

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER of the Resource Management Act 1991
AND of appeals pursuant to clause 14(1) of the
First Schedule of the Act
BETWEEN FEDERATED FARMERS OF NEW
ZEALAND INC
(ENV-2018-CHC-53)
... (continued on page 10)
Appellants
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

MINUTE (17 July 2018)

Introduction

[1] This Minute starts to address the timing of management of the 101 (approximately) appeals to the Environment Court on the Queenstown Lakes District Council's proposed second-generation Queenstown Lakes District Plan, Stage 1 ("the PDP").

[2] The court records that the Council sought directions in anticipation of appeals being lodged on the Stage 1 decision. In a Minute dated 26 April 2018 the court directed (*inter alia*) that the Council lodge an analysis of appeals by topic. That report is due to be lodged and served (electronically) on 31 July 2018. However, on 13 July 2018 the Council lodged a memorandum in which Ms K L Hockly, its counsel, first advised where the Council's work on the appeals has got to, and second asking for an extension of the full reporting date to 17 August 2018.

[3] The Council has made considerable progress. Counsel advises that it has:



- uploaded all appeals onto its website;
- completed its review of all appeals; and
- identified the Council's proposed topic allocation for each individual appeal point, the jurisdictional issues that arise from the Council's perspective, and all appeals requiring further particulars.

[4] In relation to the last point it has identified:

- approximately 175 appeal points that raise potential jurisdictional issues (some being jurisdictional matters raised by appellants and the majority being issues of the scope of the appeals identified by the Council); and
- approximately 90 appeal points where the Council considers that it would be helpful for further particulars to be provided for the purposes of mediation.

[5] In the court's view the proceedings do not need to wait for the Council's full report – much of which will relate to appeals about specific rules and specific areas of land – to be lodged, before any jurisdictional and procedural issues can be resolved or before timetabling towards substantive hearings is set in place.

[6] Consequently, the court considers it is appropriate for the parties to start thinking about, and if necessary make applications in respect of, some aspects of the procedure to be followed, earlier rather than later.

Information on all proceedings and procedures

[7] The parties should note for their convenience that in addition to the court's records which are kept separately (and repetitively) on each appeal file, the court's Minutes containing all its directions are being loaded by the Queenstown Lakes District Council on its database and are searchable at <https://www.qldc.govt.nz/planning/district-plan/>

[8] The procedures of the Environment Court are set out in the court's Practice Notes at www.environmentcourt.govt.nz/about/practice-note/. Normally the Environment Court expects those directions to be followed, in the absence of specific directions to the contrary.



The steps towards a hearing

[9] Preparation for and the hearing of the appeals is likely to be in stages as follows:

- (1) collecting of similar appeals by topic (see the next heading);
- (2) procedural and jurisdictional hearings where rulings are sought by any party;
- (3) prehearing conferences (where the court considers they are necessary for any topic, which is likely for the strategic topics);
- (4) alternative dispute resolution (if mediation is directed on any topic);
- (5) service and lodgement of evidence-in-chief (normally with the Council going first);
- (6) expert conferencing;
- (7) service and lodgement of rebuttal evidence;
- (8) hearing.

[10] We elaborate on most of those steps below. First we set out our initial thoughts on the clustering of appeals by topic.

Hearing by topic

[11] The court suggests the following general approach to the clustering of appeals:

- (1) appeals on related topics should be (mediated and) heard together;
- (2) appeals relating to higher order issues should be dealt with first.

[12] While the detailed analysis of topics (and other matters) from the QLDC is still to be lodged, it is apparent to the court from an initial reading of the notices of appeal that the first set of topics can be identified simply by reference to the Strategic Directions in Chapter 3 of the PDP and the directly related subsequent chapters.

[13] These can be split into six topics corresponding broadly to the Strategic Objectives¹ in Chapter 3 of the PDP as follows:



¹ S.O. = Strategic Objective.

No. ²	Topic	PDP Chapter 3	Other chapter
1.	A resilient economy	S.O. 3.2.1 (excluding S.O. 3.2.1.7 and 3.2.1.8) and S.O. 3.2.6	
2.	Rural landscape	S.O. 3.2.1.7, 3.2.1.8 and S.O. 3.2.5	6
3.	Urban development	S.O. 3.2.2	4
4.	Indigenous ecosystems and biodiversity	S.O. 3.2.4	33
5.	Ngāi Tahu	S.O. 3.2.7	5
6.	Heritage	S.O. 3.2.3	26

We refer to these as “the strategic topics”.

