

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Stream 05 –
District Wide chapters

**OPENING REPRESENTATIONS / LEGAL SUBMISSIONS FOR
QUEENSTOWN LAKES DISTRICT COUNCIL**

Hearing Stream 05 – District Wide

9 September 2016

 **Simpson Grierson**
Barristers & Solicitors

S J Scott
Telephone: +64-3-968 4018
Facsimile: +64-3-379 5023
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140

MAY IT PLEASE THE PANEL:

1. INTRODUCTION

1.1 These legal submissions are made on behalf of Queenstown Lakes District Council (**Council**) in respect of the District Wide hearing of the Proposed District Plan (**PDP**). The three chapters, and submissions on them, that are being considered are:

- (a) the Energy and Utilities chapter;¹
- (b) the Temporary Activities and Relocated Buildings chapter,² and
- (c) the Noise chapter³ (**District Wide chapters**).

2. OUTLINE OF LEGAL SUBMISSIONS

2.1 For the assistance of the Panel, these opening submissions address the following matters:

- (a) the scope of this hearing;
- (b) the Council's approach to deferral of submissions points; and
- (c) the key issues on:
 - (i) the Energy and Utilities chapter;
 - (ii) the Temporary Activities and Relocated Buildings chapter; and
 - (iii) the Noise chapter.

1 Chapter 30.
2 Chapter 35.
3 Chapter 36.

- 2.2** These submissions are not a comprehensive response to all evidence that has been filed, which will be covered in the Council's right of reply if necessary.
- 2.3** There are a number of issues raised in evidence for submitters that are contested and/or not accepted by the Council. In order to assist the Panel and because there is no direction for rebuttal evidence, the summaries of the Council's evidence have responded, at a very general level, to some of the key issues raised in submitters' evidence.
- 2.4** The Council refers to and adopts the opening legal submissions presented at the Strategic Direction hearing, in terms of Council's functions and statutory obligations (section 3), relevant legal considerations (section 4), and whether various submissions are "on" Stage 1 of the PDP (section 7).⁴ Those submissions are not repeated here.

3. SCOPE OF THE DISTRICT WIDE HEARING

- 3.1** The District Wide hearing is made up of the three District Wide chapters and includes any defined terms used within those chapters.
- 3.2** Each chapter regulates a specific set of activities and effects, which are generally distinct from the activities and effects regulated by the PDP zone chapters. The District Wide chapters apply across all zones of the PDP, except for the geographic area subject to Plan Change 50.⁵
- 3.3** Remarkables Park Limited has sought clarification as to the application of all district wide chapters in the PDP to the Remarkables Park Zone (**RPZ**).⁶ The current position on this matter was covered in the Council's closing submissions for the Subdivision Hearing Stream 04 where it was submitted that, unless there is a specific qualifier in the notified chapter, all district wide chapters apply district

4 Opening Representation / Legal Submissions for Queenstown Lakes District Council, Hearing Streams 1A and 1B - Strategic Chapters in Part B of the Proposed District Plan, dated 4 March 2016.

5 The Council resolved to withdraw all provisions of the PDP that related to the geographic areas covered by Plan Change 50 on 29 October 2015.

6 See paragraph 2.8 of the Legal Submissions of Mr John Young, dated 2 September 2016.

wide.⁷ The Council submits that as the three District Wide chapters being heard in this hearing stream do not explicitly (or implicitly) exclude the RPZ from their application, the provisions contained in the chapters apply to the RPZ, where relevant. Unless there is a submission seeking a specific qualification or exemption, the Panel may not have any scope to change the application of the District Wide provisions as part of this hearing stream.

3.4 The Council acknowledges that the above position may change if the Council decides to formally exclude the RPZ from the PDP (potentially by way of a withdrawal). The consequences of doing so would need to be addressed at that time and cannot be predetermined in the context of this hearing stream. Accordingly, the evidence of the Council has been provided on the basis that the District Wide chapters apply to the RPZ.

4. COUNCIL'S APPROACH TO TRANSFER OF SUBMISSIONS POINTS

4.1 The s 42A reports on the District Wide chapters explain the approach taken by the Council to the deferral of submissions on each of the District Wide chapters. The accept/reject table in Appendix 2 of each report also provides additional information.

