IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV-2019-425-108
[2021] NZHC 147

BETWEEN	GERTRUDE'S SADDLERY LIMITED Appellant
AND	ARTHURS POINT OUTSTANDING NATURAL LANDSCAPE SOCIETY INCORPORATED Respondent

CIV-2019-425-109

BETWEEN	QUEENSTOWN LAKES DISTRICT COUNCIL Appellant
AND	ARTHURS POINT OUTSTANDING NATURAL LANDSCAPE SOCIETY INCORPORATED Respondent

CIV-2019-425-110

BETWEEN	LARCHMONT DEVELOPMENTS LIMITED Appellant
AND	ARTHURS POINT OUTSTANDING NATURAL LANDSCAPE SOCIETY INCORPORATED Respondent

Hearing: 29-30 July 2020

Appearances: M E Casey QC, M A Baker-Galloway and R M Giles for Gertrude Saddlery Ltd and Larchmont Developments Ltd
M G Wakefield and K L Hockly for Queenstown Lakes District Council
P A Steven QC and E L Keeble for Arthurs Point Outstanding Natural Landscape Society Inc

Judgment: 12 February 2021

JUDGMENT OF CLARK J

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Definitions

Abbreviation	Definition
First procedural decision	*Arthurs Point Trustee Ltd as Trustee of the Arthurs Point Land Trust v Queenstown Lakes District Council*
Second procedural decision	*Upper Clutha Environmental Society Inc v Queenstown Lakes District Council*
Third procedural decision	*Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council*
Fourth procedural decision	*Upper Clutha Environmental Society Inc v Queenstown Lakes District Council*
LDR	Low Density Residential
Map 13 and Map 39	The maps included with PC1(N)
ONF	Outstanding Natural Feature
ONL	Outstanding Natural Landscape
ONL(B)	Line that delineates the ONL boundary
PC1	Stage 1 of proposed district plan
PC1(N)	Public notification of PC1
QLDC	Queenstown Lakes District Council
SDR	Summary of decisions requested
Shotover Loop	The Atley Road land owned by GSL and Larchmont at the southern end of Arthurs Point.
UCESI	Upper Clutha Environmental Society Inc
UGB	Urban Growth Boundary
UGB	Urban Growth Boundary

Introduction

[1] Arthurs Point sits within the Wakatipu Basin and borders the Shotover River. Since 2014 when the Queenstown Lakes District Council resolved to review parts of its operative district plan Arthurs Point, specifically an area called the Shotover Loop, has been the subject of complex litigation. In essence the overarching dispute concerns the future of the Shotover Loop, and whether it should be a site of urban growth and development or remain within the outstanding natural landscape.

[2] This judgment determines three appeals from a decision of the Environment Court.[1]

[3] Broadly speaking, the decision under appeal concerned the mapping of lines to identify outstanding natural landscapes and their boundaries and whether or not the Queenstown Lakes District Council had followed a fair process in its treatment of the Arthurs Point area during its proposed plan change processes. Contending non-compliance with certain requirements of sch1 of the Resource Management Act 1991 (RMA), Arthurs Point Outstanding Natural Landscape Society Inc (the Society) applied under s 314(1)(f) of the RMA for an enforcement order requiring the Council to comply with its statutory obligations (s 314 application).

[4] Judge Jackson, sitting alone, found there were serious problems with the planning maps because they did not show the outstanding landscape boundary. The upshot was that the proposed plan change was ambiguous. The Judge also found that the Council did not comply with cl 7 of sch 1 to the RMA in that the Council notified a summary of decisions requested (SDR) that was unfair and misleading.

[5] The Judge ordered the Council to re-notify a summary of the decisions requested by Gertrude's Saddlery Ltd (GSL) and Larchmont Developments Ltd (Larchmont).

[6] Notices of appeal were filed by the three appellants: GSL, the Council and Larchmont. The named respondent, the Society, filed notices of intention to be heard in relation to all three appeals. In turn, each of the three appellants filed notices of intention to appear and be heard on the appeals they had not themselves filed.

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1 *Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 150 [Decision under appeal].

Background

Factual overview

[7] In April 2014 the Queenstown Lakes District Council (the Council) resolved to review parts of its operative district plan under s 79(1) of the RMA.[2]

[8] In August 2015 stage 1 of the proposed district plan was publicly notified. The public notification included the following statements:

- The Council had completed the first stage of the district plan review and was notifying the proposed Queenstown Lakes plan for public submission.

- There were many differences between the current operative district plan and the proposed plan. The proposed plan affected all properties in the district and "may affect what you and your neighbours can do with your properties".

- Key substantive changes included a landscape chapter setting out how development affecting the District's "valued landscapes" would be managed including the mapping of lines that identified outstanding natural landscapes (ONLs) and outstanding natural features (ONFs).

[9] As Judge Jackson observed, mapping lines that identified outstanding natural landscapes and features were properly identified by the Council as a "key substantive change": it was well established that recognition of outstanding natural landscapes — and therefore of their boundaries — must occur early in the plan review process.[3] The public notification also advised a closing date for submissions of 23 October 2015 and that after that date the Council would prepare a SDR and publicly notify the availability of the SDR and where it and full submissions could be inspected.

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2 Under s 79(1) of the RMA a local authority must commence a review of a provision of a district plan if the provision has not been the subject of a review during the previous 10 years.

3 Decision under appeal, above n 1, at [5] citing *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* [2000] NZRMA 59 (NZEnvC) at [56]; and *Man O'War Station Ltd v Auckland Council* [2017] NZCA 24, (2017) 19 ERLNZ 662.

[10] Larchmont and GSL made submissions. Both parties sought low density residential zoning (LDR) for their land and for the urban growth boundary (UGB) to be extended.[4] The Council proceeded to consider and summarise the submissions received and on 3 December 2015 publicly notified the SDR and advertised its availability including in local media. The Council's evidence was that 1,206 submissions were received on the stage 1 plan from 838 submitters. In the process of summarising the submissions, 18,734 separate submission points were identified and captured using a data base that produced spreadsheets itemising the individual submission points. The SDR document itself was some 1,950 pages.

[11] The attachment to this judgment reproduces the decisions sought by GSL and Larchmont and the Council's summary of those decisions requested.

[12] Between July and September 2017 a panel of independent Commissioners heard submissions on the proposed district plan. In April 2018 they produced a report and recommendations. In relation to Arthurs Point it had come to the Commissioners' attention during the hearing that "the LDR and RV-AP zones at Arthurs Point were embedded within the outstanding natural landscape" yet on the notified planning maps there was no ONL line around the perimeter of the Arthurs Point settlement.[5]

[13] The Commissioners noted the advice from a Council official that the absence of an ONL line was not a 'mapping error'. An ONL line was not drawn around the low-density residential zone at Arthurs Point because it was not needed. Ultimately, and despite no express submission calling for it, the Commissioners considered an ONL line was required at Arthurs Point to ensure efficient and effective planning. They considered a defined ONL line would provide greater certainty when making decisions on rezoning requests and resource consents. The Commissioners recommended an ONL boundary be defined around Arthurs Point to exclude the low density residential and RV-AP zones from the wider ONL and that the ONL boundary

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4 The submission attributed to GSL was in fact made by Michael Swan. In June 2017, and in accordance with s 2A of the Resource Management Act, counsel advised that from that point GSL should be recorded as the successor for the purpose of pursuing the relief set out in Mr Swan's submission and more generally in respect of the district plan review process.

5 Queenstown Lakes District Council *Report 17-1*: *Report and Recommendations of Independent Commissioners regarding Queenstown (other than Wakatipu Basin) Planning Maps*, April 2018 at [108].

be aligned with the urban growth boundary as shown on a map renamed as planning map 39a.[6]

[14] The effect of the Commissioners' decision was that the whole of the Arthurs Point urban area and some additional rural land were excluded from the ONL and the additional land rezoned and included within the urban growth boundary as LDR.[7] Broadly speaking, the site had been rezoned to allow for the development of the land owned by GSL and Larchmont.

[15] A member of the Society found out in a social setting about the proposed development of this land and subsequently made inquiries of the Council's planners. By this time the date for making submissions on the proposed plan was long past.

Litigation overview

[16] The Society whose 124 members are, for the most part, owners of land at Arthurs Point, and whose main purpose is to "pursue and protect the landscape values generally and in particular within the vicinity of the Wakitipu Basin",[8] became a party in other proceedings before the Environment Court. I do not propose to detail what Judge Jackson described as the controversial and complex jurisdictional and procedural issues raised by that proceeding and the subsequent proceedings. It is helpful, however, to place the decision under appeal in context. To that end, I briefly summarise in the following paragraphs the "procedural decisions" as the parties and Judge Jackson himself described the decisions.

<u>First procedural decision</u>

[17] The Upper Clutha Environmental Society Incorporated (UCESI) had lodged an appeal that generally raised the issue of the location of ONL lines at Arthurs Point. The Society became a party to UCESI's appeal by giving notice under s 274 of the RMA. In a decision issued on 5 February 2019 Judge Jackson ruled that the Society

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6 At [114].

7 This description of the effect of the Commissioners' decision to draw a brown dashed line on Map 39 (renamed with the brown dashed line as Map 39a) is taken from [13] of the decision under appeal.

8 Rules of Arthurs Point Outstanding Natural Landscape Inc.

could use its s 274 notice to seek a different ONL boundary and classification on the properties on the GSL and Larchmont properties. Judge Jackson adjourned UCESI's appeal to enable submissions to be made on the issue of whether the Council had jurisdiction to move the ONL line and classification to the southern boundaries of the GSL and Larchmont properties. This was the first procedural decision.[9]

[18] GSL appealed the first procedural decision. In her judgment issued on 17 December 2020, Dunningham J ruled (amongst other matters) that the Society could not use its s 274 notice in UCESI's appeal to seek a different outstanding natural landscape boundary and classification on GSL's and Larchmont's properties.[10]

Second procedural decision

[19] GSL and Larchmont lodged applications for a rehearing of the first procedural decision. Section 294 of the RMA gives the Environment Court power to rehear proceedings where new and important evidence becomes available or changes in circumstances have arisen and the decision might have been affected in either case. In his second procedural decision (issued on 18 April 2019) Judge Jackson ordered a rehearing of his earlier ruling that the Society could use its s 274 notice on the UCESI appeal to seek a different ONL boundary and classification on the GSL and Larchmont properties. The Judge was reinforced in his view by the fact that since the first procedural decision the Society had applied for an enforcement order seeking renotification of the submission on Arthurs Point:[11]

> [33] … the general complexity of the legal and factual position and the ambiguities in the PDP's approach to recognising and protecting outstanding natural landscape suggest quite strongly that a hearing should be ordered.
>
> [34] I am reinforced in that view by the consideration that various challenges to jurisdiction have been raised (and part heard) and that [the Society] has now made an application for an enforcement order seeking renotification of the submissions on Arthurs Point. That appears to raise an issue on whether the public in general and residents of Arthurs Point and environs in particular have been fairly treated by the process to date.