[14] It appears the general order of the first round of appeal hearings should reflect the strategic objectives Chapter 3 of the PDP, except that the Rural landscapes (topic 2) should go before Urban development (topic 3) given the general movement (historically) of land from country urban.

[15] We attach lists of the appellants who seek relief in respect of the first three strategic topics as follows:

- Schedule A: appellants on topic 1
- Schedule B: appellants on topic 2
- Schedule C: appellants on topic 3.

Procedural hearings and prehearing conferences

[16] Procedural applications will be set down for separate early hearings in relation to the specific appeals named in the applications (i.e. not necessarily by topic) on a case-by-case basis.

² A longer less user-friendly, computer-generated topic number will be allocated in due course.



[17] We note the Council's and other parties' allegations over the lack of jurisdiction and/or particulars on a large number of appeals. We will issue directions about those matters because they need to be resolved soon.

[18] In addition to procedural hearings which are likely to be set down at short notice, the parties should note that prehearing conferences are likely to be held in Queenstown in the weeks of:

- **3 September 2018** for topic 1
- **17 September 2018** for topic 2.

At least some hearings of procedural matters may take place on those dates also (if not heard earlier).

Alternative Dispute Resolution

[19] The court has given considerable thought to whether it should direct mediation of all appeals relating to all the strategic topics. Our initial view is that a general order for mediation of topics 1 and 2 is inappropriate.

[20] We accept that the court usually directs that mediation (by an Environment Commissioner) takes place, almost as a matter of course. We anticipate the appeals before the court will be no exception in relation to most topics.

[21] However, in relation to the first two strategic topics we have doubts as to whether mediation of all issues is justified for three reasons:

- (1) most of the relevant objectives and policies are very abstract, so discussions could take an inordinate amount of time;
- (2) the cost to the parties would be considerable which is of concern when there is (in our view) a high probability that hearings on some sub-topics will be needed in any event; and
- (3) the time spent in preparing for mediation might be better spent in preparing evidence and then in expert conferencing once evidence is served.



[22] In our preliminary view if nearly all (in the court's view) of the parties to topics 1 and 2 agree that mediation has a reasonable prospect of success (or of narrowing the issues if that is a meaningful concept at the level of abstraction in Chapter 3 of the PDP) then the court may direct that alternative dispute resolution under sections 268 and 268A RMA should take place in September 2018.

[23] However, we will reserve leave for the parties to make applications on this as on most of the other matters raised by this Minute.

Timetable for evidence and conferencing on topic 1 (A resilient economy)

[24] With a view to holding hearings on the appeals on this topic (for a list of the relevant appeals, see Schedule A) in the weeks of **18 and 25 February 2019** in Queenstown, we suggest a timetable as follows (subject to any orders as to alternative dispute resolution and any jurisdictional issues):

- | | |
|-----------------------------|--|
| 21 September 2018 | evidence-in-chief for Queenstown Lakes District Council; |
| 12 October 2018 | evidence-in-chief for the appellants; |
| 26 October 2018 | evidence-in-chief for section 274 parties supporting appellants; |
| 9 November 2018 | evidence-in-chief for section 274 parties opposing appellants; |
| 19 Nov to 7 Dec 2018 | expert conferencing to take place; |
| 12 December 2018 | Joint Witness Statements to be lodged; |
| 20 December 2018 | rebuttal evidence for appellants and supporting section 274 parties; |
| 23 January 2019 | rebuttal evidence for QLDC together with a memorandum suggesting order of dealing with topics and the estimated hearing time for each; |
| 30 January 2019 | rebuttal evidence for section 274 parties supporting the QLDC; |
| 5 February 2019 | the QLDC should compile and lodge five (5) hard copies of all evidence on the first strategic topics to be heard. |

Timetable for evidence and conferencing on topic 2 (Rural landscapes)

