

**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 including
variations to Stage 1 of
the Proposed District
Plan

**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**

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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 provide the Hearings Panel (**Panel**) with the Council's reply to reasons provided by submitters as to why their submissions are "on" Stage 2 of the PDP and therefore should not be struck out under section 41D of the Act.

Background

2. Council filed a memorandum on 12 April 2018 that identified 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 as part of Stage 2 of the PDP. The Council considered that as there was no change to the pre-existing status quo of land subject to these submissions through notification of Stage 2 of the PDP, these submissions were not "on" Stage 2 of the PDP.¹ Consequently, the Council advised that it would not prepare recommendations or technical evidence on those listed submissions, subject to approval from the Panel.
3. The Panel identified a list of submissions where its preliminary view was that they were not "on" Stage 2, and provided those listed submitters with the opportunity to provide reasons as to why their submissions should not be struck out under section 41D of the Act.²

Documents filed

4. The following submitters filed letters/memoranda in response on 1 May 2018:
 - 4.1 Second Kawarau Bridge Group (referred to as K Sharpe in the Panel's Minute) (2568.1);
 - 4.2 Upper Clutha Environmental Society (2016.2);
 - 4.3 Vanderwood Trustees et al (2523.1);
 - 4.4 Glenpanel Developments Limited (2548.1);

1 For the full explanation see the 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 7-14.

2 Minute regarding Submissions the Council considers to not be "on" Stage 2 of the PDP dated 16 April 2016, at paragraph 43.

- 4.5 P Blakely and M Wallace (2325.2); and
- 4.6 Middleton Family Trust (2332).

5. The following letters/memoranda do not require a response:

5.1 P Blakely and M Wallace (2325.2): this submitter accepts that submission point 2325.2 on Ladies Mile is not “on” Stage 2 and that part should be struck out; and

5.2 Middleton Family Trust (2332.2 and 2332.10): this submitter accepts that the Panel has no jurisdiction to consider the location of the ONL boundary as the ONL boundary in question is not located “on” land that has been notified in Stage 2 of the PDP. The Trust has accordingly withdrawn its submission points 2332.2 and 2332.10.

6. Council responds to the remaining submissions below.

Second Kawarau Bridge Group (2568.1)

7. The Second Kawarau Bridge Group (**Group**) has raised an objection to the Chair’s decision to not be considered by the Council or the Panel. We note that the Chair has only indicated that he intends to strike-out this specific submission point, and no final ‘decision’ has been made at this time.

8. The Group’s letter does not provide any reasons why submission point 2568.1 is “on” Stage 2 of the PDP. Instead it states that the submitter objects to their submission being struck out (they use the word ‘rejected’). The submission point seeks that the Council designate the associated corridors to the north and south of the Kawarau River for a second bridge downstream of the current bridge. Designations are not within scope of Stage 2 of the PDP, they were notified as part of Stage 1 of the PDP.

9. Accordingly, while Council sympathises with the frustration of the Group, Council’s position remains that submission point 2568.1 is not “on” Stage 2 of the PDP.

Upper Clutha Environmental Society (2016.2)

10. Council's memorandum of 12 April 2018 did not suggest that all of the Upper Clutha Environmental Society's (**UCES**) submission was not "on" Stage 2 of the PDP, only submission point 2016.2. This submission point seeks that the Council prepare a land use planning study and subsequently notify a variation, amending the rural zoning of the Upper Clutha Basin.
11. UCES appears to rely on the fact that the section 32 evaluation report notified alongside the Wakatipu Basin chapter and variation to the plan maps, as part of Stage 2, refers to the Upper Clutha Basin and the issue of cumulative effects, as well as the Wakatipu Basin.
12. Council's legal principles on scope have been set out in its earlier memorandum, and they are relied on here. For clarity however, the two key reasons why this particular UCES submission point should be struck out are:
 - 12.1 The appropriate zoning for the Upper Clutha Basin is not within the scope of Stage 2. That land was notified as part of Stage 1, has been heard by the Panel, and is now the subject of decisions that were notified by the Council on 5 May 2018, with the appeal period currently open. The subject land is *not* shown on the Stage 2 plan maps and is not applied with a Stage 2 zone.
 - 12.2 The relief we understand UCES is seeking is effectively a *future* planning process occur over land that does not form part of Stage 2 of the PDP. A district plan cannot bind a council to a future planning process, so the relief that UCES is seeking cannot be granted. In any event, the Panel in its Upper Clutha Recommendation Report 16, has already made the recommendation that UCES are seeking. The Panel can do no more than make that same recommendation, it cannot bind the Council to any future planning process or variation.
13. Council accepts that a section 32 evaluation report can aid a Court (or in this case, the Panel) in determining whether a submission was *on* a proposal, by asking whether the submission in question raises matters that should have been

