

Planning & Strategy Committee
5 February 2020

Report for Agenda Item | Rīpoata moto e Rāraki take 1

Department: Planning & Development

Title | Taitara Update on decisions on the Proposed District Plan

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

- 1 The purpose of this report is to update the Planning & Strategy Committee on decisions from the Environment Court on appeals to Council's decisions on the Proposed District Plan.

EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA

- 2 The Decisions of Council on Stage 1 of the Proposed District Plan (**PDP**) received 101 appeals to the Environment Court (**the Court**) which contain approximately 1065 separate appeal points or decision requests. 83 appeals have been made against decisions on Stage 2 of the PDP comprising approximately 930 separate appeal points.
- 3 This report does not cover the huge number of separate matters and arguments that have been addressed in these decisions and over many months of mediations and hearings, and it seeks only to outline the key findings of the Court in relation to the Stage 1 district plan appeals thus-far.
- 4 A substantial number of Stage 1 appeal topics have been progressed with hearings completed and interim decisions received on the key topics of Resilient Economy and Rural Landscape. These decisions on what the Court has termed Topics 1 and 2 (described in further detail below) have upheld the purpose, general approach and intended outcomes in the key chapters of the plan and go some way to provide a basis for progressing the rest of the plan review and resolving the large number of outstanding appeals.
- 5 In summary, a number of direction setting objectives and policies have been upheld and in several cases have been recast and strengthened in order to provide clearer direction about what outcomes are to be avoided and enabled. In particular, the most recent decisions direct that outstanding natural features and landscapes need to be protected as a bottom line.
- 6 The interim decision directs the Council to identify schedules of the values and landscape capacity of the Outstanding Natural Features and landscape and of the Upper Clutha Rural Character Landscape, in "priority areas". The decision directs Council to move away from assessing the values and landscape capacity of landscape resources in considering individual consent proposals and to require this to be analysed and described in detail in the district plan.

- 7 Several procedural decisions by the Court in 2019 criticised the complexity and several legal and fairness issues created by the staged review of the PDP, however these decisions only affect specific sites.

RECOMMENDATION | NGĀ TŪTOHUNGA

- 8 That the Planning & Strategy Committee:

1. **Note** the contents of this report.

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16/01/2020

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CONTEXT | HOROPAKI

- 9 **Stages:** The Queenstown Lakes District Council Operative District Plan (the ODP) is being reviewed in stages. At this point new and revised provisions within 44 new chapters that make up the Proposed District Plan (PDP) apply to 99.8% of the land in the district. Remaining exceptions are a number of special zones which have either been reviewed relatively recently or have been seen as lower priorities for review. Decisions on submissions to Stage 1 were issued in May 2018, decisions on Stage 2 were issued in March 2019 and submissions on Stage 3 are due to be heard in May 2020.
- 10 **Appeals:** Environment Court Appeals to Council's decisions on the Proposed District Plan (PDP) are proceeding concurrently with the ODP review and the Environment Court has set out to resolve the direction setting and strategic chapters of the plan through interim decisions before proceeding to the appeals on specific matters such as zoning.
- 11 **Mediations:** Court directed mediations have been completed on a range of topics including the chapters of the plan dealing with indigenous vegetation and biodiversity, town centres, natural hazards, urban development, subdivision, lakes and rivers, heritage, noise, residential temporary activities and relocated buildings, informal airports, Glenorchy Aerodrome, Queenstown Events Centre and Queenstown and Wanaka Airports and appeals to decisions on zoning. The mediations have resulted in agreements which (if agreed by the Court) form a basis for amending the district plan and resolving the appeals. Some of the mediations have resulted in substantial parts of the key appeals being unresolved and set down for hearing.
- 12 The Court has directed broad timeframe and topic groupings for mediation and hearing of Stage 2 appeals with district wide chapters (including visitor accommodation, transport, earthworks and signs) being addressed before Wakatipu Basin followed by open space.
- 13 Mediations are progressing with Stage 1 rezoning mediations commencing in March 2020. Next steps include further mediation of Rural Zone appeals in January and confirming possible position in relation to key appeals in February and March 2020. Mediations on Stage 2 are due to commence in the third quarter of 2020.
- 14 **The role of Councillors:** It should be noted that advice to Councillors on the relevant details of the above matters is provided through regular update reports to the Planning & Strategy Committee and the Appeals Subcommittee. Direction and advice of Councillors is sought in committee meetings in accordance with Council's agreed delegations. These committee's provide oversight over the Council's participation in the appeals and over any potentially significant changes of position and policy.
- 15 The Council has given delegated authority to officials to defend the Council's decisions on submissions to date in most instances. Council has made significant investments in appointing highly experienced and qualified commissioners to the Independent Hearing Panel for the PDP hearings. It has also invested in providing rigorous technical evidence and planning and legal advice to decision makers on the PDP to ensure its decisions since notification are sound and robust.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU**Environment Court Decisions - Topic 1**

