

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

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Stream 06 –
Residential chapters

**OPENING REPRESENTATIONS / LEGAL SUBMISSIONS FOR
QUEENSTOWN LAKES DISTRICT COUNCIL**

Hearing Stream 06 – Residential

10 October 2016

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MAY IT PLEASE THE PANEL:

1. INTRODUCTION

1.1 These legal submissions are made on behalf of Queenstown Lakes District Council (**Council**) in respect of the Residential hearing of the Proposed District Plan (**PDP**) and relevant subdivision minimum lot area standards from Chapter 27. The five chapters (including definitions used within), and submissions on them that are being considered are:

- (a) the Low Density Residential chapter;¹
- (b) the Medium Density Residential chapter;²
- (c) the High Density Residential chapter;³
- (d) the Arrowtown Residential Historic Management Zone chapter;⁴
- (e) the Large Lot Residential chapter⁵ (together, **Residential chapters**).

2. OUTLINE OF LEGAL SUBMISSIONS

2.1 These opening submissions address the following matters:

- (a) the scope of this hearing;
- (b) the Council's approach to deferral of submissions points;
and
- (c) the key issues on the Residential chapters.

1 Chapter 7.
2 Chapter 8.
3 Chapter 9.
4 Chapter 10.
5 Chapter 11.

- 2.2** These submissions are not a comprehensive response to all evidence that has been filed, which will be covered in the Council's right of reply if necessary.
- 2.3** There are a number of issues raised in evidence for submitters that are contested and/or not accepted by the Council. In order to assist the Panel and because there is no direction for rebuttal evidence, the summaries of the Council's evidence have responded, at a very general level, to some of the key issues raised in submitters' evidence. As explained below, these summaries also provide a written response to additional submissions on the Subdivision chapter, that were not considered in the s42A reports.
- 2.4** The Council refers to and adopts the opening legal submissions presented at the Strategic Direction hearing, in terms of Council's functions and statutory obligations (section 3) and relevant legal considerations (section 4), and whether various submissions are "on" Stage 1 of the PDP (section 7).⁶ Those submissions are not repeated here, but in summary, the Environment Court gave a comprehensive summary of the mandatory requirements in *Long Bay-Okura Great Park Society v North Shore City Council*.⁷ Subsequent cases have updated the *Long Bay* summary following amendments to the RMA in 2005, the most recent and comprehensive of which was provided by the Environment Court in *Colonial Vineyard Limited v Marlborough District Council*.⁸

3. PROPOSED REGIONAL POLICY STATEMENT

- 3.1** On 1 October 2016 the Otago Regional Council issued a public notice stating that decisions had been made on submissions on the proposed Regional Policy Statement for Otago.⁹

6 Opening Representation / Legal Submissions for Queenstown Lakes District Council, Hearing Streams 1A and 1B - Strategic Chapters in Part B of the Proposed District Plan, dated 4 March 2016, at parts 4 and 5.

7 *Long Bay-Okura Great Park Society v North Shore City Council* EnvC Auckland A078/08, 16 July 2008. At [34]. This case related to the district plan provisions controlling urban development behind Long Bay and Grannie's Bay within the North Shore City.

8 *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

9 Under clause 14 of Schedule 1 of the Resource Management Act 1991, those who submitted on the proposal may appeal the decision to the Environment Court within 30 working days of service of the notice of decision.

3.2 At this time, Council officers have not had an opportunity to comprehensively review the decision, and take a view on whether the decision influences the Council recommendations already made in Hearing Streams 1 to 5, nor in this hearing on the residential chapters.

3.3 The Council's current intention is to address the implications of the decision in the Council's right of reply in respect of the Residential chapters. Council suggests that the Council and submitters are also given an opportunity to file legal submissions (and possibly planning evidence, depending on the outcome of the review of the Regional Council's decision), on the implications of the decision on the PDP, in the context of Hearing Streams 1 to 5.

4. SCOPE OF THE RESIDENTIAL HEARING

4.1 The Residential hearing is made up of the five Stage 1 Residential chapters and includes any defined terms used within those chapters.