[25] With a view to holding hearings on the appeals on topic 2 in the weeks of **1, 8 and 15 April 2019** in Queenstown, we suggest a timetable as follows (subject to any orders as to alternative dispute resolution and any jurisdictional issues):



5 October 2018	evidence-in-chief for Queenstown Lakes District Council;
2 November 2018	evidence-in-chief for the appellants;
9 November 2018	evidence-in-chief for s 274 parties supporting appellants;
30 November 2018	evidence-in-chief for s 274 parties opposing appellants;
10 Dec to 5 Feb 2019	expert conferencing to take place;
8 February 2019	Joint Witness Statements to be lodged by the relevant experts;
15 February 2019	rebuttal evidence for appellants and supporting s 274 parties;
8 March 2019	rebuttal evidence for QLDC together with a memorandum;
15 March 2019	rebuttal evidence for s 274 parties supporting the QLDC;
22 March 2019	the QLDC should compile and lodge 5 hard copies of all evidence.

[26] Where any party (appellant, QLDC, or s 274 party) has given an electronic address for service then we suggest a direction that service of evidence may be carried out electronically unless the party being served has given prior notice to all other parties to the relevant appeals (on the relevant topic) that it expects hard copies of the evidence.

[27] The parties should note that delays in hearing topic 1 (if the timetable suggested above is not actually set) do not necessarily mean that the timetable and hearing dates for topic 2 will be deferred also.

[28] The parties should note that the Principal Environment Judge has directed that in view of their importance, the appeals on topics 1 and 2 be heard by a larger than normal Environment Court comprising two Judges and two Commissioners. This means that in addition to electronic lodgement of the evidence, five (5) hard copies of all evidence will need to be lodged with the QLDC at the time of service.

[29] Decisions are likely to be issued in sequence. They may include interim decisions.

Other hearings

[30] Timetables for mediation of other topics will be set after receipt of the Council's reporting memorandum.

[31] Subsequent chapters from 7 to 26 of the ODP may be able to be heard by separate divisions of the court, for example:



- Chapter 12 Queenstown Town Centre
- Chapter 13 Wanaka Town Centre
- Chapter 28 Natural Hazards.

[32] Arguments over specific definitions (Chapter 2 of the ODP) will be considered when they first become relevant.

Directions

Waivers

[33] Under section 281 RMA the court:

- (1) grants the application for leave to file an amended notice of appeal for RCL Henley Downs & Others (ENV-2018-CHC-102) and directs that their notice of appeal be replaced with the 10 July 2018 version;
- (2) waives late lodgement of two appeals by Lake McKay Station Ltd & Boyd, Redai & others; and
- (3) extends the period for joining the appeals in (1) and (2) above under section 274 RMA to **27 July 2018**;
- (4) the date for the Council to lodge its full analysis of the appeals is extended to **24 August 2018** (giving more time than sought in view of other commitments imposed below).

Topics 1, 2 (and 3)

[34] The court directs that:

- (1) any appellant who is not listed in one of Schedules A to C, which relate to topics 1 to 3 respectively, and who thinks they should be, must advise the Registrar and the parties to that appeal **within 10 working days** of receipt of this Minute;
- (2) applications for:
 - (a) strikeout of any part of any appeal on topics (1) and (2) on grounds of lack of jurisdiction; and/or



- (b) further particulars of the relief sought in any notice of appeal in respect of topics (1) and (2)
- must be lodged and served by **3 August 2018**.
- (3) in relation to topics 1 and 2 any application for directions as to alternative case management, mediation, timetabling of service of evidence, or hearing of these strategic topics must be lodged and served by **10 August 2018** (or such further time as the court allows).


All other topics

- (1) In relation to all other topics, once these have been confirmed / identified by the Council, applications for:
- (a) strikeout of any part of any appeal on grounds of lack of jurisdiction; and/or
 - (b) further particulars of the relief sought
- should be lodged and served by **2 November 2018**.
- (2) procedural applications in respect of all other topics must be lodged by **16 November 2018**.

Leave required

[35] Leave is reserved to any party to apply for further directions in respect of any of the appeals.

