

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of the Queenstown Lakes
Proposed District Plan

MINUTE CONCERNING ANNOTATIONS ON MAPS

1. This Minute concerns the approach the Hearing Panel is taking to several notations and annotations shown on the Plan Maps. We are issuing this as it appears the Council has a different understanding of the effect of the maps from the Panel and we consider it will be helpful to make clear our views at this stage.
2. The Council, through counsel, have filed a memorandum (dated 6 June 2017) in the context of Hearing Stream 13 (Queenstown Mapping) setting out its position as to the effect of the following annotations on the Plan Maps: Outstanding Natural Landscape (ONL), Outstanding Natural Feature (ONF), Urban Growth Boundary (UGB), Air Noise Boundary (ANB) and Outer Control Boundary (OCB).
3. We understand the Council's position to be that where any of those five annotations (which are all shown as lines) are shown over land which is shown on the Plan Maps as having an operative zoning, the relevant line is to be considered part of the PDP and could have been subject to submission. We understand the Council to hold the same view in respect of land which, although notified as part of the PDP, has subsequently been withdrawn from the PDP.
4. We are not convinced that is the case and are concerned that the approach taken by the Council may deprive people of the right to be heard, when the Plan as notified may have led those people reasonably to the view that they did not have the need or ability to lodge submissions on matters affecting their land as part of the Stage 1 PDP process. In coming to this view, we rely on the words of the PDP as notified and the public notice of the PDP Stage 1 (published in August 2015).
5. The public notice opened with the following paragraphs:

The Council has completed the first stage of the District Plan review and is now notifying the Proposed Queenstown Lakes District Plan (Stage 1) for public submission pursuant to Schedule 1 Clause 5 of the RMA .

There are many differences between the current Operative District Plan and the Proposed District Plan. The Proposed District Plan affects all properties in the District and may affect

what you and your neighbours can do with your properties. You should take a look to see what it means for you.

6. We note that the second paragraph advises that the “Proposed District Plan” affects all properties, and the first paragraph advises that Stage 1 of the “Proposed Queenstown Lakes District Plan” is being notified. In our view, this means that while the entire Proposed District Plan affects all properties, this is Stage 1 and, by inference, other stages will follow.
7. There is nothing in the public notice to suggest that ONL, ONF, UGB, ANB or OCB lines will affect land which is not in Stage 1.
8. As notified, Chapter 1 of the PDP contained, in Section 1.6, an outline of how to use the plan. The relevant provisions are:
 - 1.6.2 *The key to using the Plan is to start with the maps. Firstly, identify the **site** to which any development relates. Zone information will be shown, as well as any other resources or restrictions.*
 - 1.6.3 *Secondly, refer to the relevant Chapter for the zone provisions (objectives, policies and rules) or District Wide Matters. Development may breach several rules across more than one Chapter and all will need to be addressed. [Emphasis added]*
9. Turning to the Maps, the Council chose to show the operative zone notation on land which was not included in Stage 1 of the PDP, but this did not have the effect that sites were brought within the purview of the PDP First Schedule process. This is made clear in the note on the Legend and User Information page¹ under the heading “Operative Plan”:

*Note: Operative zones are shown across **sites** that are not being reviewed in Stage 1 of the District Plan Review, or where the Zone has been specifically reserved for review in Stage 2. [Emphasis added]*
10. The unambiguous meaning of this text is that, where a site is shown with an operative zoning, that site is not within Stage 1 of the PDP. Thus, a person alerted by the public notice to the PDP Stage 1, having read the quoted provisions from Chapter 1, turning to the maps and finding an operative zone shown on their land, would be fully entitled to conclude, given the note above the notations for operative zones, that Stage 1 did not affect their land.

¹ As notified, and also in the version issued after minor corrections were made to the PDP

11. Additionally, on the same page, Note 2 of the right-hand side of the page reads:

2 Plan Changes

*Land that is subject to a current Plan Change is **not** part of the District Plan Review and has been included **for information purposes only**. The zonings of the Operative District Plan apply to these areas, and Operative zones are shown in the legend where relevant. [Emphasis added]*

12. In this respect, we note by way of example that Map 18 shows the area of Plan Change 45 outlined in blue dashed lines, with part shown as *Rural General (Operative)* and part as *Rural Residential (Operative)*. We note that, notwithstanding the text quoted above, within the area shown as Rural General (Operative) there is a Landscape Classification line delineating (in part) the ONF of the Clutha River.
13. We note also, as raised previously with counsel for the Council, that the ANB and the OCB are shown as Operative Plan provisions (in both the notified version of the Plan Maps and the updated version). Thus, any person reading the PDP as notified would not expect the ANB or OCB to be in issue in the Stage 1 PDP process unless a submission sought that new lines be added to the PDP maps. We note in this regard that a submission has sought the ANB and OCB be shown on the Plan Maps², but we cannot see how that submission can confer jurisdiction to add lines on land that was never part of Stage of the PDP process (or which has subsequently been withdrawn from Stage 1), for the same reasons that a submission seeking to rezone such land would be 'out of scope'.
14. In counsel's opening legal submissions for the Council, the staging of the Review was outlined in a table³. This contained a footnote to the heading District Wide Matters which read as follows:
- The District-wide chapters cover all of the District, not just the geographic area covered by the notified Stage 1 zones. The only exception to this is that they do not cover the geographic area covered by PC50, given the Council's withdrawal of all provisions as they relate to the geographic area addressed by Plan Change 50 – Queenstown Town Centre Zone.*
15. The first sentence of this footnote appears to us to be at variance with the wording of the PDP itself.