4.2 A number of provisions from within the notified chapters relating to the issue of Visitor Accommodation were withdrawn from the PDP under clause 8 of Schedule 1 of the RMA.¹⁰ These provisions now do not form part of the PDP and they have been removed from the recommended revised chapters in Appendix 1 of the various section 42A reports. Submission points relating to these provisions have been marked in Appendix 2 of the s42A reports as being out of scope, because there are no longer any provisions "on" which these submissions can be made.

4.3 The hearing of the Arrowtown Design Guidelines 2016 has recently been brought forward and is scheduled for the last two days of the Residential hearing. These legal submissions do not address the Arrowtown Design Guidelines because the s42A report and evidence have not yet been filed. However, once that has occurred, the Council may provide additional legal submissions.

¹⁰ Text of the Public Notice withdrawing these provisions is in Schedule 2 to the Council's Opening Representation / Legal Submissions for Queenstown Lakes District Council, Hearing Streams 1A and 1B - Strategic Chapters in Part B of the Proposed District Plan, dated 4 March 2016.

Subdivision chapter: Minimum Lot Areas and related standards

- 4.4** A number of provisions from Chapter 27 (Subdivision) relating to minimum lot sizes and/or density (and submissions on them) were deferred from Hearing Stream 4 to Hearing Stream 6 so that those submissions could be addressed in the zone specific hearing. This was described in the relevant s42A report¹¹ and in opening legal submissions for the Council,¹² and confirmed in the Panel Minute dated 22 September 2016.
- 4.5** The transferred provisions listed in the Council's memorandum dated 7 October 2016, confirming the intended approach, are notified Rule 27.5.1 (redraft 27.6.1), Rule 27.5.1.2 (redraft 27.7.12.2) and Rule 27.5.2 (redraft 27.7.13). Following filing of the memorandum on 7 October 2016, counsel has recognised that Ms Amanda Leith has also addressed notified Rule 27.5.3 (redraft 27.7.14) in her evidence summary for the Low Density Residential chapter.
- 4.6** Similar to redraft 27.7.13, 27.7.14 is an exception to the minimum lot areas in redraft 27.6.1 and should also be considered as part of this residential hearing. For the avoidance of any confusion, Council seeks a direction from the Panel, that the following four Subdivision standards are being re-considered through this hearing:
- (a) notified Rule 27.5.1 (redraft 27.6.1);
 - (b) notified Rule 27.5.1.2 (redraft 27.7.12.2);
 - (c) notified Rule 27.5.2 (redraft 27.7.13); and
 - (d) notified Rule 27.5.3 (redraft 27.7.14).
- 4.7** Unfortunately some of the s42A reports filed did not comprehensively address the submissions on minimum lot areas and the related standards listed in paragraph 4.6 directly above.¹³ Following a minute from the Panel, the s42A authors have included a supplementary response to the submissions that were missed, including their

11 Section 42A Report Subdivision, paragraphs 4.6-4.7 and 14.1.

12 Legal Submissions for Queenstown Lakes District Council, Hearing Stream 4, dated 22 July 2016, paragraph 3.3.

13 The s42A reports for chapter 7 (Low Density Residential Zone) and chapter 11 (Large Lot Residential zone) included sections on subdivision, but did not include all of the submissions on subdivision.

opinions and advice, and an addendum to their accept/reject table, within their filed evidence highlights.

Definition of "site"

4.8 This further analysis has required consideration of the definition of "site" as it applies to unit title, strata title and cross lease subdivisions, and in relation to how the site standards of the PDP apply to these subdivision types.¹⁴ This is addressed by Ms Banks in her summary of evidence for the High Density Residential zone.

Mount Crystal Limited (150)

4.9 Ms Banks omitted to consider a point in Mount Crystal Limited's submission relating to heights in the High Density Residential zone. This point has now been addressed in an Appendix attached to Ms Bank's evidence summary.¹⁵

5. SCOPE ISSUES

5.1 The accept / reject tables attached to the s42A reports indicate that some submissions points are considered to be out of scope. The legal principles relating to scope were addressed in depth in the Council's submissions on Hearing Streams 1A and 1B¹⁶ (stream 2).¹⁷ Those principles are not repeated here but a summary is provided at **Appendix 1** of these submissions.