For the court



J R Jackson
Environment Judge





J J M Hassan
Environment Judge

Issued: **17 JUL 2018**

List of Appellants

ENV-2018-CHC-053	Federated Farmers of NZ
ENV-2018-CHC-054	Gibbston Valley Station Limited
ENV-2018-CHC-055	Hawthenden Limited
ENV-2018-CHC-056	Upper Clutha Environmental Society Incorporated
ENV-2018-CHC-057	Clive Wood
ENV-2018-CHC-058	Ritchie Kerr Trust
ENV-2018-CHC-060	Brett Giddens
ENV-2018-CHC-061	Schranz
ENV-2018-CHC-062	Jeremy Bell Investments Limited
ENV-2018-CHC-063	Jeremy Bell Investments Limited
ENV-2018-CHC-064	Varina Pty Limited
ENV-2018-CHC-065	Clark Fortune McDonald and Associates
ENV-2018-CHC-066	Matakauri Lodge Limited
ENV-2018-CHC-067	Arthurs Point Protection Society
ENV-2018-CHC-068	Loch Linnhe Station
ENV-2018-CHC-069	Beresford
ENV-2018-CHC-070	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-071	van Brandenburg
ENV-2018-CHC-072	Kipke
ENV-2018-CHC-073	Southern District Health Board
ENV-2018-CHC-074	Wild Grass Investments No 1. Limited & others
ENV-2018-CHC-075	Jade Lake Queenstown Limited
ENV-2018-CHC-076	Arthurs Point Trustee Limited as trustee of the Arthurs Point Land Trust
ENV-2018-CHC-077	P D Gordon Family Trust
ENV-2018-CHC-078	Department of Conservation
ENV-2018-CHC-079	Otago Regional Council
ENV-2018-CHC-080	Grant
ENV-2018-CHC-081	Grant
ENV-2018-CHC-082	Kawarau Jet Services Holdings Limited
ENV-2018-CHC-083	Mt Cardrona Station Limited
ENV-2018-CHC-084	FII Holdings Limited
ENV-2018-CHC-085	Ngai Tahu Justice Holdings Limited & others
ENV-2018-CHC-086	Streat Developments Limited
ENV-2018-CHC-087	House Movers Section of the New Zealand
ENV-2018-CHC-088	Orchard Road Holdings Limited
ENV-2018-CHC-089	Macfarlane Investments Limited
ENV-2018-CHC-090	Remarkables Station Limited & others
ENV-2018-CHC-091	Burdon
ENV-2018-CHC-092	Trojan Helmet
ENV-2018-CHC-093	Queenstown Airport
ENV-2018-CHC-094	The Middleton Family Trust & others
ENV-2018-CHC-095	Seven Albert Town Property Owners
ENV-2018-CHC-096	Fairfax & others
ENV-2018-CHC-097	Mount Crystal Limited
ENV-2018-CHC-098	Friends of Wakitipu Gardens
ENV-2018-CHC-099	Bill and Jan Walker Family Trust & others
ENV-2018-CHC-100	Peter Manthey
ENV-2018-CHC-101	Universal Developments Limited
ENV-2018-CHC-102	RCL Henley Downs & Others
ENV-2018-CHC-103	Mt Christina Limited
ENV-2018-CHC-104	Soho Ski Area / Blackmans Creek
ENV-2018-CHC-105	Wright
ENV-2018-CHC-106	Te Anau Developments
ENV-2018-CHC-107	Treble Cone Investments
ENV-2018-CHC-108	Aurora Energy Ltd
ENV-2018-CHC-109	Homestead Bay Trustees Limited
ENV-2018-CHC-110	Richter



