

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

ENV-2021-CHC-

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of potential appeals
under Clause 14 of
Schedule 1 of the Act
against decisions of the
Queenstown Lakes
District Council on Stage
3 and 3b of the
Proposed Queenstown
Lakes District Plan

AND

IN THE MATTER of an application for
waivers and directions
under section 281 of the
Act

BY **QUEENSTOWN LAKES
DISTRICT COUNCIL**

Applicant

**NOTICE OF MOTION ON POTENTIAL APPEALS ON STAGE 3 AND 3B OF THE PROPOSED
QUEENSTOWN LAKES DISTRICT PLAN**

25 March 2021

Queenstown Lakes District Council
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To: The Registrar
Environment Court
Christchurch

1 Introduction

1.1 The decisions by the Queenstown Lakes District Council (**Council**) on Stage 3 and 3b (collectively, **Stage 3**) of its Proposed District Plan (**PDP**) were issued on 18 March 2021.

1.2 It is anticipated that a substantial number of appeals on the Council's decisions on Stage 3 of the PDP will be filed with the Court under clause 14 of Schedule 1 of the RMA.

1.3 Accordingly, the Council has filed this notice of motion to:

- (a) provide information to the Court on the PDP process so far, including an outline of the content of, and Council hearings for, Stage 3;
- (b) indicate the Council's preliminary thoughts on options for the case management of the Stage 3 appeals (including potential grouping of appeals into topics, and other procedural matters); and
- (c) seek, pursuant to section 281 of the RMA, various waivers and directions that may assist to streamline the filing and service of any notices of appeal, section 274 notices, and any other Court documentation relating to these appeals.

1.4 Broadly, the Council seeks to take a similar approach to case management of Stage 3 appeals as it has taken to Stage 1 and Stage 2, with some minor differences in terms of suggested timing.

2. Outline of Stage 3 of the Review of the Queenstown Lakes District Council Operative District Plan (ODP)

Stage 3

2.1 The Council's District Plan Review is being undertaken in stages. The Council publicly notified Stage 3 on 19 September 2019 and Stage 3b on 31 October

2019. The two separately notified components of Stage 3 are at the same procedural stage.

2.2 There are anticipated to be nine topics in Stage 3, comprising one new district wide chapter (intended to apply to all land that has been notified as part of the 'Proposed District Plan' in Stages 1 to 3), four new zone chapters (and associated new zones on the plan maps), two area-specific rezonings, new provisions for and / or variations to various Stage 1 and 2 chapters and plan maps (it may be that the variations are split out into separate topics, or depending on the number of appeals can be dealt with as subtopics), and Design Guidelines.

2.3 The details of each topic are as follows (topic names and Stage 3 chapters in **bold font**):

- (a) **Wāhi Tūpuna (Chapter 39)** and variations to the following Stage 1 and 2 chapters: Definitions (Chapter 2), Tangata Whenua (Chapter 5), Queenstown Town Centre (Chapter 12), Wānaka Town Centre (Chapter 13), Arrowtown Town Centre (Chapter 14), Local Shopping Centre (Chapter 15), Business Mixed Use (Chapter 16), Earthworks (Chapter 25), Historic Heritage (Chapter 26), Subdivision and Development (Chapter 27), Transport (Chapter 29), and Energy and Utilities (Chapter 30);
- (b) **General Industrial Zone (Chapter 18)** and variations to the following Stage 1 and 2 chapters: Earthworks (Chapter 25), Subdivision and Development (Chapter 27), Transport (Chapter 29), Signs (Chapter 31) and Noise (Chapter 36);
- (c) **Three Parks Commercial and Three Parks Business (Chapters 19A and 19B)** and variations to the following Stage 1 and 2 chapters: Lower Density Suburban Residential (Chapter 7), High Density Residential (Chapter 9), Business Mixed Use (Chapter 16), Earthworks (Chapter 25), Subdivision and Development (Chapter 27), Signs (Chapter 31) Energy and Utilities (Chapter 30);
- (d) **Settlement Zone (Chapter 20)** and variations to the following Stage 1 and 2 chapters: Definitions (Chapter 2), Strategic Direction

(Chapter 3), Urban Development (Chapter 4), Lower Density Suburban Residential (Chapter 7), Local Shopping Centre Zone (Chapter 15), Rural (Chapter 21), Rural Residential and Rural Lifestyle (Chapter 22), Earthworks (Chapter 25), Subdivision and Development (Chapter 27), Transport (Chapter 29), Signs (Chapter 31), Noise (Chapter 36), and Open Space and Recreation Zones (Chapter 38);