5.2 The Council submits that the evidence of Mr Ian Greaves on behalf of David Barton (269) goes beyond the scope of the original submission in one respect. The submission requests removal of the 100m² or less gross floor area requirement from notified Policy 7.2.9.2. There is nothing in the submission about notified Rule 7.4.6, which assigns non-complying status to commercial activities. However Mr Greaves in his evidence questions this non-complying status, suggesting discretionary activity status instead.

14 Notified Rule 27.5.2 (redraft Rule 27.7.13) deals with subdivision associated with infill development
15 Ms Banks' evidence summary addresses the original submission in addition to the evidence of Mr Sean Dent on behalf of Mount Crystal Limited.
16 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2.
17 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

5.3 The Council considers that this aspect of Mr Greaves' evidence is beyond the scope of the original submission, and accordingly should be disregarded.

6. STRATEGIC OVERVIEW OF RESIDENTIAL CHAPTERS

6.1 Separate section 42A reports have been prepared for each of the residential chapters. This was for resourcing reasons given the number of submission points across the chapters. In order to assist the Panel and submitters in providing an overview of the strategic approach and relationship of the chapters, we have asked Ms Amanda Leith to provide an overview of the five chapters. This is attached to her evidence summary for the Low Density Residential zone, which with the leave of the Panel will be presented after the expert evidence and before Ms Leith presents her summary for the LDR zone.

6.2 The availability of land for residential use is fundamental to the social, economic, and cultural well-being of the people and communities in the Queenstown Lakes District (**District**). Due to significant growth and housing affordability issues in the District, providing for increased density residential activities is considered necessary in order to address predicted growth and housing demand.¹⁸ However, residential activities have potential for adverse effects on the environment, particularly landscape and amenity values. Appropriate management of land for residential use is therefore important in the promotion of sustainable management of the District.

6.3 The retention of historic heritage is fundamental to the social, economic, and cultural well-being of the people and communities in the District. Buildings in the historic area of Arrowtown are important to its character and therefore specific controls are necessary to protect the present development and encourage future development to reflect the historic, aesthetic and amenity characteristics of the existing development.¹⁹

18 Section 32 Report Medium Density Residential Zone, Part 5 Resource Management Issues, page 10; Section 32 Report High Density Residential Zone, Part 3 Resource Management Issues, pages 6 and 9.
19 Section 32 Report Arrowtown Residential Historic Management Zone, Part 4 Resource Management Issues, page 6.

6.4 Part 2 of the Resource Management Act 1991 (**RMA**) provides that in achieving the purpose of sustainable management, all persons exercising functions and powers under the RMA shall recognise and provide for the protection of historic heritage from inappropriate subdivision, use, and development.²⁰

6.5 Particular regard shall be had to:

- (a) the efficient use and development of natural and physical resources;²¹
- (b) the maintenance and enhancement of amenity values;²² and
- (c) maintenance and enhancement of the quality of the environment.²³

6.6 The PDP applies Urban Growth Boundaries (**UGBs**) to the urban areas of Queenstown, Arrowtown and Wanaka. All residential zones considered within this hearing stream are located within the boundaries of defined UGBs, as notified (acknowledging these boundaries will be further considered through mapping hearing streams).

6.7 The purposes of the respective zones are as follows:

- (a) **Low Density:** to provide for suburban densities and housing forms that are well designed and located to provide a high level of residential amenity. Community activities are also anticipated where residential amenity is not unduly compromised;²⁴
- (b) **Medium Density:** to provide for a greater supply of diverse housing options for the District whilst still ensuring that housing forms are well designed and located to provide residential amenity. The zone may incorporate small scale

20 Resource Management Act 1991, s 6(f).

21 Ibid, s 7(b).

22 Ibid, s 7(c).

23 Ibid, s 7(f).

24 Section 42A Report Low Density Residential Zone, Part 6 Background, page 11.

commercial activities where these enhance residential amenity or support the town centre and do not undermine the ability of the zone to provide housing supply. Community activities may also be located within the zone;²⁵