addressed in the evaluation report.³ However, in our submission, this does not provide scope for the UCES submission point in this situation, as the notification of Stage 2 was limited to certain areas of the district (as shown on the associated plan maps).

14. Council's position remains that submission point 2016.2 is not "on" Stage 2 of the PDP, as notified by the Council.

Vanderwood Trustees et al (2523.1)

15. Vanderwood Trustees et al acknowledge in their response that the part of the submission that relates to the piece of land coloured green (in the Figure provided in the submission) is not land included in Stage 2 of the PDP. This is understood by Council to be a concession and an acceptance that Council's position is correct, in relation to this specific aspect of the submission. Council seeks that this part of the relief sought, be struck out.
16. However, in relation to the remainder of the rezoning submission, the Council agrees that this part is "on" Stage 2 and is within scope.

Glenpanel Developments Limited (2548.1)

17. Glenpanel Developments Limited's (**Glenpanel**) rezoning submission seeks that an area of land located adjacent to State Highway 6 (at Ladies Mile) be rezoned from Rural to a mix of Low, Medium and High Density Residential zoning to provide for urban development. The land in question was notified in Stage 1, where the status quo of the zoning of the land was at issue. Submissions by Ladies Mile Consortium (2489) and Glenpanel were made in respect of the land notified in Stage 1, but have not yet been heard. They have been allocated to be heard within the upcoming Stage 2 hearing, which is on the Wakatipu Basin, Arrowtown, and Ladies Mile. This includes the 'late' submission of the Ladies Mile Consortium (2489) on Stage 1, that was subject to a decision of the Chair under his delegated power to waive the time limit in part under section 37 of the Act, on 13 March 2018.

³ *Albany North Landowners v Auckland Council* [2017] NZHC 138, summarising the *Motor Machinists* reasoning, at [127].

- 18.** Council refers to the reasons set out by the Chair in his Minute of 16 April 2018, where a preliminary view is provided that this submission point (2538.1) is not “on” Stage 2 of the PDP. Council agrees with these reasons, which can be summarised as:
- 18.1** The provisions of Chapter 24 require that in giving effect to the objectives and policies or assessment criteria, reference is made to the landscape characteristics set out in Schedule 24.8;
 - 18.2** Schedule 24.8 in itself does not provide the basis for the application of the zonings;
 - 18.3** Part of the Landscape Character unit 10 Ladies Mile is zoned Wakatipu Basin Rural Amenity;
 - 18.4** Therefore, the schedule is only relevant to assessment of activities in that area;
 - 18.5** If the land subject to Glenpanel’s submission remained Rural, as proposed by Stage 1 of the PDP, the provisions of Schedule 24.8 would not apply to it.
- 19.** The Council intentionally defined the boundaries of the Wakatipu Basin variation on the Stage 2 plan maps, with the effect that the land in question does not form part of Stage 2 within either the Wakatipu Basin Rural Amenity Zone, the Wakatipu Basin Precinct, or other land that was subject to the Wakatipu Basin Land Use Study (**WBLUS**).

