

IN THE MATTER

of the Resource  
Management Act 1991

AND

IN THE MATTER

of the Queenstown Lakes  
Proposed District Plan:  
Stage 2

**MINUTE REGARDING SUBMISSIONS THE COUNCIL CONSIDERS  
TO NOT BE "ON" STAGE 2 OF THE PDP**

**Introduction**

1. On 12 April 2018 the Hearing Panel received a Memorandum from the Council which, among other things, asserted that a number of submissions lodged on Stage 2 of the PDP were not "on" Stage 2. The significance of the point the Council is making is that submissions not "on" Stage 2 cannot be granted because they raise matters not within the scope of the hearing. Counsel for the Council requested that the Panel issue a Minute confirming that it would not hear these submissions. Counsel advised that in respect of those submissions, the Council did not intend to prepare recommendations or file technical evidence.
2. Before considering the individual submissions identified by the Council, I propose to outline how I consider submissions which are not "on" Stage 2 should be dealt with, and briefly outline what determines whether a submission is "on" the PDP or not.
3. In discussing these I refer to the variations to Stage 1 provisions and the introduced new provisions as Stage 2.
4. It is also worth noting that there are a group of Stage 1 submissions awaiting to be heard as part of Stream 14 which will hear submissions related to the zoning of the Wakatipu Basin. The Council also raises an issue as to whether these can be amended.

**Legal Principles Regarding Scope**

5. Counsel for the Council has addressed this at paragraphs 7 to 10 of the memorandum. While these paragraphs summarise this at a high level, a close examination of *Palmerston North CC v Motor Machinists Ltd*<sup>1</sup> enables a

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<sup>1</sup> [2014] NZRMA 519

number of criteria to be used to determine whether a submission is “on” a plan change or plan.

6. In summary these are:
  - a) the focus of a submission must be on “specific provisions of the proposal”;<sup>2</sup>
  - b) variations to the proposal which have not been evaluated in the section 32 analysis are unlikely to be addressing the change to the pre-existing status quo;<sup>3</sup>
  - c) if the resource management regime for a site is not altered by a plan change, then a submission seeking a new management regime for that site is unlikely to be “on” the plan change;<sup>4</sup>
  - d) incidental or 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.<sup>5</sup>

### **How to Deal with Submissions Not “on” Stage 2**

7. It appears from the Council's memorandum that counsel has in mind that a Minute from the Panel outlining which submissions will not be considered will enable them to be, effectively, ignored. As noted by counsel for the Council, this was the approach taken in 2017 to notations shown on the Planning Maps over land not part of Stage 1 of the District Plan Review.
8. However, my view, now that this power is available to us, is that if a submission (or part of a submission) is found not to be “on” Stage 2, it should be struck out under section 41D of the Act. Clearly a submission that is not “on” Stage 2 discloses no reasonable or relevant case. Also, submissions which seek to relitigate matters dealt with in Stage 1 could be considered vexatious and an abuse of process.
9. However, I would not be prepared to strike out any submission without giving the submitter the opportunity to present a case as to why they should not be struck out.

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<sup>2</sup> Ibid at [38]

<sup>3</sup> Ibid at [76]

<sup>4</sup> Ibid at [81]

<sup>5</sup> Ibid at [81]

### **Analysis of Submissions**

10. The Council identified 24 submissions which it claimed were not “on” Stage 2 and one submission which it considered sought to amend Stage 1 submissions (as yet not heard) in a way that enlarged the scope of the submissions.
11. I will deal first with those submissions where I disagree with the Council's position.

#### Ladies Mile Consortium – Submission 2489.1

12. This submission seeks amendments to the Stage 1 submissions lodged by the submitters. The Council memorandum refers specifically to this in paragraphs 22-25.
13. On 13 March 2018 I issued a decision waiving the time limit to amend those submissions in part and directing the Council to notify the amended submissions in parallel with the notification of the Stage 2 submissions. I also directed the Council to redact the parts of the submissions which I refused a waiver for.
14. Given my earlier decision, parts of that submission will be heard in Stream 14. My decision of 13 March last has already dealt with the portions of the submission that sought amendments to parts of Stage 1 that have already been heard by refusing a waiver of time. Those aspects will therefore not be heard as part of the Stage 2 hearing process.

#### Skyline Enterprises Ltd - Submission 2493.1

15. This submission seeks to extend the Ben Lomond Sub-Zone Bobs Peak onto land the company leases from the Department of Conservation. The matter was heard in Stream 13, but the notification of Stage 2 meant that consideration of the zoning regime for most of Skyline's land was deferred to Stage 2. This submission relates to a small residual area that cannot be practically considered in isolation from the remainder of the land leased by the submitter from the Council.
16. This is one of those cases that I consider falls within the exception to the “no extension” regime discussed at [81] of *Motor Machinists*. It amounts to a consequential and incidental extension which can fairly said to be “on” Stage 2.