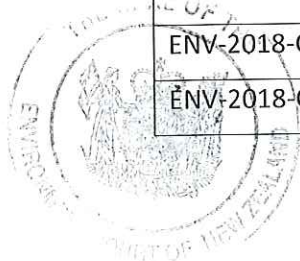
ENV-2018-CHC-111	Aspiring Lifestyle Retirement Investments Limited
ENV-2018-CHC-112	Queenstown Views Limited
ENV-2018-CHC-113	CSF Trustees Limited
ENV-2018-CHC-114	Transpower NZ Ltd
ENV-2018-CHC-115	Willowridge Developments Ltd
ENV-2018-CHC-116	Wei Heng Fong
ENV-2018-CHC-117	Cardrona Alpine Resort Limited
ENV-2018-CHC-118	Wakatipu Holdings Limited
ENV-2018-CHC-119	Halfway Bay Lands Limited
ENV-2018-CHC-120	Anderson Branch Creek Limited
ENV-2018-CHC-121	Tussock Rise Limited
ENV-2018-CHC-122	Trojan Holdings Limited
ENV-2018-CHC-123	Skyline Enterprises Limited
ENV-2018-CHC-124	Waterfall Park Developments Limited
ENV-2018-CHC-125	Kopuwai Investments Limited
ENV-2018-CHC-126	Remarkables Park Limited
ENV-2018-CHC-127	Queenstown Park Limited
ENV-2018-CHC-128	Well Smart Investment Holding (NZQN)
ENV-2018-CHC-129	Slopehill Properties Limited
ENV-2018-CHC-130	Private Property Limited
ENV-2018-CHC-131	Real Journeys Limited
ENV-2018-CHC-132	Aircraft Owners and Pilots Association
ENV-2018-CHC-133	Royal Forest and Bird
ENV-2018-CHC-134	Ngai Tahu Tourism Limited
ENV-2018-CHC-135	Republic Hospitality Group
ENV-2018-CHC-136	Burgess
ENV-2018-CHC-137	Coneburn Preserve Holdings & Others
ENV-2018-CHC-138	Real Journeys (go Journeys)
ENV-2018-CHC-139	Westwood Group Holdings Limited
ENV-2018-CHC-140	The Otago Foundation Trust Board and Wakatipu Community Presbyterian Church
ENV-2018-CHC-141	Glendhu Bay Trustees Limited
ENV-2018-CHC-142	Queenstown Wharves GP Limited
ENV-2018-CHC-143	Wyuna Preserve Residents Association
ENV-2018-CHC-144	James Wilson Cooper
ENV-2018-CHC-145	Glen Dene Limited
ENV-2018-CHC-146	Real Journeys Limited (trading as Canyon Food & Brew Company Ltd)
ENV-2018-CHC-147	Glen Dene Holdings Limited & Others
ENV-2018-CHC-148	Allenby Farms Limited
ENV-2018-CHC-149	Alps Investment Limited
ENV-2018-CHC-150	Darby Planning LP
ENV-2018-CHC-151	NZ Tungsten Mining
ENV-2018-CHC-152	Queenstown Airport Corporation Limited (designation)
ENV-2018-CHC-160	Lake McKay Station Limited
ENV-2018-CHC-163	Boyd, Redai & others



SCHEDULE: A

Topic: A resilient economy (S.O. 3.2.1 and 3.2.6)

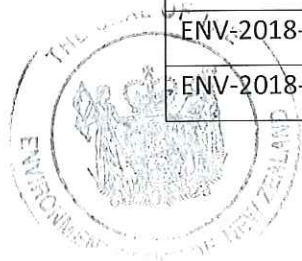
Appeal Number	Appellant
ENV-2018-CHC-056	Upper Clutha Environmental Society Incorporated
ENV-2018-CHC-065	Clark Fortune McDonald and Associates
ENV-2018-CHC-082	Kawarau Jet Services Holdings Ltd
ENV-2018-CHC-083	Mt Cardrona Station Ltd
ENV-2018-CHC-084	FII Holdings Ltd
ENV-2018-CHC-091	J and L Burdon
ENV-2018-CHC-092	Trojan Helmet Ltd
ENV-2018-CHC-093	Queenstown Airport Corporation Ltd
ENV-2018-CHC-098	Friends of Wakatipu Gardens and Reserves
ENV-2018-CHC-099	Bill and Jan Walker Family Trust
ENV-2018-CHC-101	Universal Developments Ltd
ENV-2018-CHC-103	Mt Christina Ltd
ENV-2018-CHC-104	Soho Ski Area Ltd / Blackmans Creek
ENV-2018-CHC-107	Treble Cone Investments Ltd
ENV-2018-CHC-108	Aurora Energy Ltd
ENV-2018-CHC-114	Transpower Ltd
ENV-2018-CHC-119	Halfway Bay Lands Ltd
ENV-2018-CHC-124	Waterfall Park Developments Ltd
ENV-2018-CHC-126	Remarkables Park Ltd
ENV-2018-CHC-127	Queenstown Park Ltd
ENV-2018-CHC-129	Slopehill Properties Ltd
ENV-2018-CHC-130	Private Property Ltd
ENV-2018-CHC-131	Real Journeys Ltd
ENV-2018-CHC-134	Ngāi Tahu Tourism Ltd
ENV-2018-CHC-136	M & C Burgess
ENV-2018-CHC-137	Coneburn Preserve Holdings Ltd
ENV-2018-CHC-138	Real Journeys (trading as Go Orange Ltd)
ENV-2018-CHC-146	Real Journeys (trading as Canyon Food and Brew Company)
ENV-2018-CHC-148	Allenby Farms Ltd
ENV-2018-CHC-150	Darby Planning Ltd



