

BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2021] NZEnvC 29

IN THE MATTER of the Resource Management Act 1991
AND of appeals under clause 14 of the First
Schedule of the Act
BETWEEN DARBY PLANNING LIMITED
PARTNERSHIP
(ENV-2018-CHC-150)
and all other appellants concerning Topic
1 of Stage 1 of the Proposed Queenstown
Lakes District Plan
(as set out in the Schedule attached)
Appellants
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner K A Edmonds
Environment Commissioner J T Baines

Hearing: In Chambers at Christchurch

Date of Decision: 12 March 2021

Date of Issue: 12 March 2021

DECISION OF THE ENVIRONMENT COURT
Topic 1: A Resilient Economy

A: Queenstown Lakes District Council is directed to amend the Chapter 3

QTN PLAN APPEALS – TOPIC 1



provisions of the Proposed Queenstown Lakes District Plan as confirmed by this court in the First Interim decision [2019] NZEnvC 133 (and as corrected by the erratum) and the three Strategic Objectives confirmed by the Second Interim decision [2020] NZEnvC 40 as set out in **Appendix 1** to this decision.

- B: Order A of decision [2020] NZEnvC 156 is cancelled and replaced with amended directions at [7].
- C: In relation to this decision, costs will lie where they fall.

REASONS

Introduction

[1] This decision concerns some outstanding directions in relation to Topic 1 in the sequential consideration of plan appeal points concerning the review of the Queenstown Lakes District Plan ('PDP').

[2] By memorandum of counsel dated 6 November 2020, QLDC¹ sought directions from the court to make changes to Ch 3 of the PDP as confirmed in the First² and Second³ Interim decisions. QLDC also sought amended directions in relation to the decision⁴ on the explanatory text to be inserted into the PDP. Regrettably, competing court commitments have delayed the capacity of the court to respond before now.

Background

[3] The First Interim decision confirmed a number of changes to Ch 3 provisions

¹ Queenstown Lakes District Council.

² [2019] NZEnvC 133; as corrected by erratum [2019] NZEnvC 142.

³ [2020] NZEnvC 40.

⁴ [2020] NZEnvC 156.

but withheld directions for QLDC to include the provisions in Ch 3 pending response to the court's directions.⁵

[4] The Second Interim decision reconfirmed those provisions determined in the First Interim decision and confirmed the inclusion of three new Strategic Objectives (SO 3.2.6.1, 3.2.6.2 and 3.2.6.3). That decision records⁶ that the court would not direct QLDC to provide a final set of provisions for inclusion in the plan at that time.

[5] QLDC now requests that the court issues final directions, requiring QLDC to include the Ch 3 provisions as set out in the two interim decisions. QLDC's memorandum attaches the relevant Ch 3 provisions ready for inclusion in the plan.⁷

[6] There is some related explanatory text in the operative District Plan's ("ODP") Chs 4, 5 and 6 of the PDP and Section 4. QLDC seeks some amendments to the court's directions concerning the insertion of new explanatory text. That is to:

- (a) add Ch 1 to a direction that the explanatory text be added; and
- (b) delay the change to Section 4 of the ODP until such time as QLDC makes the strategic chapters of the PDP operative. This second request is by reason that presently Section 4 remains relevant to resource consents, given the proposed status of the strategic chapters of the PDP.

Outcome

[7] We are satisfied it is now appropriate to direct QLDC to include the provisions confirmed by the First and Second Interim decisions in the PDP. In relation to the explanatory text directions, the amendments sought by QLDC are sensible and will accordingly be substituted. Therefore, QLDC is directed as follows:

⁵ First Interim decision at [194] and [200].

⁶ Second Interim decision at [35].

⁷ Memorandum of counsel for QLDC dated 6 November 2020, Appendix 1.

- (a) As soon as practicable:
- (i) make the amendments to Chapters 1, 4, 5 and 6 of the Proposed Queenstown Lakes District Plan as set out in **Appendix 2** to this decision;
 - (ii) amend Section 4 of the Operative Queenstown Lakes District Plan by inserting the following explanatory text by way of a new Introduction section:

Proposed District Plan Chapter 1 (Introduction) provides an explanation of the structure of the District Plan including the application of the strategic chapters of the District Plan applying across the Queenstown Lakes District, and the two-volume approach consisting of Volume A and Volume B.