Council respectfully considers that Glenpanel’s submissions at paragraph 8, confuse the facts around what is the status quo, by referring to non-RMA processes. Although Council accepts that the staged DPR process is not without confusion, the subject land was not notified on the Stage 2 plan maps. Council does not accept that a separate HASHAA process, inclusion of land within ‘infrastructure contributing areas’ in a separate Local Government Act process on the draft Policy on Development and Financial Contributions, or the earlier WBLUS, which was background analysis to form on a view on what the scope of the variation would be, are determinative factors on the status quo of the land. Council’s view, which reflects the Panel’s approach to scope throughout the numerous Stage 1 hearings, is that the line on the plan maps deserves weight. Council notes that the Panel’s approach to scope, as recorded in its Stage 1 Recommendation Reports, accords with the Council’s position on this submission point.

20. Council has not identified any authority that supports the Glenpanel submission in paragraph 9, that the length of time between making a submission and the hearing, can either create scope or alter the usual approach to scope.
21. As raised by counsel for Glenpanel, the section 32 evaluation report considered whether it would be appropriate to include Ladies Mile within the variation geographic area (Stage 2). The Council decided not to.
22. The Council also wishes to point out that the plan review is not a complete review, as suggested by Glenpanel. Certain areas of land within the District have been specifically excluded from this plan review process, and therefore will remain subject to the current ODP provisions.
23. The Council's position is also consistent with the position it took on Submission 2489.1 Ladies Mile Consortium. Council's position in that instance, was that this submission, which was in the vicinity of the Glenpanel submission, was not "on" Stage 2, and that the submitter would need to instead apply to the Chair for him to use his delegated powers to accept the submissions as a late submission on Stage 1. This process was then followed, and the Chair of the Panel waived the time limit to amend the submission in part, and accepted those parts of this submission that were not decided on in Stage 1 as a late submission and it now forms part of the Stage 1 process (to be heard in the upcoming hearing).
24. With reference to paragraph 10 of the memorandum filed by Glenpanel, Council acknowledges that scope in a full plan review can be broader than a narrow variation.⁴ However, in relation to this *partial* review, we do not consider that there is any need to take a broader approach to scope, or one that would depart from the consistent approach taken by the Panel during Stage 1 (and Stage 2 so far), for this one particular submission point.
25. Glenpanel refers to its rezoning relief as a "logical extension which fills in the gaps of the notified variation". This is submitted to be an acknowledgement from Glenpanel that the land itself was not included in Stage 2. The exclusion of this land from the variation was a deliberate decision, and there is again no case law that counsel is aware of, that justifies the submission by Glenpanel that the

⁴ *Albany North Landowners v Auckland Council* [2017] NZHC 138; which addressed scope in the context of a full plan review that developed the Auckland Unitary Plan pursuant to bespoke legislation.

“defined outer boundary” of what has been notified, which includes Ladies Mile, brings the land subject to their submission into Stage 2.

26. As noted above, Council remains firmly of the view that a consistent approach should be taken to scope for the Wakatipu Basin hearing, and to the remaining stages of the PDP more generally. The Panel was very clear on its approach (regarding the plan maps determining scope), and Council submits that there is no justification for not following the same approach for this particular submission point.
27. In relation to the second part of the test, Council acknowledges that a number of parties have lodged further submissions, which align with the Glenpanel position that the public will not be prejudiced from accepting the submission point as “on” Stage 2 of the PDP. On the other hand, if this submission were accepted it opens the floodgates to numerous submitters seeking to ‘re-litigate’ land determined in Stage 1 of the PDP on the same basis put forward by Glenpanel. Council considers that this will simply add to the complexity of the already complex staged approach and will not be clear for future submitters.
28. Finally, Council understands that Glenpanel (at paragraphs 22 to 28) is relying on something akin to hindsight in arguing that there is scope for its submission. Specifically, Glenpanel considers that had it known about the significant changes that may be made to the planning and zoning regime for Ladies Mile since the PDP was notified in 2015, it, and others, would have made very different submissions. Council respectfully submits that there is no authority which provides for, or contemplates, this flexible (hindsight) approach to scope.

DATED this 9th day of May 2018



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Council