4.2 Submissions that request relief that is beyond the scope of the types of specific activities and effects intended to be regulated by a specific District Wide chapter, have either been deferred to the hearing on the relevant zone chapter or have been recommended to be rejected. The Council's approach to the deferral of specific categories of submission points is as follows:

Energy and Utilities

(a) submissions made on the Energy and Utilities chapter relating to subdivision and development of land affecting the National Grid⁸ were considered in Mr Nigel Bryce's s 42A Report for the Subdivision hearing;

⁷ See also the right of reply of Mr Nigel Bryce on Chapter 27 Subdivision, and except for the geographic area covered by Plan Change 50.

⁸ Transpower New Zealand Limited (#805) and Federated Farmers of New Zealand (FS1132).

Temporary Activities and Relocated Buildings

- (b) submissions relating to air shows at Wanaka Airport have been transferred to the Business zones hearing;⁹
- (c) submissions relating to the application of Residential Zone rules or standards to relocated buildings and temporary activities have been transferred to the Residential Zones hearing; and¹⁰

Noise

- (d) the submission of Real Journeys Limited requesting that notified Rule 36.5.4 (redrafted 36.5.3) be amended to exclude noise from activities in the Walter Peak Rural Visitor Zone has been recommended to be rejected, as the Walter Peak Rural Visitor Zone is not a Stage 1 zone. Although the chapter applies District-Wide, the Council considers that the content of this submission point is better addressed in Stage 2 once the purpose of this zone has been defined.¹¹

4.3 The Council acknowledges the Minute of the Panel dated 24 August 2016. Subject to the following, all submissions seeking a particular zoning (including any requested additions or amendments to objectives, policies and rules) have been deferred to the appropriate mapping hearing.¹²

4.4 Skyline Enterprises Limited¹³ and Totality Tourism Limited¹⁴ have proposed a new Commercial Tourism and Recreation Sub-Zone, including an additional noise rule. It is understood that the position of the submitters is that it is necessary to consider the additional noise

9 Queenstown Airport Corporation (#433) Queenstown Park Limited (FS1097) Remarkables Park Limited (FS1117); Refer also to the Panel's Minute Concerning Provisions Applying to Wanaka Airport - Issued 16 June 2016.

10 Queenstown Airport Corporation (FS1340); Christine Byrch (#243).

11 Real Journeys Limited (#621).

12 Matakauri Lodge Limited (#243) (FS1224); Lake Hayes Cellar Limited (#767).

13 Submitter #574.

14 Submitter #571.

rule as part of this hearing, in case the proposed zoning is not accepted.¹⁵

4.5 The Council and the submitter have both provided evidence on the proposed noise rule.¹⁶ The Council submits that the Panel has two options for considering this evidence:

(a) it could consider the evidence and make a recommendation as part of this hearing; or

(b) it could consider the evidence as part of the appropriate hearing on mapping, in which case the Panel could still make a recommendation on the proposed additional noise rule, even if it considers that the requested new zone is not appropriate.

4.6 The latter option would be consistent with the Panel's Minute dated 24 August 2016, but the Council will abide the Panel's decision on this matter.

4.7 The Council further notes that it is unclear whether the submissions of Cardrona Alpine Resort Limited,¹⁷ on the Temporary Activities and Relocated Buildings chapter, relate to the inclusion of specific new rules in a proposed new (and extended) zone, or seek changes to the notified chapter as it applies to the current Cardrona Ski Area Sub Zone. As the Temporary Activities and Relocated Buildings chapter applies district wide, the Council has continued to provide evidence on these submissions in this hearing stream.¹⁸

5. ENERGY AND UTILITIES CHAPTER (30)

5.1 Energy and utilities are fundamental to the social, economic, and cultural well-being of the people and communities in the Queenstown Lakes District (**District**). However, energy and utilities also have the

15 See paragraphs 21 and 22 of Mr Sean Dent Evidence, dated 2 September 2016.

16 See paragraph 58 of Sean Dent Evidence; paragraph 13.3 of Dr Stephen Chiles Evidence, dated 17 August 2016; paragraph 8.48 of the s 42A report of Ms Ruth Evans on Chapter 36 Noise, dated 17 August 2016.