L Topp – Submission 2254.1

17. This submission appears to be seeking Wakatipu Basin Rural Lifestyle Precinct over more of the submitter's land than was notified. This is consistent with the submitter's submission on Stage 1 (Submission 121) where he sought the ONL line be moved and Rural Lifestyle be extended. Given that the ONL line is under consideration, it would be logical to consider the zoning of land outside the ONL as a whole, rather than, if it were moved, divided between WBRLP and RL.
18. Thus, as with the previous submission, this proposal relates to an incidental or consequential amendment. For those reasons, I consider this submission is "on" Stage 2.

Submissions Repeating Stage 1 Submissions

19. Four submissions (listed below) essentially repeated the submission lodged by the submitter in Stage 1 relating to the location of the Landscape Classification line. The Stage 1 submissions have yet to be heard, but will be heard as part of Stream 14.
20. Whether these are considered to be "on" Stage 2 or not is immaterial as the matter needs to be dealt with in the hearing. I see no point in striking these submissions out.

<b>Submission Number</b>	<b>Submitter</b>	<b>Stage 1 Submission Number</b>
2260.3	Alan Hamilton	666
2261.3	Ann Hamilton	695
2412.2	M Guthrie	401
2439.3	S Todd	690

Rock Supplies NZ Ltd – Submission 2471.3

21. While the submission refers to the Gibbston Valley Character Zone, which is not part of Stage 2, the submission is largely concerned with the amendments made to Chapter 6 by the Open Space and Recreation variation. It appears that the submitter is concerned that a consequential effect of that variation is that the Gibbston Valley Character Zone, as shown on Map 15, could become an ONL. That is a potential issue that is "on" the variation.

## Submissions Potentially Not “on” Stage 2

### Glenpanel Development Ltd - Submission 2548.1

22. This submission seeks the inclusion of a new zone (actually one of two options presented) on land in Ladies Mile not rezoned in Stage 2. On the face of it, this submission is neither incidental nor consequential, but rather proposes a new zoning regime where none has been proposed by Stage 2.
23. I note also that the Section 32 Evaluation Report for Chapter 24 and associated rezoning specifically excluded the land along Ladies Mile from inclusion in Stage 2 for reasons set out in the analysis.<sup>6</sup>
24. In my view, the inclusion of Ladies Mile within Schedule 24.8 does not bring the land within Stage 2. The provisions of Chapter 24 require that in giving effect to the objectives and policies or assessment criteria in any particular case, reference should be made to the landscape characteristics set out in 24.8. Schedule 24.8 in itself does not provide the basis for the application of the zonings. Part of Landscape Character Unit 10 Ladies Mile is zoned Wakatipu Basin Rural Amenity. Thus, the schedule is relevant to assessment of activities in that area. If the land which is the subject of this submission remained Rural, as proposed by the PDP, the provisions of Schedule 24.8 would not apply to it.
25. In the absence of evidence to the contrary, my view is that this submission is not “on” Stage 2.

### Submissions Seeking to Rezone Land at West End of Ladies Mile for Residential Purposes

26. Several submissions (listed below) relate to an area of land bounded roughly by SH6, the Shotover River margins and the ODP Shotover Country Special Zone. They all seek to apply some form of residential zoning on the land, apparently in reliance on the Wakatipu Basin Study.
27. This land is zoned Rural in Stage 1 and is subject to a submission seeking that Large Lot Residential A (effectively) apply to it (Submission 838). This submission will be heard in Stream 14.

Submission Number	Submitter
2246.1	J & L Bagrie

<sup>6</sup> Section 32 Evaluation Report: Chapter 24 dated November 2017 at page 26

2251.1	R & J Kelly
2253.1	D Stanhope & G Burdis
2541.1	G Burdis
2542.1	D Stanhope

28. The same reasoning as applied to Glenpanel above leads me to the conclusion that these submissions cannot be "on" Stage 2.

Upper Clutha Environmental Society – Submission 2016.2

29. Part of this submission seeks that a planning study be initiated of the Upper Clutha area. This is clearly not "on" the variation changing the maps to show the Wakatipu Basin Zone and is not a relief that can be granted in any event given that the outcome sought does not relate to any provision in the Proposed District Plan.

M Paulin - Submission 2034.1

30. This submission relates to the Northlake area in Wanaka which is explicitly not within the PDP, having been formally withdrawn from the District Plan Review on 16 March 2017. Thus, it cannot be "on" Stage 2.