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9 *Arthurs Point Trustee Ltd as Trustee of the Arthurs Point Land Trust v Queenstown Lakes District Council* [2019] NZEnvC 14 [first procedural decision].

10 *Gertrude's Saddlery Ltd v Queenstown Lakes District Council* [2020] NZHC 3387 at [114].

11 *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 78 [second procedural decision].

Third procedural decision

[20] The third procedural decision is the decision under appeal. In the next part of this judgment I will deal with that decision in greater detail. In essence, Judge Jackson ordered the Council to comply with its statutory obligations under the RMA by renotifying a summary of decisions requested on the Council's proposed plan change by GSL and Larchmont. To preserve the rights of potential submitters Judge Jackson directed that the rezoning of the Shotover Loop to low density residential be suspended from the date of his decision, 11 September 2019.[12]

Fourth procedural decision

[21] The fourth procedural decision was issued on 6 November 2019,[13] one month after the issue of the decision under appeal. Its purpose was to resolve the scope of UCESI's appeal as it related to the ONL on the north western part of the Wakatipu Basin — an area centred on Arthurs Point. In relation to the maps (which are also relevant to this decision), Judge Jackson stated:

> [3] The starting point for any plan change is usually (and should be) the provisions of the Operative District Plan ("ODP") which are being changed. Relevant to this case Appendix BA – Map 1 of the ODP – depicts the landscape boundaries in the Wakatipu Basin/Arthurs Point area. The boundary between the ONL and, for example urban areas, is indicated by either a solid line or a dotted line. The legend explains that a solid line indicates fixed boundaries that have been confirmed by the Environment Court, a dotted line indicates "boundaries that have not been determined by the Environment Court and therefore the exact location of the line has not been confirmed".

[22] Judge Jackson referred to the Commissioners' decision on 18 April 2018 to amend Maps 13 and 39 (now renumbered 39a) to show:[14]

(a) a brown dashed line around the Arthurs Point and Shotover Loop;

(b) an extension of the urban growth boundary to include the Shotover Loop; and

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12 Decision under appeal, above n 1, at [124] and [126].

13 *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 176 [fourth procedural decision] at [9]–[10].

14 See [13] above.

(c) the Shotover Loop rezoned to low density residential.

[23] He described the outcome as surprising —[15]

> because in fact no submission sought an ONL boundary to be drawn around Arthurs Point so as to exclude it from the ONL and secondly because the relief sought by GSL and Larchmont in respect of the "ONL" status of the Shotover Loop was both indirect and misleading.

[24] Referring to his first procedural decision the Judge said he had attempted to give direction as to the landscape issues in the plan changes as they related to Arthurs Point and although the maps attached to that decision were still relied on:[16]

> … in other respects [the first procedural decision] is wrong. It … needs to be read with caution because the decision was oblivious both to the existence of brown ONL boundary lines in the vicinity of Arthurs Point … and to the fact that the ONL contains other zones than Rural.

The decision under appeal

The application for an enforcement order

[25] The Society's amended s 314 application sought an order requiring the Council to renotify a summary of the changes to the plan sought in:

(a) the submission initially lodged by Mr Swan, who was succeeded by GSL, the owner of 111 Atley Road; and

(b) the submission by Larchmont, the owner of 163 Atley Road.[17]

[26] The Society's application is more fully described when I deal with the Council's questions of law. In summary the Society sought:

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15 Fourth procedural decision, above n 13, at [8].

16 At [9]–[10].

17 Two further submissions were the subject of the Society's application for an enforcement order: a submission by Daryl Sampson and Louise Cooper succeeded by Arthurs Point Land Trust, the owner of 182D Atley Road and a cross-submission by Larchmont in relation to 111 Atley Road (APLT). The Judge said the APLT land did not need to be considered because it was in a different location on the eastern edge of Arthurs Point. Nor did the cross-submission require to be summarised in the first place.

(a) renotification of the Council's Proposed District Plan Map 39a relating to Arthurs Point to show what is proposed in the submissions;

(b) an order setting aside the Commissioners' decision in relation to GSL's and Larchmont's submissions; and

(c) an order setting aside the Council's decision to ratify the Commissioners' decision.

[27] The Society advanced its application on the grounds:

(a) the SDR was not fair or accurate and was misleading;

(b) the SDR did not sufficiently alert members of the public to what was sought by GSL and Larchmont and was unfair and unreasonable to potentially interested persons including Society members;

(c) the SDR was not organised in a way that enabled an interested person to understand what part of the plan or geographical location the submission was directed at and the online zoning map was not in fact available on the Council's website until after the closing date for submissions.

Environment Court's analysis

[28] The Judge was satisfied that members of the public including members of the Society might be directly affected by the Council's decision on the two submissions.

[29] The Judge framed the general issue raised by the s 314 application as concerning the fairness of the process by which an entirely new inside edge to the outstanding natural landscape around Arthurs Point was identified in a decision on a plan change resulting from the Council's review of parts of its operative district plan.

[30] The Society's primary concern was with the Council's proposed plan changes and the maps relating to Arthurs Point that were included in the public notification of

the plan change. One of the matters covered in the plan change was the recognition of outstanding natural landscapes and the identification of their edges within mapping lines. Map 13 showed the Wakatipu Basin including the three town centres of Queenstown, Arrowtown and Frankton as surrounded by a brown dashed line demonstrating the boundary between the outstanding natural landscape on the outside of the ring, and other urban, industrial and rural landscapes. Arthurs Point is part of the outstanding natural landscape of the Wakatipu Basin but the larger scale Map 39 of Arthurs Point itself and its immediate environs showed no ONL boundary because the brown line indicating the boundary was east and off the map as could be seen on the small scale Map 13.[18]

[31] Having set out the terms of the enforcement order sought by the Society, Judge Jackson turned to the scheme of the plan changes, the maps and the public submissions that had been made following notification of the plan changes. The "complex procedure" adopted by the Council in its review of its operative district plan seemed to arise because the plan change provisions that would become operative would merge into and form part of the operative district plan rather than constitute a replacement district plan.[19]

[32] The Judge then summarised the relationship of the "stage 1" proposed district plan to the operative district plan.

[33] Turning to the maps Judge Jackson referred to the second procedural decision in which he wrote:[20]

> The two ways of describing an ONL are troubling because of the potential for misunderstanding. … The absence of a brown line on Map 39a might suggest that there is no outstanding natural landscape in the area of the map. However by reference to the wider map (39) it appears that despite the urban conclave Arthurs Point is actually within an ONL(B) [a brown dashed line delineating the ONL boundary]. There is no visible brown line on Map 39 in the [public notification of the plan changes], that is, no ONL boundary is shown. Indeed, the Hearing Commissioners seem to have agreed with Mr Espie, the landscape

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18 Decision under appeal, above n 1, at [10]–[11].

19 At [23] citing descriptions of the process by the Environment Court in *Tussock Rise Ltd v Queenstown Lakes District Council* [2019] NZEnvC 111 at [6] and *Darby Planning Limited Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133 at [6].

20 Decision under appeal, above n 1, at [37] quoting from *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council*, above n 11.

> architect, that in the [PC1(N)] Map 39a " ... all of Arthurs Point currently [fell] within the ONL".

[34] In relation to the structure of the public notification of the plan changes Judge Jackson observed that to ascertain the line delineating the ONL boundary the reader had to look at Map 13 which, on close examination, suggested the whole of Arthurs Point is within an outstanding natural landscape. Thus, the Judge did not accept GSL's submission "that the only logical interpretation of Map 39a when read by itself is that the whole of Arthurs Point is within an outstanding natural landscape". He went on to state:[21]

> A reader of the Map 39 in [the public notification of the plan changes] would not have a clue about where the ONL(B) is in the vicinity of Arthurs Point without reference to Map 13. That is not 'assistance': that is essential knowledge.

[35] Judge Jackson then turned to the issue of whether the Council's summaries of the decisions requested by Larchmont and GSL were unfair or misleading. While the Society had not made out its case in relation to the alleged unreasonableness of the process for notifying the summaries online, the Judge held that the Council's summary of the Larchmont submission was "insufficiently accurate" because the summary was not clear as to the area in Arthurs Point to which the submission referred. "Further, the SDR does not give any more information to help the reader work out what might possibly be sought …".[22]

[36] In relation to the summary of the GSL submission the Judge found that although accurate on its face, the summary was in fact "very misleading".[23] He concluded:[24]

> If the only issues to be resolved in relation to the landscape setting of the Shotover Loop were the location of the UGB and whether the land should be rezoned as Low Density Residential I would have no difficulty finding that the submissions on those issues were adequately summarised. However in relation to the logically prior (see *Man O'War*) questions of the location of the ONL(B) there are serious problems as I have identified.

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21 At [44].
22 At [103].
23 At [107].
24 At [110] (footnotes omitted).

[37] Judge Jackson returned to the s 314 application and the powers of the Environment Court.[25]

[38] The Council had argued that to grant an enforcement order would be to delay the plan changes becoming operative. While Judge Jackson accepted the point he took the view that delay was "a result of the complexity of the process chosen, the approach to recognition and protection of the outstanding natural landscapes of the district and the unthinking SDR of those submissions" and that therefore the prejudice caused by the delay was outweighed by the prejudice to persons not before the Council or the Environment Court.[26] Similar considerations applied in relation to the costs of renotification. Potential submitters had been unfairly misled on a matter of national importance. Therefore extra costs must be borne by the ratepayers. The public interest was in the fair hearing of the issues.[27]

Principles governing these appeals

[39] The appeals are brought under s 299 of the RMA which permits a party to appeal on a question of law against any decision, report, or recommendation of the Environment Court. The principles are well established. Appeals on questions of law (whether under the RMA or otherwise) must be confined to points of law and not invite a re-examination of the merits of the decision under appeal. The High Court will not interfere with a court's decision unless it can be shown the court misinterpreted the law or misdirected itself in law, accounted for irrelevant matters, failed to take account of relevant matters or was plainly wrong.[28] A question of law is involved—[29]

> …only where the law requires that a certain answer be given because the facts permit only one answer. Where a decision either way is fairly open, depending on the view taken, it is treated as a decision of fact, able to be impugned only if in the process of determination the decision-maker misdirects itself in law.