SCHEDULE: B

Topic: Rural Landscape (S.O. 3.2.1.7, 3.2.1.8, and 3.2.5 and Chapter 6)

Appeal Number	Appellant
ENV-2018-CHC-053	Federated Farmers of New Zealand Inc
ENV-2018-CHC-056	Upper Clutha Environmental Society Incorporated
ENV-2018-CHC-069	Beresford
ENV-2018-CHC-091	J and L Burdon
ENV-2018-CHC-092	Trojan Helmet Ltd
ENV-2018-CHC-093	Queenstown Airport Corporation Ltd
ENV-2018-CHC-095	Seven Albert Town Property Owners
ENV-2018-CHC-099	Bill and Jan Walker Family Trust
ENV-2018-CHC-103	Mt Christina Ltd
ENV-2018-CHC-104	Soho Ski Area Ltd / Blackmans Creek
ENV-2018-CHC-106	Te Anau Developments Ltd
ENV-2018-CHC-107	Treble Cone Investments Ltd
ENV-2018-CHC-108	Aurora Energy Ltd
ENV-2018-CHC-114	Transpower Ltd
ENV-2018-CHC-115	Willowridge Developments Ltd
ENV-2018-CHC-119	Halfway Bay Lands Ltd
ENV-2018-CHC-124	Waterfall Park Developments Ltd
ENV-2018-CHC-126	Remarkables Park Ltd
ENV-2018-CHC-127	Queenstown Park Ltd
ENV-2018-CHC-129	Slopehill Properties Ltd
ENV-2018-CHC-130	Private Property Ltd
ENV-2018-CHC-131	Real Journeys Ltd
ENV-2018-CHC-136	M & C Burgess
ENV-2018-CHC-137	Coneburn Preserve Holdings Ltd
ENV-2018-CHC-138	Real Journeys (trading as Go Orange Ltd)
ENV-2018-CHC-142	Queenstown Wharves GP Ltd
ENV-2018-CHC-146	Real Journeys (trading as Canyon Food and Brew Company)
ENV-2018-CHC-148	Allenby Farms Ltd
ENV-2018-CHC-150	Darby Planning Ltd
ENV-2018-CHC-151	New Zealand Tungsten Mining Ltd



SCHEDULE: C

Topic: Urban Development (S.O. 3.2.4 and Chapter 4)

Appeal Number	Appellant
ENV-2018-CHC-065	Clark Fortune McDonald and Associates
ENV-2018-CHC-084	FII Holdings Ltd
ENV-2018-CHC-086	Streat Developments Ltd
ENV-2018-CHC-092	Trojan Helmet Ltd
ENV-2018-CHC-093	Queenstown Airport Corporation Ltd
ENV-2018-CHC-098	Friends of Wakatipu Gardens
ENV-2018-CHC-099	Bill and Jan Walker Family Trust
ENV-2018-CHC-101	Universal Developments Ltd
ENV-2018-CHC-108	Aurora Energy Ltd
ENV-2018-CHC-114	Transpower New Zealand Ltd
ENV-2018-CHC-124	Waterfall Park Developments Ltd
ENV-2018-CHC-126	Remarkables Park Ltd
ENV-2018-CHC-127	Queenstown Park Ltd
ENV-2018-CHC-134	Ngai Tahu Tourism Ltd
ENV-2018-CHC-137	Coneburn Preserve Holdings & Others
ENV-2018-CHC-150	Darby Planning Ltd
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