- (e) **Rural Visitor Zone (Chapter 46)** and variations to the following Stage 1 and 2 chapters: Earthworks (Chapter 25), Subdivision and Development (Chapter 27), Signs (Chapter 31), and Noise (Chapter 36);
- (f) **101 Ballantyne Road zoning** at the former oxidation pond site in Wanaka;
- (g) **Arthur's Point zoning** and variations to the following Stage 1 chapter: High Density Residential (Chapter 9) on and adjoining land zoned Rural Visitor Zone in the ODP;
- (h) **Variations and plan maps** (Variations to the following Stage 1 and 2 Chapters and plan maps: Open Space and Recreation Zone (variation to Chapters 29, 36 and 38); Glare (variations to Chapters 7-9 and 12-16); Firefighting water supply (variation to Chapters 21-24 and 38), Wānaka Medium Density Residential Zoning; Frankton Road Height Controls (variation to planning maps 31A, 32 and 37)); and
- (i) **Design Guidelines for the Business Mixed Use and Residential Zones (applies to Chapters 7, 8, 9 and 16).**

2.4 Submissions on Stage 3 of the PDP closed on the 18 November 2019 and the 2 December 2019 for Stage 3b. Further submissions for both Stage 3 and 3b closed on 17 February 2020. In total, 405 submissions (containing 7882 submission points) and 64 further submissions were lodged with the Council for Stage 3. For Stage 3b, 48 submissions (containing 608 submission points) and 25 further submissions were lodged with the Council.

2.5 The Council appointed a Panel of Commissioners (**Panel**) to hear submissions and make recommendations on Stage 3 of the PDP. The hearings were held between June and August 2020 and the Council's decisions on the Panel's recommendations were made on 18 March 2021.

3. Case management options for the Stage 3 appeals

3.1 The Council intends to publicly notify its decisions on Stage 3 on 1 April 2021. The appeal period in relation to those decisions will close on 18 May 2021, with the section 274 period ending on 16 June 2021.

3.2 We note for completeness that the Council publicly notified its decision on the Variation to Chapter 30 (Energy and Utilities) on 22 October 2020. The appeal period for the variation closed on 4 December 2020 and two appeals were received. The Council has reported to the Court on these appeals separately.¹ Those appeals are being managed on their own timetable and, for the avoidance of doubt, no directions are sought in this Notice of Motion for those appeals.

3.3 As with the Stage 2 appeals, the Council will be required to undertake a number of tasks immediately after any appeals are served on the Council (and again after associated section 274 notices are served), as follows:

- (a) review all notices of appeal (and associated section 274 notices) to identify the relevant topics covered by each notice of appeal (and 274 notice);
- (b) identify whether further particulars are required in relation to certain appeals so that the Council will be able to formulate a position on those appeal points;
- (c) identify the parts of the PDP that are subject to appeal or are beyond challenge (and therefore deemed operative in terms of section 86F of the RMA). This step involves preparation and maintenance of an Appeals Version of the PDP chapters and an electronic plan viewer identifying land subject to site specific appeals; and

¹ Memorandum of Counsel reporting on progress of variation to Chapter 30 - Energy and Utilities dated 26 February 2021.

- (d) identify and advise the Court of any jurisdictional issues that should be addressed prior to or alongside any mediation.

3.4 The Council seeks to assist the Court by developing case management options for the Stage 3 PDP appeals (drawing on the Council's lessons from the Stage 2 process) that will take into account:

- (a) whether it is appropriate to hear certain appeals separately, or group appeals together for mediations and/or hearings;
- (b) whether any particular sequencing of appeals (or groups of appeals) is appropriate; and
- (c) whether Court facilitated mediation would be of benefit for certain appeals (or groups of appeals), and if so, the Council will liaise with the parties involved in relation to the likely timeframe required to prepare for any mediation.

3.5 It is anticipated that, following consideration of the above, the Council would prepare and file, after conferring with all parties involved in the appeals, a reporting memorandum recommending an approach to the case management of the Stage 3 PDP appeals.

3.6 The Council respectfully seeks a period of approximately eight weeks following the close of the section 274 period to undertake the above tasks, such that its first reporting memorandum is provided on or around 11 August 2021.

3.7 The Council's reason for seeking this amount of time is that Council's experience of Stages 1 and 2 is that the initial administrative tasks around recording appeals and preparing an Appeals Version of the plan takes a lot of time to complete and check appropriately. Also, Council officers and other parties will be preparing for and attending Stage 2 mediations, and possibly hearings, over this same time period, including preparing for Topic 31 rezoning mediations scheduled for April – June 2021. Further, the Council anticipates that hearings on Stage 1 and 2 appeals that were not resolved through mediation are likely to take place in the second half of 2021.