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25 At [119].
26 At [121].
27 At [122].
28 *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 at [25]. See also *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150; [1994] NZRMA 145 at 153.
29 At [21].

[40] An error of law may arise if the decision-maker has reached a factual finding that is "so insupportable — so clearly untenable — as to amount to an error law".[30] An appellant seeking to demonstrate that there was no evidence to support a finding of the court below "faces a very high hurdle".[31]

[41] The authorities recognise the deference to be accorded to the expertise of the Environment Court.[32] The Court "should be given some latitude in reaching findings of fact within its areas of expertise".[33]

[42] Finally, before this Court will grant relief on appeal, it must be shown that any error of law materially affected the result in the Environment Court.[34]

The appeals

[43] The appellants each filed a detailed and particularised notice of appeal.

[44] The Council identifies the following as errors of law in the Environment Court's decision:

(a) the Court applied the wrong legal test in its interpretation of and approach to cl 7 of sch 1;

(b) the Court misconstrued the role and purpose of the cl 7 requirement to publicly notify a summary of decisions requested by regarding the summary as the end point rather than an alert to refer to the actual submissions and relief sought;

(c) the Court erred in determining that the Council's summary of decisions was "unfair and misleading" while separately stating in the decision that the GSL submission repeated "almost verbatim what is stated in the original submission" and the "relief sought by Larchmont was

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30 At [26].
31 At [27].
32 See for example *Gertrude's Saddlery v Queenstown Lakes District Council*, above n 10, at [19].
33 *Countdown Properties (Northlands) Ltd v Dunedin* City *Council*, above n 28, at 153.
34 At 153.

accurately summarised".

(d) the Court erred by taking into account a range of matters and considerations that were not material to the Society's application and irrelevant to whether the Council met its obligations under cl 7.

[45] GSL's and Larchmont's notices of appeal are identical in all respects including the errors alleged, the questions of law posed and the relief sought. They say the Environment Court's decision contains the following four errors of law:

(a) The Environment Court applied a wrong legal test when determining whether the Council complied with the requirements of cl 7 of sch 1 of the RMA.

(b) The decision was based on material errors (identified in GSL's and Larchmont's notices of appeal) and that no reasonable decision-maker could have come to the conclusions reached.

(c) The Environment Court incorrectly considered irrelevant matters as informing its determination of whether the summary of decisions requested was "fair, accurate, and not misleading".

(d) The Environment Court wrongly concluded that the online rezoning map was not reasonably accessible on the Council's website during the further submission period in December 2015 and that in this regard the Court reached a conclusion not reasonably available to it on the evidence.

[46] I propose to deal first with the Council's appeal. The Council's grounds of appeal are distinct from, although overlap to a degree with, GSL's and Larchmont's grounds of appeal.

[47] Then I will deal with GSL's and Larchmont's appeals as one.[35]

Council's questions of law

Council's Question 1

[48] The Council's first question of law asks whether the Court applied the wrong legal test in its interpretation of and approach to cl 7 of sch 1.

Council's position

[49] In summarising the Council's position Mr Wakefield submitted the Environment Court applied a wrong legal test by:

(a) departing from the legal test established in *Hodge v Christchurch City Council*;[36] and

(b) introducing a modified legal test namely "what is reasonably and fairly raised by the SDR?".

[50] Not only did this modified test extend the established "fair, accurate and not misleading" test, it introduced jurisdictional and scope considerations in a manner that fundamentally alters the cl 7 procedural requirements. Mr Wakefield further submitted that in adopting this approach the Environment Court concentrated on substantive decisions made by the Council when those decisions are irrelevant to the issue of compliance with cl 7.

[51] The Council contends that the Environment Court's requirement to add to the SDR an explanation of the relief sought, goes beyond the role and purpose of cl 7. The Council says such an approach has significant implications in that it creates inherent risks for all local authorities involved in processes under sch 1 of the RMA.

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35 This approach is consistent with the position Larchmont has taken to the hearing of the appeals. In January 2020 Larchmont recorded that (to the extent relevant) it adopted the submissions to be filed by the Council and GSL but filed a brief submission in which it added points supporting the Council's and GSL's submissions. Prior to the hearing counsel for Larchmont advised it did not propose to file a synopsis of legal submissions but fully adopted those filed by GSL on 5 July 2020.

36 *Hodge v Christchurch City Council* [1996] NZRMA 127.

The Society's position

[52] In brief, the Society submits the Court properly applied the correct legal tests in its assessment and determination of the Society's s 314 application.

[53] The Court did not err in directing the Council to renotify the summaries of decisions requested by GSL and Larchmont. Nor was there error in requiring renotification to be in a manner that reflects the priorities accorded by the RMA and reflected in the Council's plan to the ONL classification of the land.

[54] Ms Steven QC submitted that the terms of the order reflect the reality of the relief actually sought by GSL and Larchmont.

Analysis

[55] The statutory obligation on local authorities to prepare and make available summaries of decisions requested by those who make submissions on proposed policy statements or plans is imposed by cl 7 of sch 1 of the RMA. Clause 7 provides:

> **7 Public notice of submissions**
>
> (1) A local authority must give public notice of—
>
> (a) the availability of a summary of decisions requested by persons making submissions on a proposed policy statement or plan; and
>
> (b) where the summary of decisions and the submissions can be inspected; and
>
> (c) the fact that no later than 10 working days after the day on which this public notice is given, the persons described in clause 8(1) may make a further submission on the proposed policy statement or plan; and
>
> (d) the date of the last day for making further submissions (as calculated under paragraph (c)); and
>
> (e) the limitations on the content and form of a further submission.
>
> (2) The local authority must serve a copy of the public notice on all persons who made submissions.
>
> (3) However, in the case of a submission on a proposed change to a policy statement or plan, if a local authority has given limited notification

> under clause 5A, it must give notice of the matters listed in subclause (1), as relevant, instead of giving public notice, to—
>
> (a) the persons given limited notification under clause 5A(3); and
>
> (b) the persons provided with a copy of the proposed change under clause 5A(8).

[56] The manner by which a local authority must prepare and notify a SDR under cl 7 has been the subject of consideration in decades of cases in the Environment Court and, to a lesser extent, the High Court. It is not necessary that I engage in a detailed discussion of the decisions. While I was very much assisted by counsels' analyses of many of the authorities I propose only to summarise the statements of principle to be drawn from the most relevant decisions.

[57] I start with the decision in *Countdown Properties (Northlands) Ltd v Dunedin City Council*, as it was the first consideration by the High Court of various provisions of the RMA.[37] A full Court was convened in light of the importance of the issues and the need for guidance in the early stages of the RMA's regime.

[58] The appeals concerned the adequacy of reports prepared under s 32 of the RMA and the test to be applied when assessing whether a council has complied with its reporting duties under s 32.

[59] The Court dealt briefly with and rejected an argument that the summary of submissions prepared by the council under cl 7 was inadequate:[38]

> A summary of submissions can only be just that; persons interested in the content of submissions are entitled to inspect the text of the submissions at the council offices so that an informed decision on whether to support or object can be made.

[60] In terms of the cl 10 requirement for a local authority to give a decision on matters raised in submissions and for the decision to include reasons for accepting or rejecting the submissions, the Court observed:[39]

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37 *Countdown Properties (Northlands) Ltd v Dunedin City Council,* above n 28.
38 At 164.
39 At 165.

> …councils need scope to deal with the realities of the situation. To take a legalistic view that a council can only accept or reject the relief sought in any given submission is unreal.

[61] The Court said of the principle that amendments to a plan are to be appreciated by "an informed and reasonable owner of land"[40] that it was only one test and it would not be helpful or correct to elevate the "reasonable appreciation" test to an independent test. "It would usually be a question of degree to be judged by the terms of the proposed change and the content of the submissions."[41]

[62] As numerous authorities have done since, the Court recognised the inescapable emphasis in the RMA on public participation and the importance of encouraging public participation in the resource management process.[42]

[63] The precise issue as to whether a local authority had complied with cl 7 was before the Environment Court in *Christchurch City Council re an application* [*Montgomery Spur*].[43] *Montgomery Spur* was relied upon in the decision under appeal.[44] In *Montgomery Spur* the Environment Court noted the significance of the role of the cl 7 SDR in being the main method by which interested members of the public can ascertain whether resources in which they are interested are affected by public submissions made under cl 6. In that light the duty on a local authority to prepare and notify a summary of the relief sought was greatly magnified.

[64] Accordingly, and by way of example:[45]

> … in relation to district plan provisions dealing with the adverse effects of activities on land it is essential to identify in a summary way:
>
> (1) what area of land is involved;
>
> (2) what changes to the plan are proposed by the submissions.

[65] As well:

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40 At 171
41 At 172.
42 At 172.
43 *Christchurch City Council re an application* (1999) 5 ELRNZ 227 [*Montgomery Spur*].
44 Decision under appeal, above n 1, at [63].
45 *Montgomery Spur*, above n 43, at [14]–[15].

(a) a summary must be fair, accurate and not misleading; [46]

(b) a summary must be sufficient to "alert the reasonable non-expert reader of the summary to the fact they should go to the submissions in full and examine the proposed differences for themselves";[47]

(c) although the Council is required to provide a summary of the decision (that is, the relief) sought, the submissions must be read as a whole since the submissions themselves may suggest relief.[48]

[66] In *Healthlink South Ltd v Christchurch International Airport Ltd and Canterbury Regional Council* John Hansen J dismissed an appeal from the Environment Court before whom one of the issues concerned a local authority summary that was "absolutely accurate but misleading" in two respects:[49]

(a) The zoning maps held with the summary did not show that a submission sought rezoning of the hospital land. The Environment Court Judge considered this exclusion to be one piece of misinformation to be considered by potential submitters.

(b) The summary did not suggest that residential activities could be included in the default zoning. To the contrary it suggested on its face there would be rural activity. In this respect the summary was "innocently misleading".