17 Submitter #615.

18 See 11.4 of paragraph 5.5 of the s 42A report of Ms Kimberley Banks on Chapter 35 Temporary Activities and Relocated Buildings, dated 17 August 2016.

potential to have adverse effects on the environment. Accordingly, their appropriate management is important to the promotion of sustainable management of the District.

5.2 Part 2 of the Resource Management Act 1991 (**RMA**) provides that in achieving the purpose of sustainable management particular regard shall be had to:

- (a) the efficient use and development of natural and physical resources;¹⁹
- (b) the efficiency of the end use of energy;²⁰ and
- (c) the benefits to be derived from the use and development of renewable energy.²¹

5.3 The purpose of the Energy and Utilities chapter is to provide for the sustainable management and growth of local, regional and nationally critical infrastructure and energy development in the District.²²

The objectives and policies associated with renewable and non-renewable energy

5.4 The objectives and policies of the Energy and Utilities chapter that are associated with renewable and non-renewable energy, would benefit from improvement and this is acknowledged by Mr Craig Barr in his s 42A Report. However, even when taking a generous view on scope issues, it appears that there may not be scope to make the necessary changes.

5.5 The evidence of Mr Craig Barr is that the objectives and policies associated with renewable and non-renewable energy, are too enabling,²³ they do not contain the necessary qualifiers to appropriately recognise and provide for section 6 or 7 of the RMA,²⁴

19 Resource Management Act 1991, s 7(b).

20 Ibid, s 7(ba).

21 Ibid, s 7(j).

22 Section 32 Report Energy and Utilities, Part 7 Purpose, page 6.

23 See paragraph 6.1 of the s 42A report of Mr Craig Barr on Chapter 30 Energy and Utilities, dated 19 August 2016.

24 Paragraph 1.3 and Part 6.

and do not align with the components of the Strategic Direction and Landscape chapters that seek a course of action to manage the adverse effects of activities on landscape and amenity values generally.²⁵ Further, in Mr Barr's view, several of the objectives and policies tend to mimic higher order planning instruments rather than giving effect to those instruments and, as a result, they appear ineffective.²⁶

5.6 However, it is Mr Barr's evidence that while the objectives and policies associated with renewable and non-renewable energy are problematic, the objectives and policies in the Landscape and Strategic Direction chapters are likely to provide sufficient additional guidance to decision makers on the protection of landscapes and amenity. As a result, when read in the context of the whole plan, the objectives and policies associated with renewable and non-renewable energy are not so deficient to be unworkable.²⁷ Regardless, in their current state, the Council considers that the proposed objectives and policies are far from optimal.

5.7 As mentioned above, it appears that there may not be scope to amend the proposed objectives and policies, to address the above issues. The legal principles relating to scope have been addressed in depth in the Council's various submissions on Hearing Streams 1A and 1B²⁸ Hearing Stream 2²⁹ and these submissions are not repeated here. The relevant principles are, however, summarised at **Appendix 1** of these submissions for the convenience of the Panel.

5.8 The paramount test on scope is whether or not amendments are within the ambit of what is fairly and reasonably raised in submissions on the PDP.³⁰ The Council has not identified any submission requesting that the proposed objectives and policies be improved in the manner considered appropriate by Mr Barr.³¹ It may be that the Council will need to initiate a variation to address some or all of the

25 Paragraph 1.3 and Part 6.

26 Paragraph 6.2.

27 Paragraph 1.4 and Part 6.

28 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at parts 5 and 7; Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2.

29 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

30 *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 166.

31 See paragraph 6.4 of the s 42A report of Mr Craig Barr on Chapter 30 Energy and Utilities, dated 19 August 2016.

issues raised by Mr Barr. Accordingly, the Council invites the Panel to provide guidance as to its view on the merits of the provisions.