3.8 The Council respectfully requests that the Court consider issuing a direction on the basis that the Council's first reporting memorandum should be filed on or around 11 August 2021, after which time case management directions could be issued.

3.9 The following part of this notice addresses specific matters related to the above.

Intended topic approach

3.10 The Council's preliminary view is that breaking the appeals down and grouping them into topics is likely to be helpful in ensuring that the appeals are efficiently managed. At the Council level, hearings were broken into topics in the same way.

3.11 The Council respectfully suggests that its first reporting memorandum would be the most appropriate time to propose any finer grained sub-topic or thematic approach within the nine Stage 3 topics, after the Council has had an opportunity to understand the appeals.

Mediation

3.12 The Council anticipates there will be significant benefits from mediating the Stage 3 appeals. In the Council's view, the Stage 1 and 2 mediations to date have been productive and helpful in resolving a large number of appeal points, and significantly refining the issues for those appeal points that were not able to be resolved and require hearing.

3.13 The Council notes that consideration will need to be given to the timetabling and outcomes of the relevant Stage 2 mediations and hearings, before timetabling mediation on the Stage 3 topics. However, the Council's preliminary view is that Stage 3 mediation could possibly commence in November and December 2021. The Council would address potential timetabling in more detail in its first reporting memorandum.

Preliminary jurisdictional issues

3.14 As with Stage 1 and 2, the Council anticipates that jurisdictional issues may arise out of the appeals (such as issues of parties' standing to appeal) that may most appropriately be dealt with through applications to the Court prior to mediations.

3.15 It is the Council's intention to identify such issues and apply to the Court for appropriate orders as quickly as possible following the close of the appeal and section 274 period and prior to the commencement of mediations. Other parties may also wish to make similar applications during this time.

4. Application for waivers and directions under section 281 of the RMA

4.1 The Council seeks that the same general approach be taken to Stage 3 in terms of waivers and directions for service of appeals and section 274 notices, with the aim of streamlining the process and enabling electronic service, and using the Council's website to make appeals and section 274 notices available to the public.

4.2 Drawing on lessons from Stage 1 and 2, the Council respectfully seeks a small amount of additional time for uploading appeals and section 274 notices to its website, and directions addressing the manner in which electronic documents are named and served. This approach was taken for Stage 2, because in Stage 1, a significant amount of the Council's website maintenance time was spent in re-naming and separating pdfs and requesting missing appendices, before appeals and section 274 notices could be uploaded in a logical and helpful format.

4.3 The Council seeks the following waivers and directions pursuant to section 281 of the RMA in respect of the potential appeals on its decisions on Stage 3 of the PDP:

(a) **Notices of appeal:**

(i) any notice of appeal (in relation to the Council's decisions on the provisions of Stage 3 of the PDP) must be:

- lodged with the Environment Court electronically by email to: Christine.McKee@justice.govt.nz and by posting a hard copy to: PO Box 2069, 20 Lichfield Street, Christchurch;
 - served on the Council electronically by email to dpappeals@qldc.govt.nz; and
 - served on the person who made the original submission which is the subject of the appeal, and every person who made a further submission on the same original submission;
- (ii) the requirement to serve a copy of any notice of appeal and attachments on every person who made a submission on the provision or matter to which the appeal relates is waived. The related written notice requirement (“Advice to recipients”) is also waived;
- (iii) any notice of appeal must be in pdf format, with a title following the format NOTICE OF APPEAL BY [NAME OF APPELLANT]. Any appendices must be separate pdfs, with titles following the format APPENDIX [1] TO NOTICE OF APPEAL BY [NAME OF APPELLANT];
- (iv) service of the notice of appeal on every other person (not being an original or further submitter – all of whom are to be served in accordance with paragraph 4.3(a)(i) above) who made a submission on a provision or matter to which the appeal relates will be deemed to be effected by the Council uploading copies of all notices of appeal onto its website within five working days after the appeal period closes.

(b) **Section 274 notices:**

(i) any section 274 notice must be:

- lodged with the Environment Court electronically by email to Christine.McKee@justice.govt.nz;
- served on the Council electronically by email to dpappeals@qldc.govt.nz; and
- served on the appellant electronically on any email address provided in the notice of appeal;

(ii) the requirement to lodge a signed original and one hard copy of any section 274 notice with the Environment Court is waived;

(iii) the requirement for section 274 parties to serve their notice/ form 33 on all other parties is waived;

(iv) any section 274 notice must be served on the Council within 20 working days after the period for lodging a notice of appeal ends. The requirement for section 274 parties to serve their notice within 15 working days after the period for lodging a notice of appeal ends is waived;

(v) any section 274 notice must be in pdf format, with a title following the format SECTION 274 NOTICE BY [NAME OF PARTY] JOINING [NAME OF APPELLANT]. Any appendices must be separate pdfs, with titles following the format APPENDIX [1] TO SECTION 274 NOTICE BY [NAME OF PARTY] JOINING [NAME OF APPELLANT]. A separate section 274 notice must be filed in respect of each appeal being joined;

(vi) service of section 274 notices on all other parties will be deemed to be effected by the Council uploading copies of

section 274 notices onto its website within fifteen working days after the section 274 period closes.