[67] From the judgment of the High Court including the passages that Hansen J expressly adopted[50] from the Environment Court decision itself the following observations and principles may be drawn:

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46 At [15].
47 At [15].
48 At [17] where the Court attributed this proposition to p 167 of the *Countdown* decision.
49 *Healthlink South Ltd v Christchurch International Airport Ltd and Canterbury Regional Council* HC Christchurch AP 14/99, 14 December 1999 at [27] where Hansen J sets out and adopts [20]–[22] of the Environment Court decision on appeal before him.
50 See n 49 above.

(a) In considering what is within a local authority's power to decide, fairness is crucial:[51]

> An essential aspect of fairness is that persons who wish to be heard by a local authority on an issue should be heard. To be heard they need to file a submission under clause 8, and to do that they need to be put on notice by the summary under clause 7.

(b) The Council's summary should not be so specific as to limit its decision-making powers. Whether it is, is a question of degree to be decided in the context of the summary and of the proposed plan as a whole (including planning maps).

(c) A reasonably informed person must be able to ascertain from the documentation exactly what is intended by a submitter.[52] It cannot be for the reasonable reader to uncover the extent of a submission's error and the true intentions of the submitter.[53]

(d) Where an error in a submission creates confusion the local authority is obliged to notify the submission without the error.[54]

(e) The RMA envisages a significant degree of public participation. Such participation is particularly important in relation to a proposed district plan. The barrier for participation should not be unreasonably high. The test is that of a reasonably informed reader, without knowledge of planning matters well above the informed citizen and without knowledge approaching expertise.[55]

[68] In *Albany North Landowners v Auckland Council* Whata J addressed the issue of whether a council's decision was authorised by the scope of submissions made on a proposed plan or plan change. He noted the opportunity for public participation

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51 From [21] of the decision on appeal in *Healthlink*.
52 At [29].
53 At [36].
54 At [30] and [39].
55 At [33].

afforded by sch 1 and, citing *Countdown Properties* and other High Court decisions, the need to consider whether any notified amendment to a proposed plan change —[56]

> …goes beyond what is reasonably and fairly raised in submissions on the proposed plan changes. To this end, the Council must be satisfied that the proposed changes are appropriate in response to the public's contribution. The assessment of whether any amendment was reasonably and fairly raised in the course of submissions should be approach in a realistic workable fashion rather than from the perspective of legal nicety. The "workable approach requires the local authority to take into account the whole relief package detailed in each submission when considering whether the relief sought had been reasonably and fairly raised in the submissions.

Decision

[69] Against the backdrop of the applicable principles I return to consider the Council's first question of law: whether the Environment Court applied the wrong legal test in its approach to cl 7.

[70] Mr Wakefield submitted that the Environment Court departed from the established test and applied a more nuanced "reasonableness" test to its assessment of compliance with cl 7. In doing so, it is said the Environment Court conflated two different legal tests that arise at different procedural stages under sch 1 of the RMA.

[71] The specific error is said to arise from the Environment Court's assessment of the s 314 application in light of whether the changes made by the Council's decisions were "reasonably and fairly raised by the SDR".[57] Mr Wakefield submitted that the Court's use of this language demonstrates its conflation of two legal tests: one applicable to cl 7 and the other to cl 10. Counsel also identifies [67], [73] and [76] of the Environment Court's decision as further examples of conflating the test for assessing whether cl 7 (said to be a procedural clause) is met, with the test for assessing whether the cl 10 requirement on a council to give a decision on the matters raised in submissions, is met. Clause 10 is said to raise a "jurisdictional test".

[72] My view of the Environment Court's approach does not accord with the Council's. Having reviewed the scheme of the proposed plan change, the maps and

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56 *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [110] and [115].
57 Decision under appeal, above n 1, at [67].

the SDR in relation to the relief sought in the GSL and Larchmont submissions, the Environment Court posed and addressed the question "Was the SDR unfair and/or misleading?"[58] The Court:

(a) acknowledged the importance of public participation in the plan change process and the role of the sch 1 requirements in that regard;[59]

(b) restated the "crucial" role the SDR plays in notifying members of the public about the submissions they should check to see if their interests are affected;[60]

(c) observed that it was important to realise that "questions as to the scope (reasonableness and fairness) of submissions when the Council is making decisions under cl 10, "come after questions about the adequacy of the SDR";[61] and

(d) set out the principles from the decisions "most relevant" to the question of what is required under cl 7, namely *Albany North Landowners v Auckland Council*[62] (for its emphasis on the importance of the role of sch 1 in providing an opportunity for public participation in the planning process); *Montgomery Spur* and *Healthlink*.

[73] While the Court also addressed the principles that apply to the next phase of a Council's process namely whether to amend the plan and whether the proposed amendments go beyond what is reasonably and fairly raised in submissions on the plan,[63] the Environment Court applied the correct legal test when it came to formulate the precise issue for its determination:[64]

> [100] I accept that in this case there is no evidence that any member of the Society looked at the SDR in hardcopy. However, that is not the issue. The question is whether the summary of the submission accurately, fairly and not

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58 From [60].
59 At [60].
60 At [61].
61 At [61].
62 *Albany North Landowners v Auckland Council*, above n 56, at [110].
63 Decision under appeal, above n 1, at [67].
64 At [100].

> misleadingly, alerts a reasonably informed member of the public that there is a submission seeking that the ONL(B) be drawn around the Shotover Loop (or part of it).

[74] Having demonstrably asked the right question the Court then proceeded to describe the various ways in which it found the SDR to be deficient.

(a) The hard copy SDR was arranged in an unhelpful way. "In theory a potential submitter had to trawl through over one thousand submissions to find any submission of potential relevance."[65]

(b) The summary of the Larchmont submission was insufficiently accurate as it omitted both a street address and legal description of the land. The summary went no further than to identify that the land was somewhere in Arthur's Point. Nor did it give any information to assist a reader to "work out" what Larchmont might possibly be seeking beyond movement of the urban growth boundary and rezoning. In particular, the summary did not refer at all to the ONL(B) or ONL(Z) and gave no indication that an ONL(B) line might be drawn around the Shotover Loop.[66]

(c) While the summary of the GSL submission "at least" referred to the letters "ONL", on either of the interpretations the parties offered of the wording of the relief sought, it was "very confusing". It could not be said (as the parties preferred) that GSL implicitly sought removal of the brown dashed ONL(B) line at Arthurs Point because there was no such line to be removed. Besides, it was probably the opposite of what GSL intended. Nor was the alternative scenario tenable. To suggest that the brown dashed line introduced by the Commissioners was neither sought nor necessary the Council should have amended its SDR or at least agreed to notification of a new SDR if it considered that was a tenable view of its plan.[67]

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65 At [101].
66 At [103].
67 At [105].

[75] The attention the Council gives to [67] of the decision under appeal is misplaced. The Judge did not conflate two tests. His obvious focus at this part of the decision was on the import of a passage from *Countdown* that he cited and which, he clearly pointed out, was about the limits of the Council's decision-making under cl 10 not the prior question as to what is "reasonably and fairly raised by the SDR". The Council says the quoted words are a misalignment with the legal test articulated in *Montgomery Spur*. But I think that is to read too much into the words and to overlook the actual focus of this part of the judgment. The Judge was addressing cl 10 matters and the sequencing of the cl 7 and cl 10 processes. That was not the context for solemnly stating the legal test to be applied when assessing compliance of an SDR with cl 7.

[76] In addition to stating the legal question for determination (set out above at [73]) the Judge's further conclusions reflected his appreciation of the applicable principles. While a reasonable level of diligence is expected of landowners and other potential submitters —[68]

> …in the unusual circumstances of this case, [there was] no duty for interested persons to search for changes to the Urban Growth Boundary on the Rural Zoning given that Arthurs Point was in an ONL. It would be sufficient to search for changes to the ONL(B) and that is where the difficulties arise.

[77] In this important respect *Albany North* and its particular circumstances was distinguishable.

[78] The question for determination was whether a reasonable non-expert reader of the SDR would have been alerted to GSL's and Larchmont's intent which was to have an outstanding natural landscape boundary line drawn so as to exclude land from the outstanding natural landscape. The Judge's ultimate determination was reached as a result of his proper understanding and application of the correct legal test. He found the summaries were unfair and misleading.[69]

[79] The first question is answered "no".

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[68] At [115]–[116].
[69] At [124].

Council's Question 2

[80] This question asks whether the Court erred in law by misconstruing the role and purpose of the cl 7 requirement to publicly notify a SDR.[70]

[81] The Council's argument is that, by regarding the SDR as the 'end point' rather than an 'alert', the Environment Court misconstrued the role and statutory purpose of cl 7.

[82] The Council refers to the words I have italicised in the following passage from the decision under appeal as demonstrating the Court's application of a wrong legal test.

> [54] The relief sought by Larchmont was accurately summarised in the SDR as seeking a movement of the SDR and a rezoning of the area shown on the attached map to LDR. It does not refer to a change of the ONL(Z) or a movement of ONL(B) at all. Further, there is no street address given for the property and no map annexed to the Summary so it is *impossible to work out where on Map 39* ("Arthurs Point, Kingston") is referred to.

[83] It is evident from its decision that the Environment Court was well aware of the role and purpose of cl 7. For example, having just referred to *Albany North* and Whata J's description of public participation being a long standing policy of the RMA, and sch 1 as envisaging an opportunity for public participation in the planning process, the Judge observed that the notification of the SDR under cl 7 was a "crucial step" in assisting the public to decide whether to participate, as it gives to the public, notice of what submissions they should check.

[84] The Judge understood perfectly well, the role of cl 7 and the crucial role summaries play in alerting affected persons in a timely way to submissions potentially affecting their interests so that they might have the opportunity afforded under sch 1 to lodge submissions of their own. And the Judge understood equally well the legal test to be applied in assessing whether the SDR in a sense discharges that crucial role.

[85] Question 2 is answered "no".

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[70] I note that the formulation of question two in the notice of appeal was different from this, the question posed and argued at the hearing.

Council's Question 3

[86] This question asks whether, in determining that the SDR was "unfair and misleading", the Environment Court reached a conclusion that no reasonable decision-maker could have reached. The Council submits that as a result of the Court's application of the wrong legal test in its approach to, and interpretation of, cl 7 its determination that the SDR was "unfair and misleading" was unreasonable in that it was unsupported by evidence or involved a misdirection in law.

[87] It is important to remember that the Council must overcome a "very high hurdle" in alleging the Environment Court came to a conclusion without evidence or which, on the evidence, it could not reasonably have reached.[71] The appellate court will usually have to identify a finding of fact that was unsupported by evidence or a clear misdirection in law before it will overturn a decision.[72]

[88] The first point is that, as I have determined, the Judge did not apply the wrong legal test.