- (c) **High Density:** to provide for more intensive use of land within close proximity to town centres that is easily accessible by public transport, cycle and walk ways. The zone is intended to have a key role in minimising urban sprawl and consolidating growth in existing urban areas (in conjunction with the Medium Density Residential zone). In Queenstown, buildings greater than two storeys in height are anticipated, and buildings of predominantly two storeys in Wanaka;²⁶
- (d) **Large Lot:** to provide low density living opportunities within defined Urban Growth Boundaries, and to serve as a buffer between higher density residential areas and rural areas that are located outside Urban Growth Boundaries;²⁷ and
- (e) **Arrowtown Residential Historic Management:** to provide for the continued sensitive development of the historic area of residential Arrowtown in a way that will protect and enhance those characteristics which make it a valuable part of the town for local residents and visitors. The zone seeks to retain the early subdivision pattern and streetscape, and ensure development is sympathetic to the present character. Infill housing is not anticipated, although there is provision for Residential Flats to increase the diversity of residential accommodation in the zone.²⁸

6.8 Notified Chapter 10 is one of several PDP chapters that are relevant to Arrowtown. District-wide Chapter 26 (Historic Heritage) manages historic heritage features, including the provision of two Heritage

25 Section 42A Report Medium Density Residential Zone, Part 6 Background, page 13.

26 Notified Chapter 9, section 9.1 Zone Purpose.

27 Notified Chapter 11, section 11.1 Zone Purpose.

28 Section 42A Report Arrowtown Residential Historic Management Zone, Part 6 Background, pages 8-9.

Precincts in Arrowtown.²⁹ Chapter 10, being the underlying zone, provides for the continued sensitive development of the historic area of residential Arrowtown.³⁰ Proposed Planning Map 28 shows the location of the two Heritage Precincts, the Arrowtown Town Centre,³¹ and the surrounding Arrowtown Residential Historic Management zone.

Urban Design Panel

6.9 While accepting and relying on the majority of Mr Garth Falconer's evidence, Council officers have not accepted Mr Falconer's view that the use of the Urban Design Panel (**UD Panel**) should be mandatory, or alternatively, that use of the UD Panel could be encouraged through non-notification incentives.³²

6.10 The Council's position on these issues is set out in the s42A report on the High Density Residential zone.³³ Taking into account the current use of the UD Panel, the Council's position is that the current procedure for use of the UD Panel (non-mandatory but encouraged, and recommended for proposals where urban design assessment is required) is adequate and will remain available under the PDP, while the determination of notification requirements is best undertaken by Council under sections 95A-95D of the RMA.³⁴

29 See Notified Rule 26.8.10 (Arrowtown Town Centre Historic Precinct) and Notified Rule 26.8.13 (Arrowtown Cottages Historic Precinct). Chapter 26 formed part of Hearing Stream 5.

30 Section 42A Report Arrowtown Residential Historic Management Zone, Part 6 Background, page 8.

31 Proposed Chapter 14 covers the Arrowtown Town Centre and is scheduled to be heard as part of Stream 8.

32 Evidence of Mr Garth Falconer dated 14 September 2016 at paragraphs 2.4 and 5.9-5.13.

33 Section 42A Report High Density Residential Zone, Part 8 Urban Design Panel, paragraphs 8.4-8.8.

34 Ibid, at paragraph 8.5.

6.11 The Council also does not accept Mr Falconer's view that the PDP should require the UD Panel to review development proposals in the Medium Density Residential zone.³⁵ The Council's position as set out in the s42A report on Chapter 8 is that the objectives, policies and rules as recommended will ensure a good urban design outcome for the proposed Medium Density Residential zone.³⁶ It is noted that as the Medium Density Residential zone is new, it would be difficult to estimate the potential numbers of consent applications to be reviewed by the UD Panel.

6.12 The Council submits that the current UD Panel process is functioning well and should remain voluntary.³⁷

Urban Design Guidelines

6.13 The Council has undertaken to advance guidelines for the High and Medium Density Residential zones. It is planned to notify these as part of Stage 2 of the District Plan Review and it is probable that these would be incorporated by reference in a similar manner as the Arrowsmith Design Guidelines 2016. A variation to Stage 1 text may be necessary.