6. TEMPORARY ACTIVITIES AND RELOCATED BUILDINGS CHAPTER (35)

6.1 Temporary activities and relocated housing assist in the provision of the social and economic well-being of persons and communities in the District.³² However, these activities have the potential to adversely affect the District's highly prized landscape and amenity values.³³

6.2 Part 2 of the RMA provides that, in achieving the purpose of sustainable management, particular regard shall be had to:

- (a) the efficient use and development of natural and physical resources;³⁴
- (b) the maintenance and enhancement of amenity values;³⁵ and
- (c) maintenance and enhancement of the quality of the environment,³⁶

6.3 The Temporary Activities and Relocated Buildings chapter aims to promote sustainable management of natural and physical resources by providing for temporary activities and relocated housing in a manner that protects the sensitive environment of the District.³⁷

6.4 The chapter has two distinct purposes:

- (a) to enable temporary activities, utilities and storage to be undertaken while managing any adverse effects on the environment; and

32 See Part 7 of the s 32 Report on Chapter 35 Temporary Activities and Relocated Buildings.

33 See paragraph 4.2 of the evidence of Ms Marion Read on Hearing Stream 1 A and 1 B and paragraph 5.5 of the s 42A report of Ms Kimberley Banks on Chapter 35 Temporary Activities and Relocated Buildings, dated 17 August 2016.

34 Resource Management Act 1991, s 7(b).

35 Ibid, s 7(c).

36 Ibid, s 7(f).

37 See Part 7 of the s 32 Report on Chapter 35 Temporary Activities and Relocated Buildings.

- (b) to ensure that the external appearance of relocated buildings is compatible with the surrounding environment and amenity.

Activity status for relocated buildings

- 6.5 The House Movers Section of the New Zealand Heavy Haulage Association Incorporated (**House Movers**)³⁸ seeks that all provisions for relocated buildings be either deleted from the plan, or included with a permitted activity framework.
- 6.6 In making its submission the House Movers referred to the case of *New Zealand Heavy Haulage Association Incorporated v The Central Otago District Council*.³⁹ In that case the Environment Court upheld an appeal against a restricted discretionary rule framework for relocated buildings in the proposed Otago District Council District Plan. The Court endorsed a permitted activity framework, including permitted activity standards, in its place.⁴⁰
- 6.7 The Environment Court, in the *New Zealand Heavy Haulage Association* case, did not seek to make a rule as to the appropriate method to regulate relocated buildings nationwide. Rather, its finding in the circumstances of that case was that, there was no evidence placed before it to justify the imposition of a restricted discretionary framework for relocated buildings.⁴¹ The Court's decision was also influenced by the fact that the objectives and policies of the proposed Central Otago District Plan did not align with the Council's proposed regulation of relocated buildings.⁴² Finally, an Environment Court decision is not binding on a Council, which has a duty to carry out its own section 32 analysis.⁴³
- 6.8 It is the evidence of Ms Kimberly Banks that adverse effects can arise from relocated buildings beyond those that arise from in situ builds. These include the amenity effects associated with the time period for

38 Submitter #496.
39 C45/2004, 15 April 2004.
40 *Ibid*, at [23].
41 *Ibid*, at [20].
42 *Ibid*, at [14] and [20].
43 Resource Management Act 1991, s 32.

reinstatement works, and the quality of the exterior finish.⁴⁴ It is the position of the Council that these effects need to be managed to protect the sensitive amenity and landscape values of the District.⁴⁵ Accordingly, a controlled activity regime for relocated buildings is appropriate.⁴⁶

6.9 The proposed controlled activity regime recognises that consent will be granted but provides for the Council to retain limited control over the recognised amenity effects of relocated buildings. This framework specifically reflects the proposed purpose, and the relevant objective and policy in the chapter.⁴⁷

7. NOISE CHAPTER (36)

7.1 Section 31(1)(d) of the RMA requires territorial authorities to promote sustainable management of natural and physical resources through “*the control of the emission of noise and the mitigation of the effects of noise.*” Part 2 of the RMA provides that, in achieving the purpose of sustainable management, particular regard shall be had to:

- (a) the maintenance and enhancement of amenity values;⁴⁸ and
- (b) the maintenance and enhancement of the quality of the environment.⁴⁹

7.2 The purpose of the Noise chapter is to manage the effects of noise in a manner that accepts noise as part of the environment, while recognising that noise can give rise to adverse effects on amenity values, and the health and wellbeing of people and communities.⁵⁰

44 See paragraph 7.30 of the s 42A report of Ms Kimberley Banks on Chapter 35 Temporary Activities and Relocated Buildings, dated 17 August 2016.