[89] The Council's next argument is that there is no evidence supporting the Court's determination and that in relation to the process adopted by the Council the Society failed to make out its case in the Environment Court. The argument appears to overlook the fact that the finding the Council relies on did not concern the fairness of the SDR. The Judge said:[73]

> On balance, I find that the Society has not made out its case in relation to the unreasonableness of the process for notifying the summaries of the GSL and Larchmont submissions online. *As for the fairness of the summaries*, that is the same issue as arises for any (notional) inspection of the hardcopy SDR and *I will address that below*.
>
> (Emphasis added.)

[90] Next, the Council relies on the Court's description of the two summaries:

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71 See *Independent Maori Statutory Board v Auckland Council* [2017] NZHC 356 at [64].
72 At [64], citing *Bryson v Three Foot Six Ltd*, above n 28, at [25]–[28].
73 Decision under appeal, at [85].

(a) "…the second half of the GSL summary…repeats almost verbatim what is stated in the original submission";[74] and

(b) "The relief sought by Larchmont was accurately summarised in the SDR …".[75]

[91] However, these descriptions of the summaries were not an endorsement of them by the Court. Nor are the descriptions inconsistent with the Court's ultimate conclusion that they were unfair and misleading. This aspect of the Council's appeal itself overlooks the test to be applied when assessing the adequacy of a SDR. As observed in *Healthlink*[76] a summary may be completely accurate but misleading. Or, as the Environment Court put it:[77]

> …an alleged reasonable reading of a SDR may be unfair if it does not raise the issue in a way that alerts members of the public to the fact that a wider or different issue is being raised.

[92] The Court concluded that the SDR of the Larchmont and GSL submissions did not alert a reasonably informed member of the public that Larchmont and GSL intended or sought to have an ONL(B) draw around part of the Shotover Loop.

[93] The Council has not shown that the Court's conclusion was "so insupportable — so clearly untenable — as to amount to an error of law".[78]

[94] Question 3 is answered "no".

Council's Question 4

[95] Question 4 asks whether the Court erred by taking into account a range of matters and considerations said to be either immaterial or irrelevant to the Society's s 314 application.

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74 At [53].
75 At [54].
76 *Healthlink,* above n 49, at [21] from decision under appeal.
77 Decision under appeal, above n 1, at [76].
78 *Bryson v Three Foot Six Ltd,* above n 71, at [26].

[96] Before addressing this question of law, and because he said it was important to do so, Mr Wakefield "recalibrate[d] the focus of the Environment Court's enquiry". The Council's overarching contention is that the issue raised by the s 314 application was whether the summaries of the GSL and Larchmont submissions were adequate in the sense of being accurate, fair and not misleading. That being the case, the Council says the Environment Court wrongly stated in its opening paragraph that the primary issue was whether —

> …a fair process [was] followed when identifying an entirely new inside edge to the outstanding natural landscape around Arthurs Point in a decision on a plan change resulting from the Queenstown Lakes District Council's review of parts of its operative district plan.

[97] The Council's "recalibration" of the issue does not accurately reflect the range of matters raised by the s 314 application. While the Society did apply for an enforcement order to require the Council to renotify GSL's and Larchmont's submissions, the terms and conditions on which the Society sought to have the enforcement order made should not be overlooked. In addition to seeking renotification of the summary of GSL's and Larchmont's submissions, the Society also stipulated the following terms and conditions:

(a) that the Council renotify "Proposed District Plan Map 39a relating to Arthurs Point showing what is proposed in the submissions [of Larchmont and GSL]";

(b) that the Commissioner's decision[79] in relation to GSL's and Larchmont's submissions be set aside; and

(c) that the Council's ratification of the Commissioner's decision be set aside in light of the number of submissions lodged in relation to stage 1 of the proposed district plan.

[98] The eight grounds in support of the application included (notably):

(a) that the summaries:

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79 See [10]–[12] above.

(i) were not fair or accurate and were misleading;

(ii) did not sufficiently alert members of the public to what was sought by GSL and Larchmont; and

(iii) were not organised in a way that enabled an interested person to locate the part of the plan or land to which the submissions were directed.

(b) The online zoning map was not available on the Council's website until some time after the close of the further submission period.

(c) The planning maps contained in the notified proposed district plan contained information that was confusing and uncertain because they did not alert members of the public "as to what provisions were the subject of that stage of the district plan review and which provisions were operative and not subject to that stage of the review".

[99] Unsurprisingly, what confronted the Environment Court was a "particularly difficult case" with "contextual difficulties" the Judge had been obliged to explain and consider.[80] Necessarily, the Environment Court was drawn into several interlocking themes, including:

(a) the Commissioner's decision to draw a new boundary around Arthurs Point and the Environment Court's doubt that in doing so the Commissioners had met either of the statutory tests for amending a proposed plan;[81]

(b) the Council's decision to adopt the Commissioners' recommendations;

(c) the procedure followed by the Council when it mapped landscape and other lines around Arthurs Point and the "troubling" dual methods used

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80 Decision under appeal, above n 1, at [124].
81 At [59], referring to cl 16(1) and (2) of sch 1 of the RMA.

in describing outstanding natural landscapes in the map notified with stage 1 of the proposed plan change;[82] and

(d) the public submission process including the adequacy of the Council's summaries of GSL's and Larchmont's submissions.

[100] In terms of the arguments made in relation to this fourth question of law, the passage at [45] of the Court's decision is relevant and illuminating. The Court said that in the context of the issues before it, landscape and zoning issues were to be resolved in the following order:

> 1. recognition of outstanding natural landscapes and their boundaries by the drawing of brown dashed ONL(B) lines;
>
> 2. fixing the UGB boundary provided it does not impinge on ONLs;
>
> 3. if an ONL is over a Rural Zone (or now an Open Space zone as a consequence of the variation) classification that zone into one of three "subzones" or areas:
>
> ONL(Z);
>
> RLC;
>
> ONF.
>
> 4. If a UGB is moved to include rural·land, then- that may be rezoned for example as LDR and consequently any rural subzoning classification such as ONL(Z) is removed (by default).

[101] The Court acknowledged that other intermediate steps arising from other submissions or appeals might arise "but those are the crucial steps relevant here".[83] GSL's submission started at step 2 and "jump[ed] down to step 4" and neither the GSL nor Larchmont submission appeared to engage directly with step 1. In terms of the Council's summary of GSL's submission (that extending the urban growth boundary as requested would "by default" delete the ONL landscape classification from that part of the property) the Court stated:[84]

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82 One way was to use the notation "ONL" on the yellow wash which signified a rural zoning. The other was the use of a brown double-dashed line which marked the boundary of the outstanding natural landscape or outstanding natural feature.

83 At [45].

84 At [107].

> If the Council was intending to contemplate a wide reading of the submission – to take the submission from Step 4 of the process I have identified to Step 1 – then to be fair to potential submitters, it needed to say so.

[102] The Court regarded the use of the word "default" in a cl 7 summary as possibly leading a potential submitter to think there was no point in making a submission because the word "default" suggested an automatic consequence of the Council accepting a submission. And in the case before the Court the misleading nature of the expression was compounded by the relief sought as to the ONL classification, which "should in fact be the first [step] under the scheme of the Act and of [Stage 1 of the plan change]".[85]

[103] It seems to me that the Society's recalibration of the central issue raised by the s 314 application has resulted in a simplistic, narrow and inaccurate statement of the issues that were raised for the Environment Court's determination. I do not agree that the Court's consideration of the matters the Council identifies as irrelevant or immaterial, was erroneous or that its consideration of those matters amounted to an error materially affecting the balance of its decision (as the Council submits). For completion however, I address briefly each allegedly irrelevant matter.

(a) The Council takes issue with the Court's observation that the complexities and layers of the stage 1 planning process, the sheer volume of submissions and the inadequacy of the SDR in relation to GSL's submission created a risk submitters had been deprived of the opportunity to participate.[86] I do not agree that the mention of these matters has resulted in material error. First, the Judge was listing in this passage of the decision, matters that he considered further distinguished *Albany North* from the case before him. Secondly, the "complex procedure adopted by the QLDC" in its review of its plan was expressly stated early in the decision to be part of the context for resolving the issues raised by the s 314 application.[87]

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85 At [108].
86 At [117], fourth bullet point.
87 At [22]–[23].

(b) The Court discussed the volume of submissions received by the Council in the context of its discussion about the impracticality of searching hard copies of the SDR and the "overwhelming importance" of online searching. The volume of submissions was relevant to the Court's consideration of the fairness of the Council's process in publishing the SDR online and in relation to the online rezoning map.

(c) Applying the *Man O'War* principle that "location of the ONL (and therefore of the ONL(B) should come first", the Court characterised the order of decision-making suggested by the SDR as "illogical.[88] The Council accepts that the Court was correct in its outline of the order in which ONL-related relief should be considered by decision-makers but submits the point is not relevant to the procedural requirement of cl 7. The essence of the Council's complaint under this head is that the order in which zoning issues should be resolved is irrelevant to compliance with cl 7 and it was the issue of compliance with which the s 314 application was concerned. First, the issue of compliance with cl 7 was one of the issues, not the only issue, raised by the s 314 application. More fundamentally, the Environment Court's approach reflected the realities of the relief that GSL and Larchmont sought but which potentially interested submitters were not alerted to by the SDR. The Court identified "serious problems" with the "logically prior" location of the ONL boundary.[89] The fact is that a "submission sets the limits of the relief" able to be granted as the submission may be relied on by others who wish to support or oppose the submission".[90] I accept the Society's point that given the stage the plan change process had reached when the s 314 application was determined, it is artificial to suggest that the decisions the Council was to make under cl 10 could be ignored. That is not the same as conflating the cl 7 and cl 10 tests, which I have determined the Environment Court did not do. In any

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88 At [117].
89 At [110].
90 *Campbell v Christchurch City Council* [2002] NZRMA 332 at [35] citing *Lovegrove & Ors v Waikato District Council* (Environment Court, A 17/97, 14 February 1997).

event, the critical finding was that the SDR did not meet the test of being fair, accurate and not misleading.