K Harford - Submission 2199.2

31. This submission relates to the Remarkables Park Zone which is explicitly not within the PDP, having been formally withdrawn from the District Plan Review on 25 May 2017. Thus, it cannot be "on" Stage 2.

G Oudhoff & J Hennessy - Submission 2326.1

32. This submission relates to land south of the Kawarau River that has been dealt with in Stage 1 and is not subject to change in Stage 2. I cannot see how it can be "on" Stage 2.

Middleton Family Trust - Submissions 2332.2 and 2332.10

33. These submissions seek to amend a Landscape Classification line that has been determined as part of the Stage 1 mapping hearings. Stage 2 does not propose to alter the Landscape Classification lines. I cannot see how it can be "on" Stage 2.

D Crawford - Submission 2325.2

34. This submission seeks to amend the residential zoning of land within urban Wanaka which has already been the subject of Stage 1 hearings and is not subject to change in Stage 2. I cannot see how it can be “on” Stage 2.

P Blakely & M Wallace - Submission 2499.6

35. This submission opposes development apparently proposed along Ladies Mile. Any development proposed along Ladies Mile is not within Stage 2 (see Section 32 Evaluation Report which explicitly excludes this area from Stage 2). I cannot see how this submission can be “on” Stage 2.

Vanderwood Trustees et al - Submission 2523.1

36. This submission seeks to extend the Rural Residential Zone onto land zoned Rural in Stage 1. Such a rezoning would also involve consideration of the Landscape Classification line. Although the Stage 1 zoning has yet to be considered in Stream 14, it appears that no submissions on Stage 1 apply either to the land sought to be rezoned or the Landscape Classification line in this specific location. In the absence of evidence to the contrary, I do not consider this submission to be “on” Stage 2.

K Sharpe – Submission 2568.1

37. This submission is seeking the Council include a designation for a second crossing of Kawarau River. Although it mentions Chapter 29 Transport, in my view this is neither “on” Stage 2 nor is it permissible for a submission to seek a designation. In addition, the same matter was dealt with in Stage 1.

**Submission Requiring Clarification from the Council**Queenstown Central Limited – Submission 2460.3

38. The Council memorandum refers to a single point in this submission when most of the submission is related to whether or not district wide provisions in Chapters 25, 29 and 31 apply to the Frankton Flats B Zone. My preliminary view is that the provisions of those chapters do not apply to this zone which was explicitly withdrawn from the PDP on 25 May 2017. Consequently, it may be that much more of the submission is not “on” Stage 2 than the single issue identified by the Council.

39. I would prefer the Council clarify which parts of the submission it considers to not be “on” Stage 2 with reasons, prior to receiving submissions from the submitter. Thus, for this submission I set out a separate timetable for submissions below.

### **Conclusions**

40. For the reasons I have set out above, I consider Submissions 2493.1, 2254.1 and 2471.3 are “on” Stage 2. In addition, I consider that Submissions 2260.3, 2261.3, 2412.2 and 2439.3 can remain unaltered as they raise matters which are before the Panel in any event.
41. As I noted above, the amendments to the Stage 1 submissions of Ladies Mile Consortium have already been dealt with in an earlier decision.
42. I seek clarification from the Council as to explicitly which parts of Submission 2460 it considers to not be “on” Stage 2 and which parts it considers to be “on” Stage 2 and the reasons for that position. That is to be provided to the Panel and Queenstown Central Limited by 4pm on 1 May 2018. Queenstown Central Limited have until 4pm on 8 May 2018 to file any response to the Council, and the Council has until 4pm on 15 May 2018 to file any reply.
43. For the submissions set out below, my preliminary view is that they are not “on” Stage 2. These submitters have until 4pm on 1 May 2018 to provide reasons why they should not be struck out under section 41D of the Act. The Council has until 4pm on 8 May 2018 to file any reply to reasons provided by submitters.

<b>Submission Number</b>	<b>Submitter</b>
2548.1	Glenpanel Development Ltd
2246.1	J & L Bagrie
2251.1	R & J Kelly
2253.1	D Stanhope & G Burdis
2541.1	G Burdis
2542.1	D Stanhope
2016.2	Upper Clutha Environmental Society
2034.1	M Paulin

2199.2	K Harford
2326.1	G Oudhoff & J Hennessy
2332.2 & 233.2.10	Middleton Family Trust
2325.2	D Crawford
2499.6	P Blakely & M Wallace
2523.1	Vanderwood Trustees et al
2568.1	K Sharpe

16 April 2018



Denis Nugent  
Hearing Panel Chair