The provisions in this Section 4, District wide issues, apply as follows:

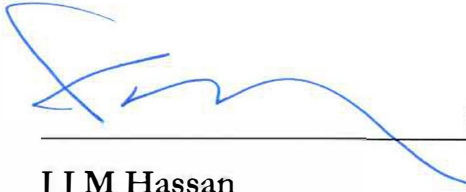
- *4.8 Natural Hazards, 4.8.3, Objective 1 and Policies 1.1 to 1.7 apply as a relevant district wide objective and policies to Volume B zones.*
- *4.10 Affordable and Community Housing, 4.10. 1, Objective 1 and Policies 1.1 to 1.3 apply as a relevant district wide objective and policies to Volume A and Volume B zones.*

- (b) at the time QLDC makes the strategic chapters of the PDP operative:
- (i) delete all remaining text from Section 4 of the ODP except for the objective and policies referred to in the bullet points in the new introductory text set out in (a)(ii) above; and
 - (ii) delete the word 'Proposed' from the introductory text⁸.

⁸ For clarity, because that word will not be appropriate at that stage given that PDP Chapter 1 will have been made operative (and replaced the ODP Chapter 1).

[8] Given the confined and consequential nature of the matters addressed herein, no order for costs will be made in relation to this decision.

For the court:



J J M Hassan
Environment Judge



SCHEDULE**List of Appellants**

ENV-2018-CHC-056	Upper Clutha Environmental Society Incorporated
ENV-2018-CHC-082	Kawarau Jet Services Holdings Limited
ENV-2018-CHC-084	FII Holdings Limited
ENV-2018-CHC-092	Trojan Helmet Limited
ENV-2018-CHC-093	Queenstown Airport Corporation Ltd
ENV-2018-CHC-098	Friends of the Wakatipu Gardens and Reserves and Associated Residents
ENV-2018-CHC-101	Universal Developments Limited
ENV-2018-CHC-106	Te Anau Developments Limited
ENV-2018-CHC-119	Halfway Bay Lands Limited
ENV-2018-CHC-124	Waterfall Park Developments Limited
ENV-2018-CHC-126	Remarkables Park Limited
ENV-2018-CHC-127	Queenstown Park Limited
ENV-2018-CHC-131	Real Journeys Limited
ENV-2018-CHC-137	Coneburn Preserve Holdings Limited & Others
ENV-2018-CHC-138	Real Journeys (trading as Go Orange Limited)
ENV-2018-CHC-146	Real Journeys Limited (trading as Canyon Food and Brew Company Limited)

Appendix 1

3.1 Purpose

This chapter sets out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities:

....

- b. clean air and pristine water;
- c. vibrant and compact town centres;
- d. compact and connected settlements that encourage public transport, biking and walking;
- e. diverse, resilient, inclusive and connected communities;
- f. a district providing a variety of lifestyle choices;
- g. an innovative and diversifying economy based around a strong visitor industry;
- h. a unique and distinctive heritage;
- i. distinctive Ngāi Tahu values, rights and interests;
- j.

3.1A Strategic Issues

The following issues need to be addressed to enable the retention of these special qualities. The following Strategic Issues are overarching. While not intended to be an exhaustive list or description of issues to be addressed in the District's pursuit of sustainable management, these Strategic Issues are identified as warranting to be addressed at the present time and during the lifetime of the Plan (and beyond) to enable the retention of the special qualities listed at a. – i. of 3.1 Purpose:

- a. Strategic Issue 1: Economic prosperity and equity, including strong and robust town centres, requires economic diversification to enable and the social and economic wellbeing and resilience of the District's of people and communities may be challenged if the District's economic base lacks diversification.
- ...
- c. Strategic Issue 3: High growth rates can challenge the qualities that people value in their communities.
- ...
- e. Strategic Issue 5: The design of developments and environments can either promote or weaken safety, health and social, economic and cultural wellbeing.
- f. Strategic Issue 6: Tangata Whenua status and values require recognition in the District Plan.