- 16 This interim decision ([2019] NZEnvC 133 and 142) addresses parts of **Chapter 3 Strategic Direction** that address the development of a prosperous, resilient and equitable economy in the District. This interim decision confirms the purpose of the Strategic Direction chapter to manage growth, land use and development in a manner that ensures sustainable management of the district's special qualities with the addition of references to its distinctive lakes, river, high country landscapes and indigenous biodiversity and ecosystems. It also confirmed the PDP description of the district's strategic objectives and strategic policies for the economic base, visitor industry town centres, commercial and industrial areas, climate change and countenanced the Council's approach to urban development capacity and plan architecture (See **Attachments A1 and A2** for details).
- 17 **Plan development:** the Court confirmed that strategic objectives and policies in Chapter 3 provide direction for the interpretation and development of the more detailed provisions elsewhere in the district plan, in relation to the strategic issues. This means that Chapter 3 will be relevant when assessing any subsequent plan changes or amending proposals.
- 18 **Plan interpretation:** the Court confirmed that the objectives and policies of the plan (including strategic objectives and policies in Chapter 3) are to be considered together, with no fixed hierarchy between them. Where some provisions are more directive than others, they may deserve more weight but they should be assessed as a whole.
- 19 **Town Centres:** The Court accepted Council's view and evidence on the relationship between the Queenstown Town Centre and Frankton Urban Area (ie. Five Mile/Remarkables Park) and whether Frankton also deserved recognition in the Plan as another Town Centre, rather than as the key service centre for the Wakatipu Basin. Council's evidence that the Queenstown Town Centre's role as the vibrant hub of a premier alpine visitor resort was accepted. The Frankton Urban Area's role in providing for regular shopping needs was acknowledged but providing for the needs of visitors was not.
- 20 **National Policy Statement Urban Development Capacity:** The Court accepted Council's evidence about the threats to industrial land in the constrained land market of Queenstown and the competition with higher value uses. The Court retained the word 'avoid' in strategic policies about avoiding zoning likely to undermine the function and viability of town centres and service centres.
- 21 **Transport:** The Court declined to introduce strategic transport objectives in advance of considering the new Transport chapter but found that because of the "paired nature" of Frankton and Queenstown CBD accessibility is important, and held (on a provisional basis) that a strategic objective about the importance of accessibility that meets resident and community needs was appropriate.
- 22 **Residents' and community wellbeing:** the Court agreed provisionally to new strategic objectives addressing the importance of arts, culture, recreation and events and their

contribution to identity and sense of place. It did not go so far as to recognise special character areas, cultural districts, and enhancement of amenity values within residential / urban areas, and this finding was consistent with Council's position.

Environment Court Decisions - Topic 2

Interim decisions on Topic 2 ONL's and ONF's

- 23 An interim Environment Court decision on Topic 2 Outstanding Natural Landscapes and Outstanding Natural Feature Maps ([2019] NZEnvC 160) was received in September 2019. This decision addressed overarching principles, the Clutha/Mata Au Corridor and Mt Iron. The Court accepted QLDC's methodology for the identification of Outstanding Natural Landscapes (**ONL's**) and Outstanding Natural Features (**ONF's**), which should assist with resolving a number of ONL related appeals.
- 24 Upper Clutha Environmental Society appeal seeking to roll-over the Operative District Plan approach of using indicative ONF and ONL lines was declined.
- 25 Seven Albert Town Property Owners appeal seeking removal of the ONL annotation near the Clutha River, Albert Town Bridge were declined but the Court signalled strongly that scheduling the values for the (entire) Clutha River ONF is required.
- 26 The James Cooper appeal seeking removal of the ONL annotation between the Clutha River's confluence with the Hāwea River and Rekos Point was declined. The ONF was confirmed for all of the river and lower terraces on Hāwea Flat and for the wider Clutha River corridor.
- 27 The Allenby Farms appeal seeking removal of three areas from the Mt Iron ONF was granted in one area and the ONF was confirmed in two others (see **Attachment B** for details).