6.14 However in the interim or if these do not eventuate, Council's view is that the recommended provisions are appropriate to address urban design considerations.³⁸

6.15 It is noted that Mr Falconer's evidence indicates the redrafted objectives and policies of Chapter 8, and the notified objectives and policies of Chapter 9, are appropriate in supporting good design outcomes.³⁹

35 Evidence of Mr Garth Falconer dated 14 September 2016, paragraph 4.23.

36 Section 42A Report Medium Density Residential Zone, Part 10 Issue 2 Design and Amenity, page 42.

37 Section 42A Report Medium Density Residential Zone, Part 10 Issue 2 Design and Amenity, at paragraph 10.50.

38 Section 42A Report Medium Density Residential Zone, Part 10 Issue 2 Design and Amenity, paragraph 10.51; Section 42A Report High Density Residential Zone, Part 8 Urban Design Panel, paragraph 10.48.

39 Evidence of Mr Garth Falconer dated 14 September 2016, paragraphs 4.13 and 5.8; Section 42A Report High Density Residential Zone, Part 8 Urban Design Panel, paragraph 8.7.

Matters of discretion – drafting generally

- 6.16** The Panel's Fourth Procedural Minute dated 8 April 2016 expressed concern that many objectives and policies were not correctly framed. This has been amended in the revised Low Density Residential chapter attached as **Appendix 1** to the s42A report.
- 6.17** The same approach has been taken to matters of restricted discretion in the revised Low Density Residential chapter (redraft Rules 7.4.10 and 7.5.11 in **Appendix 1**).⁴⁰ The subject matter of the notified provisions has been retained, but the provisions have been re-phrased to be matters of discretion rather than assessment matters.
- 6.18** Similarly, in the Arrowtown Residential Historic Management chapter the matters of discretion in redraft Rules 10.4.4, 10.5.5 and 10.5.6 have been re-phrased so that they are no longer framed as assessment matters.
- 6.19** The same has occurred in the Large Lot Residential chapter with the change to the matters of discretion in Rule 11.5.10.
- 6.20** Although there are no specific submissions seeking these changes, the Council submits that the Panel can recommend these amendments as they are non-substantive and relate to matters of clarification. As noted in legal submissions as part of the Council's right of reply in stream 5, the Council's position is that as the proposed changes are of neutral effect, there is no legal or procedural barrier preventing the Panel from recommending them, and the Council subsequently making the changes under clause 16(2) of Schedule 1 of the RMA.⁴¹
- 6.21** It is noted for completeness that the same changes have been made to the matters of discretion in the Medium Density Residential chapter; however the majority of these are in response to the Reddy Group Limited (699) submission.

40 This has not been carried through to the High Density Residential zone chapter, but may need to be if changes are recommended by the Panel.

41 Council's Legal Reply on Hearing Stream 5 dated 22 September 2016 at part 5.

Matters of discretion relating to natural hazards

6.22 In the notified Low Density Residential chapter, Rule 7.4.10 and Standard 7.5.14 each contain a provision relating to natural hazards. Similarly, in the notified Arrowtown Residential Historic Management chapter, Rule 10.4.4 contains a matter of discretion relating to natural hazards.⁴² This is also included in the High Density Residential chapter at 9.2.2 (redrafted 9.5.3), 9.5.8 (redrafted 9.5.7), and in the Medium Density Residential chapter at 8.4.11 and 8.4.25 (redrafted 8.4.22).

6.23 The wording of the natural hazards matter of discretion is as follows:

Where a site is subject to any natural hazard and the proposal results in an increase in gross floor area: an assessment by a suitably qualified person is provided that addresses the nature and degree of risk the hazard(s) pose to people and property, whether the proposal will alter the risk to any site, and the extent to which such risk can be avoided or sufficiently mitigated.

6.24 In the District Wide hearing (stream 5), Mr Craig Barr's reply dated 22 September 2016 noted the Panel had questioned the validity of a similar matter of discretion because it contained a qualifier associated with obtaining an assessment. In stream 5, a submitter (635) had asked for the matter of discretion to be deleted for other reasons, and Mr Barr recommended deletion on that basis.

6.25 The Council has not identified any submissions in stream 6 requesting deletion of the natural hazards provisions from notified Rules 7.4.10, 7.5.14 and 10.4.4, and as such the respective s42A reports do not recommend deletion.