3.1B Interpretation and Application of this Chapter

- 3.1B.1 For the purpose of plan development, including plan changes, the Strategic Objectives and Strategic Policies in this Chapter provide direction for the development of the more detailed provisions contained elsewhere in the District Plan in relation to the Strategic Issues.
- 3.1B.4 For the purpose of plan implementation (including in the determination of resource consent applications and notices of requirement):
- a. the Strategic Objectives and Strategic Policies in this Chapter may provide guidance on what the related objectives and policies in other chapters of the Plan are seeking to achieve in relation to the Strategic Issues;
 - b. the relevant objectives and policies of the plan (including Strategic Objectives and Strategic Policies in this Chapter) are to be considered together and no fixed hierarchy exists between them.
- 3.1B.3 In this plan, the notation 'SO' means 'Strategic Objective'. The notation 'SP' means 'Strategic Policy'.
- 3.1B.4 The following relationships apply as between Strategic Objectives and Strategic Policies of this Chapter:
- a. Where it is intended that a Strategic Objective elaborates on another Strategic Objective, that is specified in italicised text in brackets immediately following the Strategic Objective that is elaborated on. Unless otherwise specified, where a Strategic Objective enumerated to three digits (e.g. 3.2.1) ('Three Digit Strategic Objective') is followed by one or more Strategic Objectives enumerated to four digits (e.g. 3.2.1.1, 3.2.1.2) ('Four Digit Strategic Objective'), those Four Digit Strategic Objectives elaborate on that Three Digit Strategic Objective;
 - b. Many Strategic Policies in Chapter 3 implement more than one Strategic Objective. This is reflected in how Strategic Policies are grouped. The relationship(s) intended between individual Strategic Policies and the relevant Strategic Objective(s) is specified in the italicised text in brackets following each such Strategic Policy.

~~This chapter sets out the District Plan's strategic Objectives and Policies addressing these issues. High level objectives are elaborated on by more detailed objectives. Where these more detailed objectives relate to more than one higher level objective, this is noted in brackets after the objective. Because many of the policies in Chapter 3 implement more than one objective, they are grouped, and the relationship between individual policies and the relevant strategic objective(s) identified in brackets following each policy. The objectives and policies in this chapter are further elaborated on in Chapters 4 – 6. The principal role of Chapters 3 – 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan. In addition, they also provide guidance on what those more detailed provisions are seeking to achieve and are accordingly relevant to decisions made in the implementation of the Plan.~~

3.2 Strategic Objectives

3.2.1 The development of a prosperous, resilient and equitable economy in the District. (addresses Issue 1)

3.2.1.1 The significant socioeconomic benefits of well designed and appropriately located visitor industry places, facilities and services are realised across the District.

3.2.1.2 The Queenstown and Wanaka town centres¹ are the hubs of New Zealand's premier alpine visitor resorts and the District's economy.

3.2.1.3 The Frankton urban area (including the Remarkables Park mixed use centre) functions primarily as a major commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin.

3.2.1.4 The key function of the commercial core of Three Parks is focused on large format retail development.

3.2.1.5 Local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres², Frankton and Three Parks, are sustained.

3.2.1.6 Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.

...

3.2.6 The District's residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety. (addresses Issues 1 and 6).

3.2.6.1 The accessibility needs of the District's residents and communities to places, services and facilities are met.

3.2.6.2 A diverse, resilient and well-functioning community where opportunities for arts, culture, recreation and events are integrated into the built and natural environment.

3.2.6.3 The contribution that community social, recreational and cultural facilities and activities make to identity and sense of place for residents of the District is recognised and provided for through appropriate location and sound design.

¹ Defined by the extent of the Town Centre Zone in each case.

² Defined by the extent of the Town Centre Zone in each case.

3.3 Strategic Policies ~~Visitor Industry~~

Visitor Industry

- 3.3.1 Make provision for the visitor industry to maintain and enhance attractions, facilities and services within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone. (relevant to S.O. 3.2.1.1 and 3.2.1.2).

Town Centres and other Commercial and Industrial Areas

- 3.3.2 Provide a planning framework for the Queenstown and Wanaka town centres that enables quality development and enhancement of the centres as the key commercial, civic and cultural hubs of the District, building on their existing functions and strengths. (relevant to S.O. 3.2.1.2).
- 3.3.3 Avoid new commercial zoning of land that is likely to ~~could~~ undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity. (relevant to S.O. 3.2.1.2).
- 3.3.4 Provide a planning framework for the Frankton urban area that facilitates the integration of the various development nodes. (relevant to S.O. 3.2.1.3).
- 3.3.5 Recognise that Queenstown Airport makes an important contribution to the prosperity and resilience of the District. (relevant to S.O. 3.2.1.3).
- 3.3.6 Avoid additional commercial zoning that ~~will~~ is likely to undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine increasing integration between those areas and the industrial and residential areas of Frankton. (relevant to S.O. 3.2.1.3).
- 3.3.7 Provide a planning framework for the commercial core of Three Parks that enables large format retail development. (relevant to S.O. 3.2.1.4).
- 3.3.8 Avoid non-industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities. (relevant to S.O. 3.2.1.3 and 3.2.1.5).
- 3.3.9 Support the role township commercial precincts and local shopping centres fulfil in serving local needs by enabling commercial development that is appropriately sized for that purpose. (relevant to S.O. 3.2.1.5).
- 3.3.10 Avoid commercial rezoning that ~~would~~ is likely to undermine the key local service and employment function role that the centres outside of the Queenstown and Wanaka town centres, Frankton and Three Parks fulfil. (relevant to S.O. 3.2.1.5).
- 3.3.11 Provide for a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification. (relevant to S.O. 3.2.1.1, 3.2.1.2, 3.2.1.5, 3.2.1.6 and 3.2.1.9).