(d) The next irrelevancies are said to be in (i) the Environment Court's finding that the Council should have made it clear to submitters that GSL intended to have the Council redraw an ONL boundary line and in (ii) the Court's criticism of the Council's approach to preparation of the SDR as "unthinking". In my view, the Court's concern with the use of the phrase "by default" in the SDR was justified because the question prior to the matter of the relief sought is the identification of the outstanding natural character and landscape values of the Shotover Loop. In this regard I accept Ms Steven's submission that Council officers responsible for preparing the SDR would have (or should have) appreciated this point. An SDR is not to be so specific as to limit a council's decision-making powers. As stated in *Healthlink*, whether a summary is in fact so limiting will be a question of degree. Nor do I accept that in ensuring the SDR reflected the reality of the relief sought in this case (so as to alert potential submitters) the Council was required to go beyond its proper role. There have been instances where Council officers have been correct in "divining" from a submission what was sought and been correct in their understanding.[91] In this case Council officers would not have had to go so far as to "divine" what was sought by way of relief.

(e) The Council's fifth point was that the Court erred in suggesting that the words "by default" might lead a potential submitter to think there was no point in making a submission. I see this point as an elaboration of the argument that has been sufficiently covered in the preceding discussion.

(f) The Council's next point is that the fact no cross-submissions had been lodged in relation to rezoning at Arthurs Point was not relevant to the

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[91] See *Lovegrove & Ors v Waikato District Council*, above n 90, cited in *Campbell v Christchurch City Council*, above n 90, at [35].

issue of compliance which is to be assessed on the basis of the submissions and SDR. However, the fact that no cross-submissions were lodged was one of five points identified by the Environment Court as differentiating the contexts in this case and *Albany North* when considering the level of diligence expected of a submitter. The Society had advanced the point as being relevant to the Court's determination of the s 314 application and whether to order re-notification of the SDR. There was no error in the Court's mention of the point.

(g) The next irrelevant matter is said to be the Court's consideration of the extent to which the online rezoning map was accessible on the Council's webpage. This issue was determined in favour of the Society. On the basis of the detailed evidence the Court determined that the Council's evidence "overstate[d] significantly" what was reasonably accessible on its webpage. This finding, however, did not have a bearing on the Court's assessment of compliance with cl 7. The accessibility of the online rezoning map was relevant to the Court's consideration of the "reasonableness" of the Council's processes for notifying the GSL and Larchmont submissions online. Having found the online rezoning map was not reasonably accessible in December 2015, the Court went on to address the discrete issue of compliance with cl 7.

(h) The next irrelevant matter is said to be the Court's consideration of the Council's possible exercise of its powers under cl 16(2) of sch 1. Under cl 16(2) a local authority, without using the sch 1 process, may amend its proposed policy statement or plan by altering information providing the alteration is of a minor effect or is to correct minor errors. The Court noted that the decision by the Commissioner's to draw a brown line to show a new ONL(B) around Arthurs Point and the extra rural land of the Shotover Loop was in purported exercise of power under cl 16(2). The Court, correctly in my view, observed that cl 16 was not intended to avoid the rights of public participation in the RMA by permitting changes to the information in a plan "where had that

information been present in the proposed plan, it might have drawn a submission".[92] The Court said the point was of some importance because the Council validated its decision on the Shotover Loop in a way not able to be foreseen by any reader of the SDR. The Council submits that whether or not it used its powers under cl 16 is not relevant to the issue of the SDR's compliance with cl 7. If wrongful reliance on cl 16 was the only ground advanced by the Society to demonstrate non-compliance with cl 7, I would agree with the Council. But I regard this aspect of the Court's decision as providing exemplification of the ways in which the opportunities for public participation were missed, in addition to it not meeting the legal test for compliance with cl 7.

(i) The Court said it seemed to be "unfair" that the opposing parties should both attempt to prevent the Society from being heard yet at the same time attempt to argue that the Society could not by its appearance in the UCESI appeal and its challenge to the Commissioner's decision to draw an ONL boundary line around Arthurs Point and the Shotover Loop, seek consequential relief that would move the urban growth boundary back to the line in the notified plan change. The Council submits the extent to which consequential relief is available in the UCESI appeal is irrelevant to the content of the GSL and Larchmont submissions and the SDR. I agree. The Court itself was "troubled" as to whether it was a relevant factor but candidly recorded that it "seem[ed] to be so". That said, it was a "small" factor in the Court's evaluation of the Commissioner's decision to draw the ONL boundary line.[93] It is not apparent from this part of the decision nor the decision read as a whole, that this factor was material to the Court's ultimate finding at [124] that the SDR was unfair and misleading.

[104] For these reasons, question 4 is answered "no".

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92 Decision under appeal, above n 1, at [57].
93 At [117], seventh bullet point.

GSL's and Larchmont's questions of law

[105] As I have mentioned, GSL's and Larchmont's notices of appeal are identical in all respects including the errors alleged, the questions of law posed and the relief sought.[94] As well Larchmont fully adopts GSL's submissions. Therefore, I deal with these two appeals together. I intend no discourtesy to Larchmont or counsel by referring in this part of the judgment (for convenience and efficiency), only to GSL.

GSL Question 1

[106] Question 1 asks whether the Environment Court applied a wrong legal test when determining whether the Council complied with the requirements under cl 7 of sch 1 of the RMA. The question is substantially the same as the Council's first question of law, which I have determined: the Environment Court did not apply the wrong legal test. Two further issues were addressed in GSL's submissions.

[107] The first relates to the Environment Court's finding that the summaries of the GSL and Larchmont submissions were illogical and misleading. Mr Casey QC submitted the Court applied the wrong test by incorrectly placing an onus on the Council to go beyond the express words in the decisions requested and interpret and summarise in the SDR what the submissions impliedly sought.

[108] While Mr Casey accurately observed that the GSL summary does refer to Arthurs Point, and to the legal description of the land and the map attached to GSL's submission, the Court's concern with the GSL summary was not that the subject land was inadequately identified. The Court made no comment about that. To recap, the Court had the following concerns:[95]

(a) Although accurate on its face the summary of the GSL submission was "very confusing" and "very misleading".[96]

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94 See [45] above.
95 Decision under appeal, above n 1, at [105]–[108].
96 At [106] and [107].

(b) To say, as the summary said, that extending the urban growth boundary around the existing low density residential zone would "by default" delete the ONL classification was potentially misleading to submitters and that problem itself was compounded by the fact that reclassification of the ONL should be the first step under the Act, not the consequence of a submission.

(c) To be fair to potential submitters the summary should have alerted them to the fact that the relief sought contemplated reclassification of the ONL and redrawing of the boundary so as to exclude from the outstanding natural landscape classification, that part of the land shown on the map attached to the submission.

[109] GSL places great emphasis on the Court's description of the GSL summary as repeating "almost verbatim" what was stated in the original submission. Therefore, GSL argues, the summary met the legal test of being "fair, accurate and not misleading".

[110] However, that approach is simplistic and mischaracterises the role of cl 7. If all that were required of a summary was a faithful replication of the words used by a submitter, but perhaps shortened (to meet the definition of a "summary") the value or point of the cl 7 exercise is diminished — if not lost. An essential plank in the appellants' respective cases is that the cl 7 requirement is procedural in nature. As such, "no exercise of discretion was involved other than determining how best to summarise the relief sought in a submission".[97]

[111] Yet to regard cl 7 as a mere procedural requirement that is met whenever, for example, a summary mirrors the text of a submitter overlooks its statutory purpose and its relationship to other clauses in sch 1.

[112] Under the RMA there must at all times be a district plan for each district.[98] The plan is to be prepared and changed in the manner set out in the relevant part of sch 1.[99]

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97 Written submissions for the Council.
98 Resource Management Act, s 73(1).
99 Section 73(1A).

Part 1 of sch 1 is comprehensive and prescriptive as to the steps to be taken in the preparation and change of policy statements and plans by local authorities. As previously noted the encouragement of public participation in these processes is a distinctive feature of the RMA.[100] Clause 6 of sch 1 presents the first opportunity for ordinary citizens to contribute to the preparation of a district plan but, as the Environment Court observed in *Campbell v Christchurch City Council*, making a submission is —[101]

> …one step in the process started under Part V of the RMA and continuing with the process set out in Part 1 of the First Schedule … from preparation under clause 2 to the date a district plan becomes operative under clause 20.

[113] The "important continuing role" of submissions in the process of preparing or changing a plan is evident from related clauses in sch 1. To illustrate the point:

(a) Clause 5 requires a local authority to give public notice that it has prepared a plan as well as public notice of the process for "public participation in the consideration of the proposed … plan" and the closing date for submissions.

(b) Clause 6 requires any submissions under cl 5 to be in the prescribed form. The prescribed form requires submitters to clearly indicate whether they support or oppose specific provisions in a proposed plan and to give precise details of any decisions they seek from the local authority.[102]

(c) Clause 7 requires a local authority to prepare a SDR and to notify the availability of a SDR and where the SDR and submissions can be inspected. I mention again the observation of the Environment Court in *Montgomery Spur* that the SDR is the main method by which interested members of the public can ascertain whether they are affected by submissions made under cl 6.[103]

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100 Above at [62].
101 *Campbell v Christchurch City Council* Decision, above n 90, at [24] and [30].
102 At [14] where the Court set out the requirements of the form prescribed by reg 5 of the Resource Management (Forms) Regulations 1991.
103 Above at [62].

(d) Clause 8 prescribes the circumstances in which further submissions may be made. Clause 8B requires a local authority to hold a hearing into submissions on its proposed plan with at least 10 days' notice to be given to all submitters who asked to be heard.

(e) Clause 10 requires a local authority to give a decision on the matters raised in submissions. A local authority is to consider whether any amendment to a plan change as notified goes "beyond what is reasonably and fairly raised in submissions on the plan change".[104]

(f) Clause 14 enables submitters to appeal to the Environment Court in relation to provisions included or excluded from the plan if their submission referred to that provision.

[114] The SDR will be the starting point for persons interested in knowing whether they are affected by any submissions seeking changes to provisions in a proposed plan.[105] At another level of detail, the SDR enables an interested member of the public to ascertain the scope of a submission that has been made. That aspect of the utility of a SDR is important and ties back to the obligation on councils to consider whether any amendment to a plan change as notified goes beyond the scope of the relevant submission or submissions.

[115] In short, preparing and notifying the cl 7 summary is a key step in the process by which members of the public:

(a) are advised of potential changes to a proposed policy statement or plan;

(b) can ascertain whether and how they may be affected; and

(c) respond to submissions.

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104 *Countdown Properties (Northlands) Ltd v Dunedin City Council*, above n 28, at 167 relied on by the Environment Court in *Campbell v Christchurch City Council,* above n 90, at [17].