45 Paragraphs 7.26 - 7.28.

46 Paragraph 7.33.

47 Objective 35.2.6; Policy 35.2.6.1.

48 Resource Management Act 1991, s 7(C).

49 Ibid, s 7(f).

50 See Part 6 of the s 32 Report on Chapter 36 Noise.

Stage 2 Zones

- 7.3 QAC's evidence is that the Council's intended process as to the management of the provisions of the Noise chapter that relate to Stage 2 zones is not clear.⁵¹
- 7.4 The Noise chapter applies across the District and contains a number of standards that apply to specific zones. These standards apply to both Stage 1 zones and some (but not all) zones that are anticipated to be notified in Stage 2.
- 7.5 Accordingly, noise standards in relation to Stage 2 zones that are not currently contained within the Noise chapter may need to be notified as part of Stage 2 of the PDP. Further, the Council may need to initiate a variation in order to amend existing standards in the Noise chapter to ensure that noise received in the Stage 2 zones is managed in accordance with the relevant zone purposes, if necessary.⁵²

Table 2 Heading

- 7.6 The evidence of Ms Ruth Evans is that the notified version of Table 2 of the Noise chapter contained an error in column 2, which causes ambiguity as to the operation of Table 2. The notified heading read "Activity or sound source." However, the provisions contained in that column generally relate to the receiving environment, not the noise generator.⁵³ The intended application of column 2 is clarified by notified advice note 36.3.2.7, which explains that the noise limits specified in Table 2 are intended to apply to the zone in which sound from an activity is *received*. The advice note reads (emphasis ours):

*Sound from non-residential activities, visitor 36.3.2.7 accommodation activities and sound from stationary electrical and mechanical equipment must not exceed the noise limits in Table 2 **in each of the zones in which sound from an activity is received**. The noise limits*

52 In response to the submission of Bunnings Limited (#746) the Council has recommended that the reference to Industrial zones be deleted (and consequently will be notified in Stage 2). However, it does not appear that there is scope in submissions to delete the references to other potential Stage 2 zones from the Noise chapter.

53 See Paragraph 8.24 of the s 42a report of Ms Ruth Evans on Chapter 36 Noise, dated 17 August 2016.

in Table 2 do not apply to assessment locations within the same site as the activity.

- 7.7** The Council submits that the column 2 heading should appropriately read "Zones the sound is received in." It is the Council's position that, apart from the issue discussed below, such an amendment will have no substantive impact on the operation of the provisions within the table.
- 7.8** Ms Kirsty O'Sullivan for Queenstown Airport Corporation Limited (**QAC**)⁵⁴ has provided evidence that the proposed alteration to Table 2 would have the effect that activities within the Queenstown Airport Mixed Use Zone would be required to manage their effects on the adjacent zones (in accordance with notified Rule 36.5.2), yet there would be no requirement for users of adjacent zones to manage the noise effects of their activities on the Queenstown Airport Mixed Use Zone (on account of the operation of rule notified 36.5.5 (redraft 36.5.4)).⁵⁵
- 7.9** The Council accepts that, as notified, the application of rules 36.5.2 and 36.5.5 is ambiguous. However, it is the position of the Council that there is scope⁵⁶ to resolve the ambiguity in relation to notified Rule 36.5.2 by moving this rule to Table 3, as proposed by Ms Ruth Evans in her summary of evidence. In respect of notified Rule 36.5.5 (redraft 36.5.4), the Council submits that the potential effects of the proposed amendment to the column 2 heading identified by Ms O'Sullivan is fanciful. It is submitted that the clarification to confirm the intended application of the rules is neutral and there would be no clear prejudice to any party.

Plan Change 35

- 7.10** By way of its synopsis of legal submissions,⁵⁷ Remarkables Park Limited⁵⁸ has sought clarification that the provisions of the Noise chapter do not extend or embellish those provisions agreed to as part

54 Submitter # 433.

55 See Paragraph 5.6 of the evidence of Ms Kirsty O'Sullivan, dated 2 September 2016.

56 Through the submission of Queenstown Airport Corporation Limited (#433).

57 See paragraph 1.3(c)(ii) of the legal Submissions of Mr John Young, dated 2 September 2016.

58 Submitter # 807.

of Plan Change 35 – Queenstown Airport Aircraft Noise Boundaries (**PC35**), as they apply to the RPZ.