6.26 At the time of filing these submissions, Council officers are considering the appropriate cause of action.

⁴² Policies that guide the assessment of proposals on land affected by natural hazards are located in Chapter 28 of the PDP.

Matters under the sub-heading "Clarification"

- 6.27** In previous hearings including Rural (Hearing Stream 2) and District Wide (Hearing Stream 5) the Panel questioned the status of the provisions under the heading "Other Provisions and Rules", specifically within the sub-heading "Clarification".
- 6.28** To provide more certainty as to the regulatory status of these provisions, the Council suggests that these "Clarification" provisions should be further re-ordered under additional subheadings "General Rules" and "Advice Notes". These changes do not affect the regulatory impact of these provisions and are considered to be non-substantive. Similar changes will need to be made to chapters that have already been heard by the Panel.
- 6.29** In this hearing, concerns were raised about the content of the "Clarification" matters in the s42A report on the Large Lot Residential zone.
- 6.30** Notified clause 11.3.2 makes a number of points under the title "Clarification". Ms Amanda Leith in her s42A report has noted that there is no scope to change these points as no submissions were received on them, but raises concerns about their content. Two notified Clauses (11.3.2.2 and 11.3.2.3) are considered unnecessary because they contain standard resource management advice not specifically related to the Large Lot Residential zone. Notified Clause 11.3.2.4 relates to building consent applications, and the s42A report notes that an RMA planning document is not an appropriate place for building consent considerations as this is governed by separate legislation.⁴³
- 6.31** The s42A report suggests that all the points within notified clause 11.3.2 would be more appropriately classed as "Advice Notes".

6.32 The Council submits that the re-ordering of these provisions under the subheadings "General Rules" and "Advice Notes" would address these concerns.

7. WITNESSES

7.1 The Council proposes to call its evidence in the following order:

- (a) Mr Ulrich Glasner, infrastructure expert;
- (b) Dr Stephen Chiles, acoustic engineer;
- (c) Mr Philip Osborne, economist;
- (d) Mr Garth Falconer, urban design expert;
- (e) Ms Amanda Leith, Senior Policy Planner, for her section 42A reports on the Low Density Residential and then Medium Density Residential chapters;
- (f) Ms Kimberley Banks, Senior Policy Planner, who is the author of the section 42A report on the High Density Residential chapter;
- (g) Ms Rachael Law, Policy Planner, who is the author of the section 42A report on the Arrowtown Residential Historic Management Zone chapter; and
- (h) finally, Ms Amanda Leith, for her section 42A report for the Large Lot Residential chapter.

DATED this 10th day of October 2016



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**APPENDIX 1 –
LEGAL PRINCIPLES ON SCOPE**

1. The legal principles regarding scope and the Panel's powers to recommend (and subsequently the Council's power to decide) are:
 - 1.1 a submission must first, be *on* the proposed plan;⁴⁴ and
 - 1.2 a decision maker is limited to making changes within the scope of *the submissions made on the proposed plan*.⁴⁵

2. The two limb approach endorsed in the case of *Palmerston North City Council v Motor Machinists Ltd*,⁴⁶ subject to some limitations, is relevant to the Panel's consideration of whether a submission is *on* the plan change.⁴⁷ The two limbs to be considered are:
 - 2.1 whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and
 - 2.2 whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.

3. The principles that pertain to whether certain relief is within the scope of a submitter's submission can be summarised as follows:
 - 3.1 the paramount test is whether or not amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP. This will usually be a question of degree to be judged by the terms of the PDP and the content of submissions;⁴⁸
 - 3.2 another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought in a

44 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7.
45 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

46 [2014] NZRMA 519.

47 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at paragraph 7.3-7.12.

48 *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 166.

submission; the scope to change a plan is not limited by the words of the submission;⁴⁹

3.3 ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter;⁵⁰ and

3.4 scope is an issue to be considered by the Panel both individually and collectively. There is no doubt that the Panel is able to rely on "collective scope". As to whether submitters are also able to avail themselves of the concept is less clear. To the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief, it is submitted that the submitter could not advance relief.⁵¹

49 *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556, and 574-575.

50 *Ibid*, at 574.

51 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.