

**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 15

**MEMORANDUM OF COUNSEL FOR QUEENSTOWN LAKES DISTRICT
COUNCIL ADVISING PANEL AND SUBMITTERS OF PORPS STATUS**

**HEARING STREAM 15 – VISITOR ACCOMMODATION, OPEN SPACE AND
DISTRICT WIDE CHAPTERS**

22 August 2018

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MAY IT PLEASE THE PANEL:

1. This memorandum is filed by the Queenstown Lakes District Council (**Council**). The purpose of this memorandum is to advise the Panel and submitters of the status of the proposed Otago Regional Policy Statement (**pORPS**) as at the date of filing Council's rebuttal evidence for Hearing Stream 15.

2. This matter has already been addressed in Hearing Stream 14. However, as a differently constituted Panel will hear submissions allocated to Hearing 15, and there are different submitters involved, Council considers it prudent to advise all submitters an update, in advance of the hearing (and the Council's legal submissions).

Update and electronic links to relevant consent orders

3. In June the Environment Court issued a number of consent orders that direct changes to the decisions version of the pORPS:¹
 - (a) Chapter 1;
 - (b) Kai Tahu Chapter 2;
 - (c) Natural Hazards;
 - (d) Climate Change;
 - (e) Energy;
 - (f) Urban Growth Development;
 - (g) Hazardous Substances;
 - (h) Public Access;
 - (i) Historic Heritage;
 - (j) Dry Catchments;
 - (k) Commercial Activities;
 - (l) Industrial Activities; and
 - (m) Tourism and Outdoor Recreation.

4. All of these consent orders can be accessed at this link:
<https://www.qldc.govt.nz/assets/Uploads/S2239-QLDC-T14-Scott-S-Opening-Legal-Submissions-30838248-v-1-Appendix-A-.pdf>

¹ Council Opening Legal Submissions for Hearing Stream 14:
<https://www.qldc.govt.nz/assets/Uploads/S2239-QLDC-T14-Scott-S-Opening-Legal-Submissions-30838248-v-1.pdf>

5. The following consent orders were made after the Council's legal submissions were filed, and were handed up at the hearing:
 - (a) Exhibit 14.1 – Consent Order (Adverse Effects of Enjoying Otago's Natural and Physical Resources); and
 - (b) Exhibit 14.2 – Consent Order (Infrastructure).

6. These two consent orders can be accessed here:

<https://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/PDP-Stage-2/Stream-14-Evidence-Presented/01-Monday-9-July-2018/QLDC-T14-Scott-S-Exhibit-14.1.pdf>

<https://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/PDP-Stage-2/Stream-14-Evidence-Presented/01-Monday-9-July-2018/QLDC-T14-Scott-S-Exhibit-14.2.pdf>

Correct legal test

7. As at today, the date of Council's rebuttal evidence, the version of the pORPS that is to be had regard to, is the pORPS as updated by the issued consent orders.

8. The Regional Council has advised counsel that it intends to make the pORPS operative in part at its August or September meetings. The consequence of this is that the pORPS will likely be operative (in part) either by the time Stream 15 goes to hearing, or at least will be operative in part when the Panel makes its recommendations on Hearing Stream 15.

9. Council's legal right of reply sets out the correct legal test, the relevant part is copied below:²

3.4 A consent order issued by the Environment Court updates the proposed RPS without any formal process. When relevant parts of the pORPS are beyond challenge, significant weight can be given to it. However, a consent order does not and cannot deem the proposed RPS to be approved and operative There is no equivalent to Subpart 7 of the

² <https://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/PDP-Stage-2/Stream-14-Council-Right-of-Reply/S2239-QLDC-T14-Scott-S-Reply-Legal-Submissions.pdf>

RMA for policy statements. Instead the Regional Council still needs to work through clauses 17(2) and (3) (approval) and clause 20 (notification of operative date) of Schedule 1 of the RMA. Until that actually happens, the correct legal test is that this Panel in its recommendations (and the Council in its decisions), must “have regard to” the PORPS (as amended by consent order) and “give effect to” the operative RPS.

3.5 *As discussed with the Panel during the course of the hearing, a lot of weight can be given to the PORPS as amended by consent orders, and little weight should be given to the equivalent parts of the operative RPS. Care must be given to using the correct legal test, as until the PORPS is made operative in part, the equivalent parts of the operative RPS must still be given effect to (albeit deserving little weight). In any event, Council’s evidence is that its position does give effect to the operative RPS.*

Consent memoranda filed with Environment Court

10. In addition, three consent memoranda have been signed by interested parties and filed with the Environment Court. At this point in time, no consent orders have been issued by the Court, and they therefore have no standing at this point in time (and could possibly be changed by the Court):
 - (a) Exhibit 14.3 – Consent Memorandum (Tumuaki for Waitaha Tai Whenua o Waitaki Trust Board) dated 18 April 2017;³
 - (b) Exhibit 14.4 – Consent Memorandum: Chapter 3: Natural Resources dated 6 July 2018;⁴ and
 - (c) Exhibit 14.5 – Consent Memorandum: Rural Activities dated 6 July 2018.⁵

11. There is a possibility that the consent memoranda referred to in paragraph 8 are issued sometime soon. When they are, the pORPS will update without need for any further process, to reflect Court directed changes. The council will then need to make that part of the pORPS operative in part, as set out above.

3 <https://www.gldc.govt.nz/assets/Uploads/Planning/District-Plan/PDP-Stage-2/Stream-14-Evidence-Presented/03-Wednesday-11-July-2018/QLDC-T14-Scott-S-Exhibit-14.3.pdf>

4 <https://www.gldc.govt.nz/assets/Uploads/Planning/District-Plan/PDP-Stage-2/Stream-14-Evidence-Presented/03-Wednesday-11-July-2018/QLDC-T14-Scott-S-Exhibit-14.4.pdf>

5 <https://www.gldc.govt.nz/assets/Uploads/Planning/District-Plan/PDP-Stage-2/Stream-14-Evidence-Presented/03-Wednesday-11-July-2018/QLDC-T14-Scott-S-Exhibit-14.5.pdf>

12. We also advise that two decisions are expected to be issued on some specific parts of the pORPS that went to hearing. One of those topics has no relevance to the PDP.

DATED this 22nd day of August 2018



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Counsel for Queenstown Lakes District
Council