

**In the Environment Court of New Zealand
Christchurch Registry**

**I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe**

ENV-2024-CHC-031

Under of the Resource Management Act 1991 (**RMA**)

In the matter of an appeal under cl 14(1) of the RMA

Between

Glenpanel Limited Partnership

Appellant

And

Otago Regional Council

Respondent

**Submissions for Queenstown Lakes District
Council regarding scope**

MC.

Counsel acting:

Janette Campbell
Barrister
Bankside Chambers
janette@campbell.legal

Instructing solicitor:

Brandon Watts | Cordelia Woodhouse
Meredith Connell
PO Box 90750, Victoria Street West, Auckland 1142
DX CP24063
T: +64 9 336 7500
brandon.watts@mc.co.nz
cordelia.woodhouse@mc.co.nz

Submissions for Queenstown Lakes District Council regarding scope

1 Introduction

- 1.1 These submissions respond to the Court’s direction of 13 August 2025 that Queenstown Lakes District Council (**QLDC**) file submissions on the scope of the relief sought by Glenpanel Limited Partnership (**Glenpanel**) by 1 September 2025.
- 1.2 Glenpanel lodged a submission on the proposed Otago Regional Policy Statement (**pORPS**) dated 3 September 2021. The submission sought specific relief to provisions in the Urban Form and Development (**UFD**) and Natural Features and Landscapes (**NFL**) chapters of the pORPS.
- 1.3 On 27 March 2024, Otago Regional Council (**ORC**) gave its decision on the pORPS. A notice of appeal was filed by Glenpanel on 16 May 2024. The appeal related to all parts of the decision (being the Decisions Version of the pORPS) that:
 - (a) relate to, or affect, the provisions (and any equivalent, updated, reordered or replacement provisions) raised in its Submission, these include but are not limited to: NFL-O1; NFL-P1 to P2, NFL-M1 to M-4; NFL-E1; NFL-PR1, NFL-AER1 to AER2; UFD-O1; UFD-P1 to P5; UFD-P10; UFD-M1 to M2; UFD-E1; UFD-PR1; UFD-AER1 to AER13; and
 - (b) the matters or issues raised in its submission; and
 - (c) the outcomes sought in its submission
- 1.4 The notice of appeal sought wide-ranging relief in respect of urban form and development; outstanding natural features and landscapes (**ONF/Ls**); and the relationship between urban form and development and ONF/Ls. It did not set out any specific relief or specific changes sought to provisions.
- 1.5 The appeals on the pORPS subsequently proceeded to a series of topic-based mediations, during which the specific relief sought by Glenpanel was not elucidated. On 28 July 2025, following directions from this Court, Glenpanel provided the parties with the specific relief it is seeking. For the reasons set out in this submission, QLDC considers this relief is out of scope.
- 1.6 QLDC has read the submissions of ORC and agrees with the points raised in those submissions. These submissions should be read alongside the submissions of ORC.

2 Legal tests on scope

- 2.1 Whether the relief sought by Glenpanel is within scope of the pORPS requires consideration of the following three tests:
 - (a) Whether Glenpanel’s submission was “on” the pORPS;
 - (b) Whether the relief now sought was fairly and reasonably raised in Glenpanel’s submission; and

- (c) Whether the relief now sought was fairly and reasonably raised in Glenpanel's notice of appeal.

Whether the submission is "on" the plan change

- 2.2 Scope to make submissions on a proposed policy statement is limited to submissions that are "on" the policy statement.¹ Whether a submission is "on" the policy statement should be addressed with reference to the bipartite test in *Clearwater*,² as summarised in *Palmerston North City Council v Motor Machinists*.³
- 2.3 It is acknowledged that the scope of a full policy statement review is very wide compared to the limited scope of a discrete plan change or variation.⁴ Accordingly, QLDC does not contest that Glenpanel's submission was "on" the pORPS.
- 2.4 The issues to be determined are therefore whether the changes sought by Glenpanel in its appeal go beyond what was raised in its submissions and/or appeal.

Whether the relief was fairly and reasonably raised in Glenpanel's submission

- 2.5 An appeal from a decision on a submission on a proposed policy statement must be on a provision or matter referred to in that submission.⁵
- 2.6 An appeal cannot ask for more than did the submissions on which the appeal is based. Amendments are within jurisdictional scope if they were "fairly and reasonably raised" in submissions on the pORPS.⁶
- 2.7 While it is correct that this assessment is to be approached in a realistic workable fashion rather than from the perspective of legal nicety,⁷ the changes proposed on appeal must be a foreseeable consequence of any changes directly proposed in the submission:⁸
- [74] Ultimately, it is a question of procedural fairness. Procedural fairness extends to the public as well as to the submitter and the territorial authority. Adequate notice must be given to those who might seek to take an active part in the hearing before the Environment Court if they know or ought to foresee what the Environment Court may do as a result of the reference.
- 2.8 If the relief sought on appeal goes beyond what was fairly and reasonably raised in the submission, there will be no jurisdiction to make the changes.

¹ Resource Management Act 1991, Schedule 1, cl 6(1).

² *Clearwater Resorts Limited v Christchurch City Council*, HC Christchurch AP34/02, 14 March 2003.

³ *Palmerston North City Council v Motor Machinists* [2013] NZHC 1290.