105 *Campbell v Christchurch City Council*, above n 90, at [33].

[116] Whether a SDR is fair, accurate and not misleading is to be assessed by reference not only to its content but in light of the public interest function it serves. In this case, because the GSL summary reproduced virtually verbatim part of GSL's submission, it was indisputably accurate. But what did the summary actually convey to the reasonably informed reader? The parties themselves put to the Environment Court "two (conflicting) theories" as to the meaning of the sentence in the summary that referred to the ONL.[106] The Court concluded (in essence) that a reasonably informed person was unable to discern from the summary (or the submission itself had the summary been sufficient to alert that person to go to the submission) exactly what GSL intended. There has not been reasonable compliance with cl 7 if a summary is accurate yet fails to sufficiently alert the reasonably informed reader of the submitter's intention.

[117] The role of territorial authorities is to facilitate the legislative objective of public participation by notifying summaries of decisions requested that comply with the legal standards. To return to GSL's original point,[107] I do not accept that any undue onus is placed on the Council by requiring it to notify a summary that alerts potential submitters to GSL's intention to exclude the Shotover Loop land from the outstanding natural landscape.

[118] Turning to the Larchmont summary, the Court's essential concern was with the inadequacy of the description of the land. Without a street address, or legal description of the land, hatching an area on a map attached to Larchmont's submission inadequately identified the land to which the submission related. Beyond that the land was in the "hatched" area of Arthurs Point it was not possible to locate "Arthurs Point Kingston" on Map 39.[108]

[119] Councils are obliged to read submissions "as a whole" since the submissions themselves may suggest relief.[109] No incorrect onus is placed on the Council by insisting that its SDR identifies the location of land in a way that makes it sufficiently clear to a reasonable reader, what land a submitter seeks to have rezoned.

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106 Decision under appeal, above n 1, at [104].
107 See above at [107].
108 Decision under appeal, above n 1, at [54] and [103].
109 *Montgomery Spur*, above n 43, at [17].

[120] The Council says it is not its role to interpret the relief sought. That may or may not be so depending on the particular facts. The inescapable point of principle is that a reasonably informed person must be able to ascertain from the documentation exactly what is intended by a submitter. It is not for that reader to uncover the true intentions of the submitter.[110] In this case GSL and Larchmont say the SDR did not need to refer to a proposed drawing of an ONL boundary around the Shotover Loop because the submissions did not seek that.[111] But that is indeed what GSL and Larchmont sought at the hearing as evidenced in the Commissioners' report. Their submission requested the properties be rezoned from rural to low density residential within an urban growth boundary, and that the ONL be deleted from the properties.[112] Further, and crucially, there can be little credible doubt that the Council was unclear as to what GSL and Larchmont sought. As recorded in the first procedural decision the location of the ONL line at Arthurs Point was agreed by the landscape architects during the Council hearings and confirmed in the decisions version of the proposed plan.[113]

[121] In short, to say as the appellants say, that they did not actually seek in their submissions, or in the relief sought with their submissions, what the Environment Court ordered and therefore the Court was wrong to conclude that the SDR inadequately summarised the decisions they requested overlooks the very essence and purpose of an SDR. Even if they did not articulate it, GSL and Larchmont intended by the decisions they requested from the Council to have the outstanding natural landscape boundary moved so that parts of their respective properties could be rezoned and thereby permit low density growth which would be impermissible in an area zoned rural and having an outstanding natural landscape value. The Council's SDR failed to meet the purpose and requirements of summaries of decisions requested because instead of stating GSL's and Larchmont's unarticulated intent, when that intent was clear to the Council but not a reasonably informed member of the public, the SDR merely repeated GSL's statement that extending the urban growth boundary would "by default" delete the ONL landscape classification from that part of the property.

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110 See above at [67](b).
111 See above at [45](c).
112 Queenstown Lakes District Council *Report 17-4*: *Report and Recommendations of Independent Commissioners regarding mapping of Arthurs Point*, *4* April 2018 at [9.2].
113 First procedural decision, above n 9, at [25].

[122] The second argument made in GSL's submissions, and not addressed above, is that the Environment Court incorrectly placed an onus or requirement on submitters to understand the complexities of the plan change framework and the legal hierarchy of decision-making. Ms Steven submitted that no such onus flows from the decision. I agree. The decision implies no such burden on submitters generally nor on GSL and Larchmont in this case. The point is illustrated by the fact that GSL and Larchmont appeared at the hearing before the Commissioners. The relief they sought is recorded in the Commissioners' report: that "the ONL be deleted from [their] properties".[114] GSL and Larchmont were no more required to understand the complexities of the plan change framework when they made submissions at the hearing, than they were when they lodged their submissions. It was open to them to state in their submissions, with the same clarity, the relief they sought.

[123] In finding the Council's SDR to be unfair and misleading, the Environment Court did not apply the wrong test and was not otherwise in error. I say a final word about the "fairness" component of the legal test. The principle endorsed in *Healthlink v Christchurch International Airport Ltd and Canterbury Regional Council* bears repeating:[115]

> An essential aspect of fairness is that persons who wish to be heard by a local authority on an issue should be heard. To be heard they need to file a submission under clause 8, and to do that they need to be put on notice by the summary under clause 7.

[124] The appellants have not established that the Environment Court applied the wrong legal test or otherwise erred in finding the Council's SDR to be unfair and misleading.

[125] Accordingly, GSL's first question is answered "no".

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114 Queenstown Lakes District Council *Report 17–1*, above n 5, at [42].
115 See above at [67](a).

GSL Question 2

[126] Question 2 asks whether, in relation to six conclusions set out in the notice of appeal, the Environment Court erred in reaching conclusions that no reasonable decision-maker could have reached.

[127] I have addressed the alleged errors in:

(a) the Court's determination that the SDR was "unfair and misleading";

(b) the Court's finding that the Larchmont SDR was inaccurate because Larchmont did not seek that the ONL boundary be drawn around the Shotover Loop;

(c) the Court's finding that the GSL summary was misleading in its reference to "default" because the submission clearly sought a change to the ONL classification;

(d) the Court's consideration of the fact the submissions did not clearly seek an amendment to the ONL boundary around the Shotover Loop; and

(e) the Court's finding that the SDR of Larchmont's submission was insufficiently accurate because it did not refer to a legal description or street address.

[128] GSL has not overcome the "very high hurdle" faced by a party who seeks to demonstrate an insufficient evidential basis for a finding in the court below, especially when recognising the expertise of the Environment Court and that the conclusions reached were within the Court's areas of expertise.[116]

[129] It remains only to address the final alleged error which is said to be in the Court's finding that the notified planning maps showed an ONL classification within

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116 See the principles set out at [39]–[42] above.

the rural zone, identified by the acronym "ONL" written on the yellow wash which the legend showed is the rural zone. The Council says "ONL" is placed over other colours on the planning maps identifying zones other than rural zones and the Court relied on its "incorrect assessment" to conclude the proposed plan change was ambiguous and therefore the SDR was confusing because it did not state that GSL and Larchmont sought the insertion of an ONL boundary.

[130] First, I observe that the Court made no such "finding" or "assessment". The Court referred twice in its judgment to the ONL marked on the "yellow wash". Both occasions were in the section headed "2.2 The maps in PC1(N)". Immediately below the heading the Court stated:

> [36] The 'Legend and User Information' in the PC1(N) maps shows:
>
> - an ONL classification with the Rural Zone. This is identified on the maps by the acronym 'ONL' written on the yellow wash which the Legend shows is the Rural zone…

[131] That description was accurate.

[132] The second mention was in the second half of the Court's paragraph [36]:

> … A map in PC1(N) thus had two ways (with different purposes as I discuss shortly) of describing outstanding natural landscapes or parts of them:
>
> (1) The notation 'ONL' on the yellow wash (which signifies a 'Rural' zoning);
> (2) A brown double-dashed line which marks – according to the Legend at the side of each map–the boundary of the outstanding natural landscape or the outstanding natural feature.…

[133] The Court did not conclude or "find" that the ONL notation on the planning maps apply only to rural land. What is plain from the decision in its entirety is that the plan was confusing and problematic in terms of the methods used in relation to signifying relevant ONL values. Regardless, the Court's description of the plan at this point was observational (in the context of the s 314 application) and not central to its conclusion that neither the submissions nor the SDR stated that GSL and Larchmont sought to have the ONL boundary moved so that parts of their land would no longer be within the outstanding natural landscape classification.

[134] GLS's second question is answered "no".

GSL Question 3

[135] This question asks whether the Environment Court erred in finding that the Council did not comply with the requirements of cl 7 and whether, on the evidence, the Court's decision was one that no reasonable decision-maker could have reached.

[136] For the reasons at (primarily) [86]–[94] above, question 3 is answered "no".

GSL Question 4

[137] The fourth question asks whether, in assessing whether the SDR was fair, accurate and not misleading, the Environment Court erred in law by considering the six matters identified in GSL's notice of appeal.

[138] As the first allegedly irrelevant matter is the accessibility of the online rezoning map I put that issue in context. In its broader consideration of the requirements of cl 7, the Court stated:[117]

> (a) If in doubt about a summary a reader should go to the submissions themselves.
>
> (b) Subject to that qualification a summary of a submission may be unreasonable because the submission itself is irrelevant or raises no reasonable case or is frivolous or vexatious because it is not made on the plan or plan change.
>
> (c) But an important qualification to those principles recognises the impracticality of hardcopy searching an SDR and the "overwhelming importance these days of searching online since it is now the standard practice for Councils to have dedicated webpages…"

[117] Decision under appeal, above n 1, at [73]–[77].

(d) From the evidence there were potentially three ways in which persons interested in changes to the outstanding natural landscape boundary, UGB or zonings at Arthurs Point could find submissions on those matters:

(i) by searching the online SDR;

(ii) by examining the online rezoning map; and

(iii) by inspecting the hardcopy SDR.

(e) In relation to (i) the unreasonableness of the process for notifying the SDR by GSL and Larchmont online was not established. In relation to (ii) the online rezoning map was not readily accessible, and in relation to (iii) the Larchmont request for relief (and the SDR) was insufficiently accurate in its description of the land and GSL's request for relief (and SDR) was unfair, misleading and confusing.

[139] As can be seen the accessibility of the online rezoning map was relevant to the Court's discussion of the ways in which the public might access the information needed in order to know whether to make a submission. But the Court's finding that the online rezoning map was inaccessible at the relevant time did not bear on its ultimate conclusion that the SDR did not meet the legal test for compliance with cl 7.