Interim Decisions on Topic 2 Rural Landscapes

- 28 An interim decision on Topic 2 Rural Landscapes ([2019] NZEnvC 205) was received in December 2019. This decision saw the Court work carefully through the RMA framework and subsequent case law relating to rural landscapes and outstanding natural landscapes and features (see **Attachment C** for details).
- 29 **Scheduling ONL's and ONF's.** While accepting the risks Council pointed out with extensive scheduling of so much land in the district (more than 97% of the land in the district is either ONL or ONF), the Court's interim decision supports the mapping and scheduling of not just values, but also determining the landscape capacity of "priority areas" of rural land within the plan. Having the plan provide greater direction was considered preferable to leaving these matters to be determined as part of considering resource consents on a case by case basis, notwithstanding the costs that Council will incur in addressing these matters under the standard plan change process set out in the RMA.
- 30 The Court did not require this approach across all ONF/L and Rural Character Landscapes and has directed that it be undertaken in (yet to be confirmed) "priority areas", with the

ONF/L schedule likely to come through a First Schedule plan change process, and for the Rural Character Landscapes this may be via either the standard Schedule 1 process which is open to all, or for some areas, a process involving a confined number of parties.

- 31 **Further Work:** Council has been directed to inform the court of its position on ‘priority areas’ to be selected and mapped, and on timing for undertaking the necessary assessment work. Entire landscapes and features will need to be assessed, not just particular ‘hot-spots’ within the wider landscape or feature and this work is likely to be expensive and time consuming to undertake. It is also likely to be highly contested by interested and affected parties and development interests.
- 32 **Objectives and Policies:** The Court has changed the wording of a number of the key provisions on landscapes. These changes take a firm approach to the protection of landscape values in the ONF/Ls and RCL – going further than the Council’s position at times. The approach states that new subdivision, use and development is inappropriate on ONF’s and L’s unless identified values are protected and the development is “reasonably difficult to see”.
- 33 **Upper Clutha:** The decision requires that the plan identify (through maps) priority landscape character areas (essentially the ‘hot-spots’) in the Upper Clutha alongside schedules in Chapter 21 identifying landscape character, visual amenity values, and landscape capacity for those. The process and timing for this still to be determined.
- 34 The decision supports a policy direction whereby landscape character (the overall character of a landscape character area) is to be maintained, and visual amenity values (particular qualities that help inform that overall character) are to be maintained and enhanced.

Remaining Rural Landscapes Appeals

- 35 A further interim decision on Topic 2 Rural Landscapes ([2019] NZEnvC 206) was received in December 2019, which confirmed unchanged the ONL’s, ONF’s and Rural Character Landscape boundaries challenged by:
- the Hawthenden Farm appeal at the pastoral terraces known as the Alpha Fan beneath the steep schist face of Mt Alpha
 - the Upper Clutha Environmental Society appeal over further parts of the basin between the Alpha Range, Lake Wanaka and the Maungawera Valley and Fan, and
 - the Lake McKay Station appeal concerning terraces, plateaus and carps at the northern interface of the Pisa and Criffel Ranges in the Upper Clutha Basin (see Attachment D for details).
- 36 The above decisions also:
- confirmed the appropriateness of applying a favourable status to agriculture, set a strong policy direction to, “do not allow [rural living in rural character landscapes] except where” landscape character and amenity values are protected,
 - provide for commercial recreation and tourism subject to qualifiers of protect and maintain/maintain and enhance respectively,

- parked an appeal seeking to add a strategic policy on Resorts for now,
- accepted Council's position on carving out (making specific provision to allow and manage) certain areas and activities which need to locate in these areas in a departure from standard approaches to ONL's and ONF's.