4.4 The Council seeks the above waivers and directions on the following grounds:

- (a) In total, 453 submissions² with 8,490 submission points were received on Stage 3 of the PDP. The waivers and directions will:
 - (i) clarify the requirement for service of documents set out in section 352 of the RMA and reduce the burden on the Council in receiving hard copies of appeal documents;
 - (ii) reduce the burden on appellants and section 274 parties, who may be otherwise obliged to serve notice on a significant number of parties;
 - (iii) reduce the administrative burden on the Council's website team by requiring parties to serve documents in a consistent format, and providing a small amount of additional time for uploading; and
 - (iv) address the significant logistical issues for the parties that would otherwise arise, particularly around filing and service of hard copies of documents.

- (b) The Environment Court in *Re Auckland Council*³ granted a similar application made by Auckland Council in respect of upcoming appeals on its decisions on the Proposed Auckland Unitary Plan. (The Council's Notice of Motion dated 23 April 2018 attached Auckland Council's application and the Environment Court's decision). The Court identified two relevant aspects of section 281 of the RMA, being that:⁴
 - (i) it does not appear that the Court's jurisdiction is confined to a proceeding already before the Court; and

² And 89 further submissions.

³ [2016] NZEnvC 153.

⁴ [2016] NZEnvC 153 at [9] – [10].

- (ii) the Court can waive the requirements of the RMA and make directions in an appropriate case.
- (c) The Environment Court granted the Council's previous application in respect of Stage 1⁵ and Stage 2.⁶ These directions worked well for Council.
- (d) On 1 April 2021 the Council will:
 - (i) give public notice of its decisions in the Wanaka Sun, Otago Daily Times, Southland Times, and Queenstown Mountain Scene newspapers (as required by clause 10(4)(b) of Schedule 1 of the RMA); and
 - (ii) send a letter to all submitters and further submitters on Stage 3 of the PDP containing the information required by clause 11(1) of Schedule 1 of the RMA.
- (e) The Council has created a specific webpage on the Council's website (<https://www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/appeals/appeals-received-for-stage-three>), which will contain the Council's decisions and all notices of appeal and section 274 notices served on the Council. In accordance with the above waivers and directions, copies of all notices of appeal will be uploaded within five working days after the appeal period closes, and section 274 notices will be uploaded within fifteen working days after the section 274 period closes, so that any submitters or other persons will be made aware of any appeal and have the opportunity to join any appeal by lodging a section 274 notice with the Court.
- (f) The Council will also upload this Notice to its website, and provide a copy via email to all submitters and further submitters on Stage 3.
- (g) The Council appreciates that this application for waivers and directions under section 281 of the RMA may not be able to be

5 Available on the Council's website: <https://www.qldc.govt.nz/planning/district-plan/proposed-district-plan-stage-1/appeals/>.

6 Available on the Council's website: <https://www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/appeals/appeals-received-for-stage-two>.

decided prior to 1 April 2021. If the Court is minded to make the above waivers and directions after 1 April 2021 the Council will:

- (i) upload a copy of the Court's waivers and directions on the Council's webpage; and
 - (ii) serve notice on all Stage 3 PDP submitters (in electronic form, unless no electronic address is available) that the waivers and directions have been made and that they can be found on the Council's website.
- (h) If the Court is minded to grant the above waivers and directions prior to 1 April 2021, the Council would include notice of this fact as part of its public notice of 1 April 2021.

5. Just treatment of parties

- 5.1 The Council acknowledges that the *ex parte* nature of this application is a relevant matter for the Court's consideration. The Council is mindful that it is an objective of the Court's case management set out in paragraph 4.1(a) of the Practice Note to "*ensure the just treatment of all parties.*"
- 5.2 With this factor in mind, the Council respectfully submits that other parties and potential parties to the Stage 3 appeals would not be prejudiced by the Court granting the waivers and directions sought. Council anticipates that granting the waivers, and directions sought, will assist the parties.
- 5.3 Counsel is also willing to assist the Court by providing any further information that the Court considers would be of assistance, in advance of the appeals being received.

Dated 25 March 2021



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