² Submission 433
³ Table 1, page 8

16. On 23 November 2016 counsel filed a memorandum on behalf of the Council to update us on the approach being taken by the Council to the staging of the PDP. We were advised that the PDP would continue to be progressed in stages, but that a “Two Volume” approach was being taken to the District Plan. Volume A would comprise the areas notified in either Stages 1 or 2 of the PDP; and Volume B would comprise the ODP as it relates to geographic areas that are excluded from the partial review.⁴
17. This memorandum was the first to suggest that Chapters 1, 3, 4, 5 and 6 would apply across all parts of the District Plan, whether in Stages 1 or 2, or Volume B⁵. The memorandum suggested this was intended through notification of Stage 1⁶. The memorandum continued, in paragraph 15, to expand on this theme and concluded that a note was required to make this intent clear. The memorandum suggested such a note fell within the change of minor effect category under Clause 16(2) of the First Schedule to the Act.
18. The memorandum then set out a list of geographic areas that had been excluded from the Review, and would consequently form Volume B of the District Plan⁷. This list included the Remarkables Park Zone.
19. Counsel’s subsequent memorandum dated 6 June 2017 appears to link the application of ONL, ONF, UGB, ANB and OCB lines to zones not part of Stage 1 by stating that such lines have their genesis in Chapters 3, 4 or 6, along with the fact that they were shown on the Plan Maps as notified.
20. Our interpretation of the application of the various components of the PDP, relying on the public notice and the contents of Stage 1 of the PDP, as notified, is as follows:
- a) Chapters 1-6 inclusive, 26-28 inclusive, 30, 32-37 inclusive apply across all parts of the District covered by the PDP zones notified to date. We base this not just on the text in the PDP, but also having regard to the practical application of District Plan provisions. If a person applies for a resource consent in a zone which has not been notified as part of Stage 1, then only the ODP provisions can apply to that application.
 - b) Where the PDP Plan Maps show ODP zone notations, we should treat those as outside the PDP. It is illogical to suggest that the applicable zoning is in

⁴ Memorandum of Counsel for Queenstown Lakes District Council Regarding Approach to Stage 1 and Stage 2, paragraphs 7.2 and 7.3

⁵ Ibid, paragraph 7.1

⁶ Ibid, paragraph 11

⁷ Ibid, paragraph 19.1

the ODP but some other rule from the PDP applies. This is particularly the case with the ANB and OCB which are the subject of Plan Change 35 to the ODP. The resolution of that Plan Change will determine the location of those lines in the ODP. In our view, when the Council notifies a PDP zone for such land, it should notify all the applicable controls for that land (i.e. ONL, ONF, UGB, ANB, OCB) at the same time, if applicable.

- c) If Chapters 3, 4, 5 and 6 are to apply to Volume B of the District Plan, we would expect a plan change to that volume to give effect to that. Such a plan change could resolve any inconsistencies between Chapter 4 of the ODP and these three chapters.

21. We are concerned that the apparent change of stance by the Council may be creating circumstances where people who thought at notification that they were not within Stage 1 of the Review, now find that they are affected but unable to be heard. Also, the Council, having resolved to withdraw land/geographic areas from the PDP, is now suggesting that land is in for some purposes, but not for others.
22. We do accept that the opportunity to submit on Chapters 1, 3, 4, 5 and 6 has passed, but are also satisfied that submissions were lodged on those chapters on the basis that they would, in some instances, apply once the submitter's land was brought within the PDP. We also accept that designations fall into a different category due to the effect of s.175(2).
23. We consider that the presence of a policy providing the basis for an ONL, ONF, UGB, ANB, OCB line on the maps does not in itself mean that the line is applied when the land has not been zoned in the PDP, or, to use the terminology of the PDP, where the sites have not been reviewed in Stage 1. We would expect that as sites were brought into the PDP, if such lines are to apply to a site, they would be applied at that stage. We are of the view that only by following such a process can the Council ensure it is not disadvantaging potential submitters.
24. In our view, the appropriate way for the Council to resolve this issue would be for it to obtain a declaration from the Environment Court on the question as to what was actually notified as Stage 1 of the PDP and how that may apply to provisions notified as part of Stage 1 in relation to those geographic areas withdrawn from the Review. If a declaration were to be sought, the Panel would appreciate the opportunity to contribute to framing the question(s) to be asked. We also consider that the issue is such that the Environment Court should have both positions put to it, whether by *amicus curiae* or some other party.

25. In the absence of an Environment Court declaration, the stance the Hearing Panel will take is to not hear submissions or evidence from the Council or submitters in relation to notations on the maps applied to operative zones and those geographic areas withdrawn by resolution of the Council from Stage 1 or the Review in total.

26. In addition, when we make our recommendations to the Council on submissions, we will accompany those with Plan Maps which show only the zones within Stage 1 of the PDP, including other notations applying to land within those zones. We will recommend that the Council not show ODP zonings or other notations over ODP-zoned land on the Plan Maps.

For the Hearing Panel



Denis Nugent (Chair)

12 June 2017