Procedural Decisions

- 37 An enforcement decision around the ONL annotation on the planning maps at **Arthurs Point** directed re-notification of a summary of the decisions requested on the proposed plan change by Gertrude's Saddlery limited and Larchmont Developments Limited at Atley Road, Arthurs Point (see **Attachment E** for details).
- 38 The decision suspends the rezoning and directs the summary of submissions be re-notified with additional explanation inserted in the summary about excluding the land from the ONL.
- 39 The Court found that the Council accurately summarised the submissions, however it was in error in doing so, because the submissions themselves were (in the Court's view) confusing, so the Council should have looked behind the submissions and included statements in the summary explaining what the Council understood that the submitters were seeking.
- 40 The decision was appealed on the basis that it is incorrect and problematic for the plan review summarising tasks moving forward and for opening the door to future appeals.
- 41 The Environment Court refused to strike out the appeal by **Tussock Rise** Ltd of Council's decisions relating to land in Connell Terrace, Wanaka. In this complex decision the Court (on some of the same grounds as its findings in relation to Arthurs Point) was critical of how the Council are going about the review of the ODP in stages, and of the potential conundrums and confusion this creates for decision making and for participation in the review.
- 42 The decision was also critical of what it understood to be the Council's approach to the NPS Urban Development Capacity 2016 – although it noted that was not the subject of this decision (See **Attachment F** for details).

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 43 This matter is of high significance, as determined by reference to the [Council's Significance and Engagement Policy](#) because it is a matter relating to the administration of Council affairs and has the potential to impact on the environment, culture and people of the District.
- 44 The persons who are affected by or interested in this matter are residents/ratepayers of the Queenstown lakes district community. Particular individuals and entities affected have had substantial opportunities to participate in plan development and pre-

notification consultation, submitting on the notified provisions and participating in hearings, appealing the decisions and joining the appeals.

- 45 At this stage the appeals are now in the hands of the Court and a matter between the Council (as respondent) and the parties participating in the appeals. Anyone with an interest in an appeal to the Stage 1 decisions that is greater than the public had an opportunity to become a party to the proceedings.

> MĀORI CONSULTATION | IWI RŪNANGA

- 46 Consultation with tangata whenua under the Resource Management Act 1991 (RMA) is a legal requirement before notifying a district plan and it is noted that legal requirements have been met.
- 47 Iwi entities did not submit on the matters addressed in these decisions and they have not sought to join the resulting appeals, however it is noted that many of these matters may still be relevant to tangata whenua.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

- 48 This matter relates to the Strategic/Political/Reputation risk. It is associated with SR1 'Current and future development needs of the community (including environmental protection)' within the QLDC Risk Register. This risk has been assessed as having a high inherent risk rating.
- 49 This report sets out to note the details of several key appeal decisions and does contain recommendations on options to implement additional controls for this risk.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

- 50 There are no financial implications as a result of this proposal. The recommended approach can be implemented through current funding under the 10-Year Plan and Annual Plan.

COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA

- 51 The consistency of these matters with Council policies, strategies and bylaws will be covered under separate committee agenda items where appropriate.

LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHAKA WAETURE

- 52 There are particular legal considerations that need to be taken into account under the RMA in relation to these appeals. Where needed legal advice is taken and reported to the committee directly or within the associated report.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 TE KĀWANATAKA Ā-KĀIKA

53 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses;
- Can be implemented through current funding under the Ten Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

ATTACHMENTS | NGĀ TĀPIRIHANGA

A1	<u>Interim Decision of the Environment Court: Topic 1, Stage 1 - A Resilient Economy</u>
A2	<u>Erratum - Interim Decision of the Environment Court: Topic 1, Stage 1 - A Resilient Economy</u>
B	<u>Interim Decision of the Environment Court: Topic 2, Sub-topic 1 - ONL and ONF Maps</u>
C	<u>Interim Decision of the Environment Court: Topic 2 - Rural Landscapes Decision 2.2</u>
D	<u>Interim Decision of the Environment Court: Topic 2 - Rural Landscapes Decision 2.3</u>
E	<u>Decision of the Environment Court: Arthurs Point Outstanding Natural Landscape Society Incorporated v Queenstown Lakes District Council</u>
F	<u>Procedural Decision of the Environment Court: Tussock Rise Limited v Queenstown Lakes District Council</u>