Climate Change

- 3.3.12 Encourage economic activity to adapt to and recognise opportunities and risks associated with climate change.

Appendix 2

Chapter 1 of the Proposed Queenstown Lakes District Plan is to be amended by inserting the following explanatory text after the Purpose section in Chapter 1:

1.1B Structure of the District Plan

The Council has undertaken the review of the 2007 District Plan by way of a series of plan changes (referred to as a Proposed District Plan), notified in a series of stages from August 2015.

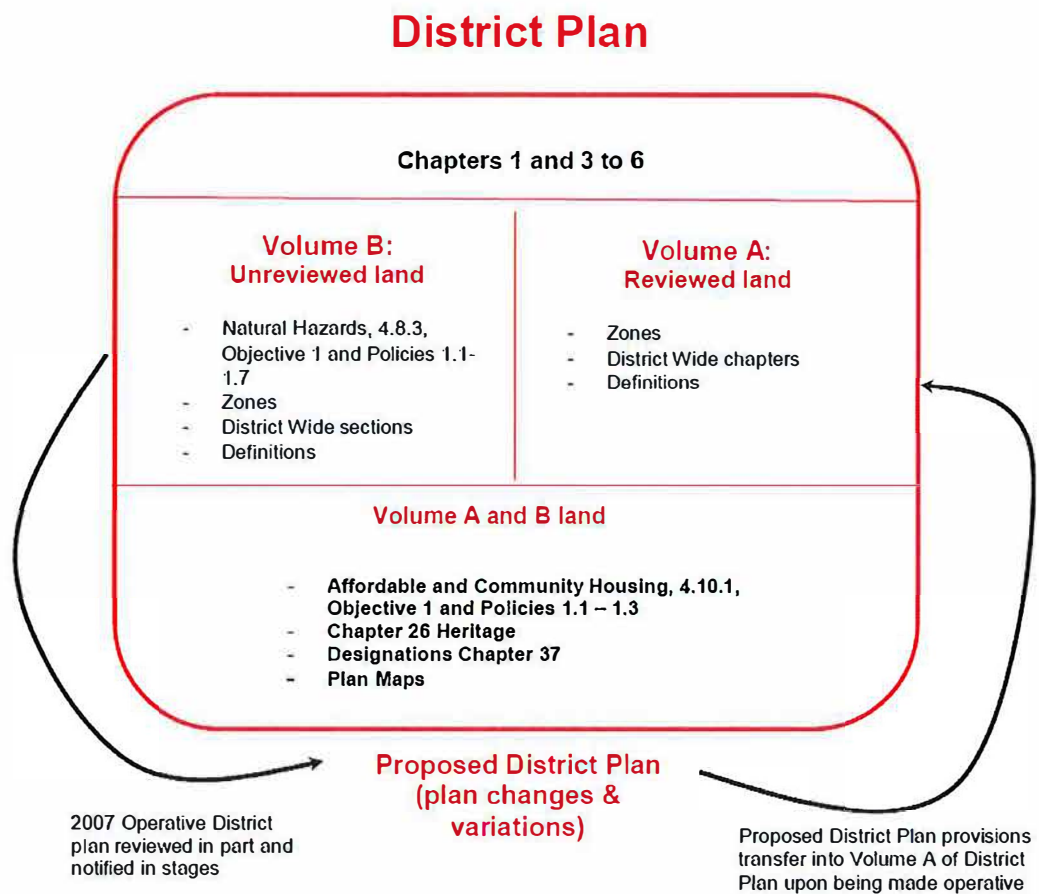
The District Plan consists of two volumes, separated by geographic area, and these areas are categorised by way of separate zones that fall into one of Volume A or Volume B. Volume A is the land that has been reviewed (for convenience referred to as the proposed district plan, until such time it is made operative), while Volume B contains land that to date has not been reviewed.

