

**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 Stage 3b Proposed
District Plan, Hearing
Stream 18 and 20 –
Rural Visitor Zone

**MEMORANDUM OF COUNSEL RELATING TO INTERIM DECISION 2.6 (EXCEPTION
ZONE FRAMEWORK) AND THE RURAL VISITOR ZONE**

28 OCTOBER 2020

 **Simpson Grierson**
Barristers & Solicitors

S J Scott / R P Mortiaux
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. This memorandum of counsel is filed on behalf of Queenstown Lakes District Council (**Council**) and relates to the relevance of an interim decision, recently issued¹ by the Environment Court in the context of Topic 2: Rural Landscape – Exception Zone Framework (**Decision 2.6**), on the Stage 3 Rural Visitor Zone (**RVZ**). A copy of Decision 2.6 is attached to this memorandum.

2. Relevant to Decision 2.6 is an earlier decision of the Court (**Decision 2.2**)² where it was decided to include what was termed an ‘Exception Zone Framework’ in Chapter 3. The framework served two purposes:³
 - 2.1 To qualify how certain SOs and SPs of Chapter 3 apply; and
 - 2.2 To state how landscape is treated in the consideration of applications for subdivision, use and development in the carved out zones.

3. The Court in Decision 2.6 summarised the framework as:⁴

[34] In essence, the EZF is premised on a theory that, for the ODP provisions to which it applies, s6(b) landscape matters have already been accounted for. Therefore, it qualifies how certain SOs and SPs of Ch 3 apply in the consideration of applications for subdivision, use and development in the EZF zones.

[35] Decision 2.2 also finds that the premise of s6(b) landscape matters have been accounted for in the provisions “cannot extend to what is not contemplated by the particular Exception Zone...”

4. In response to directions in Decision 2.2, Council proposed that the RVZ be listed as an Exception Zone in 3.1B.5. This was premised on the fact that RVZ is a ‘Special Zone’ as referred to in Policy 6.3.3, and that Chapter 46 has its own specific set of provisions managing landscapes in the context of s6(b) of the RMA, and it was therefore not necessary for the Chapter 3 Outstanding Natural Landscape provisions to also apply. This would also ensure consistency with Policy 6.3.3 of Chapter 6.

1 21 September 2020.

2 [2019] NZEnvC 205.

3 At [3] of Decision 2.6, referencing [509] of Decision 2.2.

4 At [34].

5. The Court considered this proposal in Decision 2.6 and declined to include the RVZ as an Exception Zone on the basis the RVZ provisions were not addressed in evidence before the Court, rather they were to be addressed in evidence through Stage 3 of the plan review.⁵ Consequently, the Court:
- 5.1 could not safely conclude that the Chapter 46 provisions accounted for s6(b) landscape matters⁶;
 - 5.2 was not satisfied participants would have necessarily assumed or understood the RVZ provisions would be subject to the EZF⁷; and
 - 5.3 could not satisfy itself that there was sufficient scope to include the RVZ as an Exception Zone.⁸
6. The Council's evidence (and indeed the evidence of submitters) for the Stage 3 hearing was prepared on the basis that the RVZ would be listed as an Exception Zone in 3.1B.5 of Chapter 3. The RVZ is already 'carved-out' of the Chapter 6 policies that usually apply to an Outstanding Natural Landscape (**ONL**) through Policy 6.3.3 (renumbered to 6.3.1.3 in Decision 2.2). Essentially the underlying purpose of the Exception Zone Framework in Chapter 3 is to ensure a consistent approach to plan implementation across the two strategic chapters. The zone framework itself (ie. the RVZ chapter) is to provide the 'separate regulatory regime' that ensures section 6(b) of the RMA is achieved.
7. The section 32 report⁹ for the RVZ assesses in detail the activities contemplated within the RVZ and the effects of those activities on the landscape. At paragraph [8.7] the report is clear that the RVZ is a 'Special Zone' under Policy 6.3.3 (now Policy 6.3.1.3) and should be subject to a separate regulatory regime:

"The RVZ, as a Special Zone under Part 6 of the PDP, would fall within the ambit of Policy 6.3.3 which, in areas other than the Rural Zone but where landscape value is still an issue, provides for a separate regulatory regime to manage the effects on landscape values."

5 Decision 2.6, at [38].

6 At [38].

7 At [39].

8 At [40].

9 https://www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/notification-and-submissions#s32_reports.

8. Subsequently, the Chapter 46 provisions, recommended by Ms Grace through her Reply evidence¹⁰ have been specifically drafted to meet the s6(b) landscape requirements and provide their own regulatory regime.
9. Now that the RVZ chapter has been tested in terms of section 6(b), Council requests that the Panel recommend in its decision that the RVZ be listed as an Exception Zone in 3.1B.5 which will mean that 3.1B.6 will apply to it in the context of any applications for any subdivision, use or development where in an ONL on the planning maps.
10. Listing the RVZ as an Exception Zone will have no impact on the provisions of Chapter 46 from a plan development perspective, rather it will become relevant at the resource consent application stage. The effect of listing the RVZ as an Exception Zone means that an application for resource consent for subdivision, use or development in a RVZ ONL will not need to comply with the SOs and SPs listed in 3.1B.6.
11. If the RVZ is not listed as an Exception Zone, certain Chapter 3 ONL related SOs and SPs (those listed in 3.1B.6) *will apply* to any applications for subdivision, use or development in the RVZ, but the equivalent policies in Chapter 6 will not apply. This will result in an inconsistency between the RVZ, and other Special Zones confirmed through Stage 1 of the PDP – which would be a nature of timing only, rather than any substance. It is also likely to result in some duplication arising between Chapters 3 and 46, on the basis that Ms Grace’s recommended Chapter 46 provisions have already accounted for s6(b) requirements – given the goal was for the RVZ to provide a separate regulatory framework to achieve section 6(b) of the RMA.
12. Counsel considers the change to list the RVZ as an Exception Zone can be made through clause 10(2)(b) of Schedule 1 of the RMA which provides that a decision on provisions:

(b) ...may include –

(i) matters relating to any consequential alterations necessary to the proposed statement of plan arising from the submissions...

10 Dated 10 September 2020, refer Appendix A: <https://www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/hearings/stream-18-settlement-zone-rural-visitor-zone-and-variations>.

13. The submission by Christine Byrch¹¹ is relevant, in that it opposed notified Chapter 46, seeking, relevantly, that the PDP stipulate restrictions on the extent of the RVZ¹² and that the PDP provide clear guidelines describing what areas are suitable for the RVZ¹³. While not specifically addressing ONL related policies located in Chapter 3, the submission resulted in Ms Grace recommending strengthening of the RVZ framework to ensure that it achieved section 6(b) and relevant SOs and SPs in Chapter 3. It is a consequential change to then list the RVZ as an Exception Zone given the complete regulatory framework now included in the RVZ chapter.
14. While a rezoning submission, the Gibbston Valley¹⁴ submission seeks rezoning from Rural Zone to RVZ with one of the reasons being that the “...rules provide appropriate safeguards and controls on activities within the Zone including the location of buildings outside of landscapes of high visual sensitivity and monitor building development to ensure landscape values are considered and reflected in the building design.”¹⁵
15. The Malaghans¹⁶ submission seeks a rezoning from Rural Zone to RVZ on similar grounds. Both the Gibbston and Malaghans submissions front the issue that the zone itself provides the necessary framework to ensure the section 6(b) landscape is protected from inappropriate development, contending RVZ at the respective sites will “provide for visitor industry activities at a location ... within a landscape that can accommodate change, while avoiding, remedying and mitigating adverse effects on an ONL (section 6 of RMA).”¹⁷ The two submissions also specifically address certain Chapter 3 ONL related objectives and policies (explaining that RVZ at the sites will align with SO 3.2.1.8¹⁸ and SP 3.3.30,¹⁹ which are two of the strategic provisions now confirmed as listed in 3.1B.6).
16. Council considers there would be no prejudice or unfairness to any submitter, or to the public more generally, to the Panel now recommending the inclusion of the RVZ as an Exception Zone.

11 31030.

12 31030.3.

13 31030.4.

14 31037.

15 At [7(h)] 31037.

16 31022.

17 At [8a] of both 31037 and 31022.

18 The diversification of land use in rural areas beyond traditional activities that maintains the character of rural landscapes (including that landscape values of ONL/PNF are protected).

19 Protection of ONL/ONF landscape values.

Updated version of Chapters 3 and 6

17. Following Decision 2.6, and also some related decisions and consent orders issued by the Court, attached for the convenience of the Panel is an updated version of Chapter 3. The attached version reflects amendments confirmed since the filing of Mr Barr's Strategic Evidence (which included a version of Chapter 3 at Appendix A), by the following:
- 17.1 Topic 1 Second Interim Decision, dated 7 April 2020²⁰ - SO 3.2.6.1, 3.2.6.2 and 3.2.6.3 included;
 - 17.2 Topic 2 Interim Decision 2.4, dated 21 September 2020²¹ - SP 3.3.20 (deletion of (c) confirmed);
 - 17.3 Topic 2 Interim Decision 2.6, dated 21 September 2020²² – 3.1B.5 and 3.1B.6 confirmed;
 - 17.4 Topic 3 Urban Development (ENV-2018-000108) consent order, issued 20 August 2020;
 - 17.5 Topic 4 Indigenous Vegetation and Biodiversity (ENV-2018-000131) consent order, issued 25 March 2020.
18. The attached version of Chapter 3 is a working version of Chapter 3 only. The Council will not update the PDP itself until final decisions are issued by the Environment Court (as compared to an interim decision). Further amendments are also required to include changes confirmed by the recent Court decision on Topic 1 - Explanatory Text (issued 21 September 2020) – a copy of this decision is provided with this memorandum.

²⁰ *Darby Planning Limited Partnership v Queenstown Lakes District Council* [2020] NZEnvC 40.

²¹ *Hawthenden Ltd v Queenstown Lakes District Council* [2020] NZEnvC 157.

²² *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* [2020] NZEnvC 159.

19. Also attached is an updated version of Chapter 6 which reflects changes confirmed by the Topic 2, Subtopic 9 consent order ('Rural Landscapes – Managing Activities on Lakes and Rivers) issued by the Court on 11 September 2020. Although these changes are not relevant to the matters covered in this memorandum, the Panel may find it useful to have the most up to date version at hand.

DATED this 28th day of October 2020



S J Scott / R P Mortiaux
Counsel for Queenstown Lakes District
Council