

BEFORE THE HEARINGS PANEL

FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN

UNDER

The Resource Management Act 1991
(RMA)

IN THE MATTER

of Stage 3 of the proposed District Plan

AND

IN THE MATTER

of Submission 3256 seeking re-zoning of
land at Luggate

SUBMISSIONS FOR UPPER CLUTHA TRANSPORT LIMITED ON JURISDICTION

21 AUGUST 2020

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MAY IT PLEASE THE COMMISSIONERS

- 1 These submissions address the issue of the Council's jurisdiction to consider some Stage 3 submissions that seek re-zoning of land that was not notified as part of this Stage of the PDP. The issue has been raised by counsel for Scope Resources Limited (**SRL**) in submissions dated 7 August 2020.
- 2 SRL's interest relates to the zoning of land at Victoria Flats as sought in the submission of Cardrona Cattle Company Limited (**CCCL**). While SRL has no interest in the outcome of the submission by Upper Clutha Transport Limited (**UCT**) seeking rezoning of land at Church Road, Luggate, counsel for SRL's challenge to the jurisdiction of the Council to consider CCCL's submission could have wider implications if accepted by the Commissioners.
- 3 I am therefore appreciative of the opportunity to make these brief submissions on the issue on behalf of UCT.
- 4 I submit that the approach to this issue set out in the submissions of counsel for the Council dated 29 June 2020, and in particular at paragraphs 4.1 – 4.5, and 6.2 – 6.6 is both legally permissible and appropriate in the circumstances.
- 5 Other counsel have referred to the leading authority of relevance to the question of what constitutes a submission "on" a proposed plan. I agree that *Palmerston North CC v Motor Machinists Ltd*¹ is the most authoritative case on point.
- 6 The comments made by counsel for the Council at paragraph 6.5 of opening submissions set out the position as it relates to the UCT submission (although the UCT submission is not identified). Counsel explains that "[G]iven the staged approach taken to the plan review, and fairness matters, Council has approached all of these submissions as if they were 'on' Stage 3." It is worth expanding on that a little.
- 7 Preparing a new district plan in conformance with the requirements of the RMA, both as to content and process, is a complicated undertaking. It requires the application of real care and attention to arrive at an outcome that balances competing aspirations and ultimately promotes the sustainable management of the land resource. That said, at a certain level, it can be understood that there are three fundamentally important considerations:

¹ [2013] NZRMA 519

- a. Determining how the district’s land is to be understood spatially – that is to say, what zones and other spatial planning tools (such as overlays and precincts) are we going to apply;
 - b. Determining what the content of those tools should be – that is to say, what activities should and should not be provided for within different zones or other identified areas, and what other controls are appropriate;
 - c. Where should each of the zones and other tools apply in the district.
- 8 The reality of course is that these matters are all closely related and it is unrealistic to think that a district plan can be developed in a disaggregated or unintegrated way that denies the relationships between these considerations, and particularly between b. and c. above.
- 9 Also, the scale of the task means that for this district plan, a decision to break it down into stages was taken so as to assist with the orderly management of a vast amount of material. That’s entirely reasonable and pragmatic.
- 10 A consequence of the staged approach, combined with the intertwined nature of *what* the zone provisions say and *where* in the district they should apply means that as a matter of fairness the approach that the Council has taken, as set out by counsel at paragraph 6.5, is the right one.
- 11 In the case of UCT, its submission is clearly on the topic of the GIZ as notified in Stage 3, seeking both the inclusion of land on the fringe of Luggate (and adjacent to other land used for industrial activities) within the GIZ, and specific provisions for inclusion in the GIZ rules in relation to that land.
- 12 UCT’s existing activity is industrial in nature, and it seeks suitable rezoning of nearby land in Luggate to facilitate a relocation that will both better suit its needs while also allowing for the more sustainable re-purposing of its existing site in the township. In my submission it would be artificial and unfair if UCT’s submission could not be considered because it filed the submission as part of the consideration of the GIZ rather than as part of the earlier consideration of the Rural Zone.
- 13 The counter-factual is that in order to achieve the re-zoning of the Church Rd land a variation to the PDP would need to be prepared and notified. In my submission this would be inefficient and incur needless cost on the submitter and Council, for no substantive benefit.
- 14 Finally, I note that the alternative industrial zoning option for the Church Rd site that is available to the Commissioners is the Rural Industrial Sub-Zone (**RISZ**). Should the

Commissioners, contrary to my submissions, conclude that the re-zoning to GIZ cannot proceed on jurisdictional grounds because it offends the earlier zoning of the land as Rural, then it would appear that the RISZ would still be available. The RISZ sits within Chapter 21 – Rural of the PDP as a sub-zone, and the subject site is adjacent to other land within that sub-zone. RISZ zoning of the site would not “offend” the underlying rural character of the site.



Stephen Christensen

Counsel for Upper Clutha Transport Limited

21 August 2020