act.¹
3. The purpose of this memorandum is to provide the Hearing Panel Chair with the Council's reply, to reasons provided by submitters as to why they consider their submissions (in relation to Hearing Stream 15) are "on" Stage 2 of the PDP and therefore should not be struck out under section 41D of the Act.

Documents filed

4. The following submitters filed letters/memoranda in response on 23 July 2018:
 - 4.1 Kiromoko No. 2 Limited Partnership (2405.1);
 - 4.2 Teece Irrevocable Trust No 3 (2599);
 - 4.3 Remarkables Park Limited (2468.25); and
 - 4.4 Glen Dene Limited and Mrs Sarah Burdon (2407.1).

Overall response

5. The legal principles on scope and the Panel's powers have been set out in Council's earlier memorandum, and they are relied on here.² The Chair also elaborated on the legal principles in an earlier Minute, which are also relied on by the Council and adopted for the purposes of this reply.³

1 <https://www.qldc.govt.nz/assets/Uploads/Minute-AppIns-by-Council-to-Strike-Out-14-7-18.pdf>

2 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 dated 12 April 2018, at paragraphs 7 to 10.

3 Minute regarding submissions the Council considers to not be "on" Stage 2 of the PDP dated 16 April 2018, at paragraphs 5 to 6.

6. A number of the letters/memoranda filed by the submitters⁴ listed in paragraph 4 above argue that their submission falls into the fourth category of the *Motor Machinist* decision, which has been distilled by the Chair of the Panel as being:⁵

incidental and consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial section 32 analysis is required to inform affected persons of the comparative merits of that change.

7. The Chair in the context of Stage 2 of the PDP, has as determined by the Panel to mean:⁶

My view is that the term “incidental and consequential” means a minor extension to align with property boundaries or such like. It should be an amendment that is not inconsistent with the overall regime proposed by the variation, as assessed in the section 32 report. I consider that a wholesale rezoning of a substantial area of land that was specifically excluded from the variation cannot be incidental and consequential. Any other approach could lead to widespread extensions of zoning being requested, such as the Gibbston Valley for instance, or the land within the Wakatipu Basin proposed to be zoned Rural but within the Outstanding Natural Landscape Category.

8. Council relies on, and emphasises the Panel’s views, and submits that the three submitters arguing the ‘incidental and consequential’ exception, all seek substantial areas of land to be rezoned (for example whole lots as opposed to boundary adjustments). Council considers that the exception therefore does not apply and the submissions are not “on” Stage 2 of the PDP.

Teece Irrevocable Trust No 3 (2599)

9. Council sought that part of the Teece Irrevocable Trust No 3’s (**Trust**) be struck out as it sought for its site, which was notified in Stage 1 of the PDP and is now subject to the Stage 1 decisions as Rural Zone, be rezoned to Rural Visitor Zone (a standalone underlying zone). The primary submission did not seek that the Visitor Accommodation Sub Zone (**VASZ**) should apply to its land.
10. In the Trust’s submissions filed on 23 July 2018, it sets out extensive case law regarding the legal principles for scope,⁷ and its view on what the ambit of the

⁴ The submitters arguing this are Glen Dene Limited and Mrs Sarah Burdon (2407.1), Remarkables Park Limited (2468.25), and Kiromoko No. 2 Limited Partnership (2405.1).

⁵ Decision relating to submissions not “on” Stage 2 dated 17 May 2018, at paragraph 4(d).

⁶ Decision relating to submissions not “on” Stage 2 dated 17 May 2018, at paragraph 37.

⁷ Submissions on behalf of Teece Irrevocable Trust No 3 – Submitter 2599 dated 23 July 2018, at section 5.

Variation was as notified.⁸ Counsel for the Trust then argues that due to the Visitor Accommodation Variation's *very broad context*, it is open to landowners to seek a site specific management regime for visitor accommodation on their properties.

11. In Council's submission, the Visitor Accommodation variation context, does not justify opening up and re-challenging the appropriateness of the underlying zone, which was a matter that has been open for submissions and evaluation through the Stage 1 hearings and decisions.⁹ The approach being promoted by the Trust (ie. a change to the underlying zone), would in effect mean that all other types of activities that are anticipated in the underlying Rural Zone, and that are regulated through the Rural Zone provisions, would fall away. The objectives and policies of the Rural Zone, as already decided to be appropriate for the land in question, would no longer apply (even if the type of activity being considered was not a Visitor Accommodation activity), given that the Trust seeks for the objectives, policies and rules included in a new Rural Visitor Zone, would instead apply.
12. The VASZ in the PDP, is a sub zone, sitting as an overlay over an underlying zone. What the sub zone provides for (ie Visitor Accommodation) does not necessarily have to be relied upon, when considering what someone might choose to do with his or her land and considering whether land use consents under the district plan are required. With a sub zone, depending on the nature of the activity in question, the Rural Zone provisions are likely to remain relevant for consenting purposes.
13. Consequently, Council still seeks that this part of the Trust's submission be struck out.
14. The Trust still has scope to seek changes to the notified VA provisions, as they apply to the Rural Zone (and therefore the Trust's site), as far as their submission on the text provides scope. It is respectfully submitted that is the appropriate forum for the Trust, based on the form of the primary submission it filed, is to pursue changes to the Visitor Accommodation provisions notified in Stage 2.

⁸ Submissions on behalf of Teece Irrecoverable Trust No 3 – Submitter 2599 dated 23 July 2018, at section 6.

⁹ 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 dated 6 July 2018, at paragraphs 6 to 7.

Remarkables Park Limited (2468.25)

15. Council continues to consider that this submission point should be struck out by the Panel, for the reasons set out in its memorandum,¹⁰ and at paragraphs 5 to 8 above.
16. Council does wish to clarify a comment made by Mr Young for RPL where he states the site in question was excluded from the Stage 1 Decision maps for the reason that it was subject to Stage 2 of the PDP.¹¹ Two adjoining sites were zoned as Informal Recreation through the Stage 2 variation, and are subject to Stage 2 of the PDP (hence, white on the Stage 1 PDP decisions maps). However, the subject site (referred to by RPL as the "Land Parcel") was not notified in Stage 2. The Stage 1 zoning of this site was uncontested through Stage 1 (where it was notified as Rural Zone). It is only shown as white on the Stage 1 Decision maps because the land was, in preparing for the Stage 1 hearings, allocated to the wider 'Wakatipu Basin' hearing, which because of the Wakatipu Basin hearing did not go ahead in Stage 1 and therefore was not part of Stage 1 decisions.

Glen Dene Limited and Mrs Sarah Burdon (2407.1)

17. In addition to the Overall Response above, Council also notes that the submissions filed by the submitter on 23 July 2018 do not acknowledge that Council, on 8 February 2018, withdrew Lot 1 DP 418972 from Stage 2, which means that the Council specifically initiated a cl. 8D withdrawal to ensure this land was no longer part of Stage 2 of the PDP. Council submits this is relevant to the Panel's decision on this submission point.

DATED this 30th day of July 2018



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Council

10 Memorandum of Counsel dated 6 July 2018, at Appendix 1.

11 At paragraph 4.