[140] The "fairness" to the Society point has been discussed at [103](i) above. As to the other four matters the Council contends are irrelevant, the matters that the Court considered in its proper application of the legal test have been traversed at length. They did not include the matters the Council submits the Court erroneously considered such as the Council's district plan review process, the higher order chapters of the proposed district plan, the s 32 report or the legal authorities for identifying ONL boundaries and the hierarchical relationship between ONL boundaries, zoning of land and identification of UGB's.

GSL Question 5

[141] GSL's final question asks whether the Environment Court erred in concluding that the online rezoning map was not reasonably accessible on the Council's website during the further submission period in December 2015.

[142] The Court heard evidence on behalf of the Council and on behalf of the Society. I have discussed the Court's findings at [103](g). The Council has not overcome the high hurdle it faces in seeking to overturn this factual finding for which there was a proper (and preferred) evidential foundation.

[143] This question is answered "no".

Summary

[144] It is important to appreciate that what confronted the Environment Court was a "particularly difficult case" with "contextual difficulties".[118] The Society's s 314 application for an enforcement order, and the terms and conditions on which the Society sought to have the s 314 order made, gave rise to complex issues for the Court's assessment and determination. As mentioned in the body of this judgment, the Society sought not only renotification of GSL's and Larchmont's submissions on the proposed district plan but also, to have set aside the Commissioner's decision in relation to their submissions. The Society contended in its s 314 application that the planning maps in the publicly notified proposed district plan contained information that was confusing and uncertain. In order to determine the point, it was necessary for the Environment Court to analyse the provisions that were the subject of the stage 1 district plan review and which provisions were operative and not subject to that stage of the review. While the legal sufficiency of the SDR was a key issue, because of the wide-ranging nature of the application, the Environment Court was necessarily drawn into considering matters that went beyond the narrow issue of compliance with cl 7.

[145] The appeals have not succeeded. I have concluded that the Environment Court did not misinterpret or misapply the law. Irrelevant matters were not taken into

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[118] See above at [97]–[99].

account. Nor was there any failure to consider relevant matters. To the extent the appellants challenge factual findings they have not met the high threshold of demonstrating that the findings were so clearly untenable as to amount to an error of law.

[146] The Council argued that the Environment Court's approach to cl 7, and its requirements of the Council, create inherent risks for local authorities involved in processes under sch 1. Having completed my analysis of the many detailed arguments advanced on appeal, I see this as a floodgates argument having little merit. The case before the Environment Court was fact specific. The starting point for persons interested in knowing whether they are affected by any submissions seeking changes to provisions in a proposed plan will be the local authority's SDR. Preparing and notifying the SDR is a key step in the process by which members of the public are advised of potential changes to a plan and can ascertain whether and how they may be affected and respond to submissions. The role of territorial authorities is to facilitate the legislative objective of public participation by notifying summaries that comply with the legal standards. As I have held, whether a SDR is fair, accurate and not misleading is to be assessed by reference not only to its content but in light of the public interest function it serves. For the reasons I have detailed, this SDR failed in these fundamental respects.

Disposition

[147] For the foregoing reasons, each of the parties' questions of law (set out below), is answered "no".

> Council's Question 1: Did the Court apply the wrong legal test in its interpretation of and approach to clause 7 of Schedule 1?
>
> Council's Question 2: Did the Court err in law by misconstruing the role and purpose of the clause 7 requirement to publicly notify a SDR?
>
> Council's Question 3: Did the Court reach a conclusion that no reasonable decision-maker could have reached when determining that the Council's SDR was "unfair and misleading"?

Council's Question 4: Did the Court err by taking into account a range of matters and considerations which were either immaterial, or irrelevant, to the Society's application?

GSL/Larchmont's Question 1: Did the Environment Court apply a wrong test when determining whether the Council complied with the requirements under cl 7 of sch 1 of the RMA?

GSL/Larchmont's Question 2: In reaching the conclusions identified at paragraphs 8(a) to 8(f) of the notice of appeal, did the Environment Court err in reaching conclusions no reasonable decision-maker could have reached?

GSL/Larchmont's Question 3: Did the Environment Court err in finding that the QLDC did not comply with the requirements under clause 7 of Sch 1 of the RMA? Was the Environment Court's decision unreasonable in that, on the evidence, it was a decision no reasonable decision maker could have reached?

GSL/Larchmont's Question 4: Was it an error of law for the Environment Court to take into consideration the matters identified in paragraphs 12(a) to 12(f) of the notice of appeal in determining whether the SDR was "fair, accurate and not misleading" and whether the QLDC complied with the requirements under clause 7 Schedule 1 RMA?

GSL/Larchmont's Question 5: Was it an error of law for the Environment Court to reach the conclusion that the online rezoning map was not reasonably accessible on the QLDC's website during the further submission period in December 2015? In particular, did the Environment Court reach a conclusion which on the evidence it could not reasonably come to?

[148] The three appeals are dismissed.

[149] As the successful party, the Society is entitled to costs. If costs are unable to be agreed I will receive memoranda which will need to be filed in accordance with a timetable to be strictly observed. Any application for costs is to be filed and served

within 15 working days from the date of this judgment. Memoranda in response are to be filed and served 10 working days thereafter. No memorandum is to exceed six pages.

Karen Clark J

Solicitors:
Anderson Lloyd, Queenstown for Gertrude Saddlery Ltd and Larchmont Developments Ltd
Simpson Grierson, Christchurch for Queenstown Lakes District Council
Parker/Cowan, Queenstown for Respondent

Attachment

Reproduction of decisions requested by GSL and Larchmont and Council's SDR by GSL and Larchmont

Party	Submission	Summary of Decisions Requested
Swan/GSL Submission on Proposed District Plan **Submitter No 494**	**My submission is:** (i) I own the titles 29585 and OT17C/968 located at 111 Atley Road, Arthurs Point, Queenstown. Under the Proposed District Plan (Planning Map 39) my properties are zoned partly Low Density Residential Zone and partly Rural Zone. The boundary of these two zones also forms the Urban Growth Boundary and the part of the site in the Rural Zone also has an Outstanding Natural Landscape (ONL) classification. (ii) I support that part of our properties that is zoned Low Density Residential and seek no changes to the objectives, policies and rules associated with that zone. (iii) I oppose Rural Zoning over that part of our property that extends to the south of the proposed Low Density Residential Zoning. I submit that this land, which is relatively flat, is a logical extension to the proposed (and existing) Low Density Residential Zone, can be adequately serviced and can enhance the housing stock of Queenstown. I submit that the proposed zoning achieves the purpose of the Resource Management Act – the sustainable management of natural and physical resources. (iv) I oppose the urban Growth Boundary and Landscape Classification for the same reasons. **I seek the following decision from the local authority:** (i) Adopt Low Density Residential Zoning over my property (as shown on the attached map). (ii) Delete part of the Rural Zoning from our property and extend the Low Density Residential Zoning in its place as shown on the map attached to this submission. (iii) Extend the Urban Growth Boundary around the extended Low Density Residential Zone as requested in (ii). By default this then deletes the ONL landscape classification from that part of my property. (iv) The balance of our land should remain Rural Zoning. (v) Any other consequential amendments required to give effect to this submission. **I wish to be heard in support of our submission.** **If others are making a similar submission, I will consider presenting a joint case with them at the hearing.**	**Point No 494.1** **Summary of Submission** Submitter own the titles 29585 and OT17C/968 located at 111 Atley Road, Arthurs Point, Queenstown. Supports that part of the land zoned Low Density Residential; opposes Rural Zoning over that part of the land that extends to the south of the proposed Low Density Residential Zoning; and opposes the urban Growth Boundary and Landscape Classification. Requests that council: • Delete part of the Rural Zoning from our property and extend the Low Density Residential Zoning in its place as shown on the map attached to this submission. • Extend the Urban Growth Boundary around the extended Low Density Residential Zone as requested above. By default this then deletes the ONL landscape classification from that part of the property. • The balance of the land remains Rural Zoning.

Larchmont **Submission on Queenstown Lakes Proposed District Plan 2015 — Stage 1** **Submitter No 527**	**Map 39 – Arthurs Point, Kingston** The current boundary of the Low Density Residential Zone is opposed. In particular the Site is not appropriately zoned as Rural for the following reasons: 1. The Site is categorised as a 'Rural Landscape Classification' by virtue of it being located in the Rural Zone. This classification is opposed as this land does not have the requisite characteristics of that classification. The adjoining residential developments of Arthurs Point immediately adjacent to this land detract from the naturalness of this site. 2. This Site cannot give effect to the objectives and policies of the Rural Zone which are focussed on the rural character and in particular supporting farming and other agricultural activities. This Site is not capable of productive farming and as such is not appropriately categorised as rural. 3. This Site is already serviced by the infrastructure of the adjoining residential zone which has the capacity to service this Site. 4. Rezoning this Site as LDR would be the most efficient and effective use of a natural resource and would give effect to the purpose of sustainable management. **Decision sought** 1. Amend Map 39 as follows; Rezone the area of land hatched on the attached Map at Appendix 1 as Low Density Residential. **Map 39 Arthurs Point, Kingston** The current location of the Urban Growth Boundary on this map is opposed. The current boundary encompasses the LDR zones and the Arthurs Point Rural Visitor zones entirely. This boundary does not enable the most efficient and effective use of resources in this area and does not give effect to the relevant objectives and policies of the Proposed Plan. In particular, **Policy 4.2.2.3** Within Urban Growth Boundaries, land is allocated into various zones which are reflective of the appropriate land use; **Policy 4.2.2.2** Urban Growth Boundaries are of a scale and form which is consistent with the anticipated demand for urban development over the planning period, and the appropriateness of the land to accommodate growth; **Policy 4.2.1.5** Urban development is contained within or immediately adjacent to existing settlements. The zoning of the Site immediately adjoining the LDR, and separated by the UGB, does not give effect to policies and objectives in the rural chapter such as minimising the effects of residential activities in rural areas. There appears to be no justification for alternative alignments of the UGB in accordance with section 32(b) of the RMA. **Decision sought** 1. Amend Map 39 as follows; Relocate the UGB to include the area of land hatched on the attached map at Appendix 1. [**Larchmont's submissions continued after this point.]**	527.1 Rezone the area of land hatched on the Map attached to this submission from Rural zone to Low Density Residential 527.2 Relocate the UGB to include the area of land hatched on the map attached to this submission.