The relationship between the two volumes is as follows:

- a. *Chapter 3 provides overarching strategic direction for the Queenstown Lakes District. The Chapter 3 strategic objectives and policies are further elaborated on in Chapters 4 and 5 that provide more detailed objectives and policies for urban development and tangata whenua. Chapter 6 provides more detailed policies for landscapes and rural character. Chapters 3, 4, 5 and 6 apply district wide over Volume A and Volume B land except to the extent that either Chapter 3 or Chapter 6 specifies exclusions or qualifications to that application. The principal role of Chapters 3 – 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan.*
- b. *Volume A consists of the zone and district wide chapters notified as plan changes (referred to as the proposed district plan), that have worked their way through the RMA Schedule 1 process and been made operative pursuant to Clause 17 of Schedule 1 of the RMA.*
- c. *Volume B of the District Plan consists of the zone chapters, or specific areas not yet reviewed or notified as the Proposed District Plan, and all relevant parts of the 2007 District Plan district wide chapters that need to remain to regulate district wide issues as they relate specifically to those Volume B provisions.*
- d. *Chapters 3, 4, 5 and 6 have encompassed the 2007 District Plan Section 4 (District Wide Issues) with the exception of the following two objectives:*
 - *Natural Hazards Objective 4.8.3(1) and Policies 1.1 to 1.7 (Section 4.8), which still applies as a relevant district wide objective to Volume B zones.*

- *Affordable and Community Housing Objective 1 and Policies 1.1 – 1.3 (Section 4.10), which still applies to both Volume A and B zones.*
- e. *There is one designations chapter in the District Plan.*
- f. *The Volume A Heritage Chapter 26 includes listed heritage items. Some of these are located over Volume B land, and therefore Volume A District Wide Chapter 26 applies over Volume B land.*
- g. *The plan maps show both Volume A and Volume B land.*

The following diagram shows the Queenstown Lakes District Plan and the relationship between Volume A and Volume B.



Chapter 4 of the Proposed Queenstown Lakes District Plan is to be amended by inserting the following explanatory text under a new heading "Application of this Chapter", following Section 4.1 (Purpose):

4.1.2 Application of this Chapter

Chapter 1 (Introduction) provides an explanation of the structure of the District Plan including the application of the strategic chapters of the District Plan applying across the

Queenstown Lakes District, and the two-volume approach consisting of Volume A and Volume B.

Chapter 3 provides overarching strategic direction for the Queenstown Lakes District. The Chapter 3 strategic objectives and policies are further elaborated on in Chapter 4, which provides more detailed objectives and policies for urban development. Chapter 4 applies district wide over Volume A and Volume B land. The principal role of Chapters 3 to 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan.

Chapter 5 of the Proposed Queenstown Lakes District Plan is to be amended by inserting the following explanatory text under a new heading "Application of this Chapter", following Section 5.1 (Purpose):

5.1.2 Application of this Chapter

Chapter 1 (Introduction) provides an explanation of the structure of the District Plan including the application of the strategic chapters of the District Plan applying across the Queenstown Lakes District, and the two-volume approach consisting of Volume A and Volume B.

Chapter 3 provides overarching strategic direction for the Queenstown Lakes District. The Chapter 3 strategic objectives and policies are further elaborated on in Chapter 5, which provides more detailed objectives and policies for tangata whenua. Chapter 5 applies district wide over Volume A and Volume B land. The principal role of Chapters 3 to 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan.

Chapter 6 of the Proposed Queenstown Lakes District Plan is to be amended by inserting the following explanatory text under a new heading "Application of this Chapter", following Section 6.1 (Purpose):

6.1.2 Application of this Chapter

Chapter 1 (Introduction) provides an explanation of the structure of the District Plan including the application of the strategic chapters of the District Plan applying across the Queenstown Lakes District, and the two-volume approach consisting of Volume A and Volume B.

Chapter 3 provides overarching strategic direction for the Queenstown Lakes District. The Chapter 3 strategic objectives and policies are further elaborated on in Chapter 6, which provides more detailed policies for landscapes and rural character. Chapter 6 applies

district wide over Volume A and Volume B land, with the application of location specific policies as set out in the chapter. The principal role of Chapters 3 to 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan.