- 7.11** The current position as to the application of the Noise chapter to the RPZ has already been discussed at Part 3 of these submissions.
- 7.12** The Council provided legal submissions on the relationship between PC35 and the PDP in the Strategic Direction hearing.⁵⁹ These submissions are not repeated here. In summary, the Panel is not bound by the Environment Court decisions on PC35 when making recommendations on the PDP. Accordingly, it is entitled to recommend provisions in the Noise chapter that go beyond PC35.
- 7.13** Despite this, the Council has only identified two instances where the recommended revised chapter may not be consistent with PC35. The first is the sound insulation Rule 36.6.2. The Council has proposed that this rule be updated to refer to a specific double glazing configuration, to reflect modern building practices. The second is the proposed update and consolidation of ventilation rules 36.6.3 and 36.7. Both proposed changes are in accordance with the expert evidence of Dr Stephen Chiles.⁶⁰

Noise Chapter Rule (notified 36.5.7; redrafted 36.5.6)

- 7.14** Dr Stephen Chiles has identified structural issues with notified Noise Chapter Rule 36.5.7 (redraft 36.5.6).⁶¹ The rule contains duplicate and conflicting noise limits. It is the opinion of Dr Chiles that the rule is deficient and unworkable.⁶² While there is a submission requesting the part of the rule relating to the Industrial Zones be deleted and re-notified in Stage 2 of the PDP (the deletion has been recommended by Ms Ruth Evans), the Council has not identified any submission that would provide scope to remove or amend the part of the rule that relates to the Kingston Village Special Zone (Activity Area 2). If considered necessary on the merits, the Council may need to initiate a variation to address this issue. In such circumstances, the Council

⁵⁹ Council's Legal Submissions in reply on Hearing Streams 1A and 1B see Part 4, dated 7 April 2016.

⁶⁰ See part 14 of the evidence of Dr Stephen Chiles, dated 17 August 2016.

⁶¹ See Paragraph 8.40 of the s 42a report of Ms Ruth Evans on Chapter 36 Noise, dated 17 August 2016.

⁶² See paragraph 5.3 of the evidence of Dr Stephen Chiles, dated 17 August 2016.

invites the Panel to provide guidance as to its view on the merits of the rule.

8. WITNESSES

8.1 The Council will call the following evidence:

- (a) Dr Stephen Chiles, Acoustics Expert;
- (b) Ms Ruth Evans, Consultant Planner, who is the author of the section 42A report on the Noise chapter;
- (c) Ms Kimberley Banks, Senior Planner, who is the author of the section 42A report on the Temporary Activities and Relocated Buildings chapter; and
- (d) Mr Craig Barr, Acting Manager Planning Policy, who is the author of the section 42A report on the Energy and Utilities chapter.

DATED this 9th day of September 2016



S J Scott/ K L Hockly
Counsel for the Queenstown Lakes
District Council

**APPENDIX 1 –
LEGAL PRINCIPLES ON SCOPE**

1. The legal principles regarding scope and the Panel's powers to recommend (and subsequently the Council's power to decide) are:
 - 1.1 a submission must first, be *on* the proposed plan;⁶³ and
 - 1.2 a decision maker is limited to making changes within the scope of *the submissions made on the proposed plan*.⁶⁴

2. The two limb approach endorsed in the case of *Palmerston North City Council v Motor Machinists Ltd*,⁶⁵ subject to some limitations, is relevant to the Panel's consideration of whether a submission is *on* the plan change.⁶⁶ The two limbs to be considered are:
 - 2.1 whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and
 - 2.2 whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.

3. The principles that pertain to whether certain relief is within the scope of a submitter's submission can be summarised as follows:
 - 3.1 the paramount test is whether or not amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP. This will usually be a question of degree to be judged by the terms of the PDP and the content of submissions;⁶⁷
 - 3.2 another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought in a

63 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7.
64 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

65 [2014] NZRMA 519.

66 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at paragraph 7.3-7.12.

67 *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 166.

submission; the scope to change a plan is not limited by the words of the submission,⁶⁸

3.3 ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter,⁶⁹ and

3.4 scope is an issue to be considered by the Panel both individually and collectively. There is no doubt that the Panel is able to rely on "collective scope". As to whether submitters are also able to avail themselves of the concept is less clear. To the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief, it is submitted that the submitter could not advance relief.⁷⁰

68 *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556, and 574-575.

69 *Ibid*, at 574.

70 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.