

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of the Queenstown Lakes
Proposed District Plan

REQUEST FOR LEGAL OPINION REGARDING
CONSEQUENTIAL AMENDMENTS

1. Although this question has arisen in the Stream 3: Historic Heritage and Protected Trees Hearing Stream, it is an issue of concern PDP-wide.
2. The question we request a legal opinion on is:

Where a submitter has sought amendments to the rules but not to the overlaying objectives and policies, is it within scope to amend the objectives and policies that the rule(s) are implementing to ensure that there remains a consistent series of implementation links from objectives to policies and policies to rules by classing such changes as consequential amendments?
3. We would appreciate an answer to this as soon as possible please.

For the Hearing Panel



Denis Nugent (Chair)

4 August 2016

Memorandum

To: Queenstown Lakes District Council - Hearing Panel

From: Meredith Connell

Date: 9 August 2016

Subject: Request for legal opinion regarding consequential amendments

- 1 We refer to the Hearing Panel's request for legal advice of 4 August 2016 as to whether:

Where a submitter has sought amendments to the rules but not to the overlaying objectives and policies, it is within scope to amend the objectives and policies that the rule(s) are implementing to ensure that there remains a consistent series of implementation links from objectives to policies and policies to rules by classing such changes as consequential amendments?
- 2 In our view, the Panel is not prevented from amending the overlaying objectives and policies where a submitter has only sought amendments to the relevant rule(s) as long as any such amendments do not go beyond what is fairly and reasonably raised in the submission.
- 3 The Courts have considered this matter in past cases where local authorities have proposed amendments in response to submissions, but which are not included in the specific relief sought. The Courts have taken a liberal approach to these situations, finding that a legalistic view whereby local authorities (the Panel in this case) can only accept or reject the specific relief sought in submissions is unrealistic.
- 4 This is on the basis that decision-makers generally need to reconcile multiple conflicting submissions and submissions are often prepared without professional assistance, so a submitter may not understand the planning framework and the requirement for implementation links from objectives to policies and policies to rules.
- 5 Accordingly, the Panel should ask itself whether any amendment it proposes, in order to ensure a consistent series of implementation links, goes beyond what is fairly and reasonably raised in the submission.
- 6 This will be a question of degree, to be judged by the terms of the proposed change (ie is it a significant change, perhaps to the structure of the Proposed Plan or in respect of a Plan-wide matter? Or is it simply a minor change?) and the content of the relevant submission. As an example, an amendment to a rule might be the specific relief sought, but the grounds for the submission might outline what the submission seeks to achieve, which the Panel could find to encompass a change to the relevant objectives and policies.

- 7 The Environment Court in *Campbell v Christchurch City Council* [2002] NZRMA 332 (EC) set out three useful steps in asking whether a submission reasonably raises any particular relief:¹
- (a) Does the submission clearly identify what issue is involved and some change sought in the proposed plan?
 - (b) Can the local authority rely on the submission as sufficiently informative for the local authority to summarise it accurately and fairly in a non-misleading way?
 - (c) Does the submission inform other persons what the submitter is seeking?
- 8 In applying this test and proposing “consequential” amendments, the Panel should also be careful to consider any proposed amendments to the overlaying objectives and policies in the context of the Proposed Plan more broadly. There may be consequences in terms of objective and policy direction that goes beyond what is fairly and reasonably raised in the relevant submission.
- 9 Some submissions will likely include “any other consequential changes” as relief sought. While the changes are, in effect, consequential amendments, it is open to the Panel to simply class the changes as within the scope of submissions (so long as the “fairly and reasonably” test is met).

¹ *Campbell v Christchurch City Council* [2002] NZRMA 332 (EC). See also *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145 (HC).