⁴ *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [129].

⁵ Resource Management Act 1991, Schedule 1, cl 14(2)(a).

⁶ *Re Vivid Holdings Ltd* [1999] NZRMA 467 at [19] and *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) HC Wellington AP 214/93, 13 February 1996, at 41 as applied in *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [115].

⁷ *Royal Forest & Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 (HC) at 413 per Panckhurst J.

⁸ *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556 (HC) at [72] – [74] per Fisher J.

Whether the relief was fairly and reasonably raised in Glenpanel's appeal

- 2.9 The proper ambit or scope of an appeal is a matter to be ascertained by reference to what is sought in the notice of appeal.⁹
- 2.10 A notice of appeal against a proposed policy statement requires the appellant set out the “specific provision or matter” that the decision includes or excludes and to “give precise details” of the relief sought.¹⁰ The use of the words “specific” and “precise” are plainly intended to carry their ordinary meanings, which are well known and do not leave room for vagueness, generalities or ambiguities.¹¹
- 2.11 In *Noakes v Waikato District Council*,¹² the Environment Court acknowledged that, for the sake of procedural fairness, parties must make reasonable efforts to state their interests (i.e. the specific provisions appealed) and the relief they seek as clearly as they can. An examination of these elements of the notice of appeal in combination should be sufficient to establish the proper scope of the appeal and what is sought by it.¹³

3 Evaluation

- 3.1 In contrast to its submission, which clearly set out the relief sought to specific provisions of the pORPS, Glenpanel's notice of appeal did not include specific or precise details about the relief sought. Instead the notice of appeal sets out generalised themes about the relationship between urban development and ONF/Ls. A theme central to the notice of appeal is that urban development should prevail over ONF/Ls. This was not a concept foreshadowed in Glenpanel's submission.
- 3.2 The scope issues inherent in this approach were apparent from the outset. QLDC and ORC first raised issues with the scope of Glenpanel's appeal in July 2024. In response, Glenpanel suggested that the parties reserve their respective positions and see what progress could be made at mediation. Specific relief was not articulated at this time.
- 3.3 Mediation on the pORPS concluded in June 2025. Following almost a year of mediation on the pORPS, specific relief had still not been provided by Glenpanel. Notwithstanding that position, the various mediation agreements together record that the only portion of Glenpanel's appeal that it considers remains unresolved is its appeal on the UFD chapter.¹⁴

⁹ *Gertrudes Saddlery Ltd v Arthurs Point Natural Landscape Society Ltd* [2021] NZCA 398 at [25].

¹⁰ Resource Management (Forms, Fees, and Procedure) Regulations 2003, Form 7.

¹¹ *Noakes v Waikato District Council* [2023] NZEnvC 76 at [81].

¹² *Noakes v Waikato District Council* [2023] NZEnvC 76.

¹³ *Gertrudes Saddlery Ltd v Arthurs Point Natural Landscape Society Ltd* [2021] NZCA 398 at [25].

¹⁴ Third memorandum of the Otago Regional Council reporting progress of appeals on the non-freshwater instrument parts of the proposed Otago Regional Policy Statement, dated 27 June 2025 at [12].

- 3.4 In ORC's reporting memorandum dated 27 June 2025 the following was noted:¹⁵
- The Glenpanel appeal seeks unspecified relief. ORC does not know what relief Glenpanel is seeking in respect of the UFD – Urban form and development chapter.
- 3.5 Following this, Glenpanel was directed by the Court to provide ORC and interested parties with the specific relief it was seeking. Failing compliance, the Court directed that ORC was granted leave to seek to strike out the appeal.
- 3.6 Glenpanel provided its specific relief by memorandum dated 28 July 2025. However, the relief proposed amendments to the notified version of the pORPS. The pORPS has been significantly altered through the hearings process making it difficult to reconcile the relief sought with the current Decisions Version (now further amended through mediation agreements, although those do not form part of the formal pORPS and cannot until their endorsement (or otherwise) by the Court).
- 3.7 It is unacceptable at this juncture, being over 15 months since the notice of appeal was filed, for the parties and ORC not to understand the specific relief sought by Glenpanel, or how to reconcile it with either the formal post-decisions version or indeed the agreed mediation version of the pORPS.
- 3.8 Notwithstanding these preliminary comments, the specific relief sought by Glenpanel, and whether there is scope for each of the changes sought, is addressed below.

UFD-01

- 3.9 By its 28 July 2025 memorandum, Glenpanel sets out that it seeks the following changes to UFD-01:

UFD-01 – Form and function of urban areas

The form and functioning of Otago's urban areas:

(1) reflects the diverse and changing needs and preferences of Otago's people and communities, now and in the future, (including expansion of urban areas); and

(2) subject to (1), maintains or enhances the significant values and features identified in this RPS, and the character and resources of each urban area.

Or an alternative to this being the addition of subclause (3):

(3) recognises that the need for urban expansion may prevail over the values of an ONL/E.

- 3.10 Glenpanel relies on its submission point on the definition of "Urban Area". This submission supported the notified definition of Urban Area, which was:
- that is, or is intended to be, predominantly urban in character."
- 3.11 Glenpanel's submission particularly sought that reference to areas intended to be predominantly urban in character be retained in the definition.

¹⁵ Third memorandum of the Otago Regional Council reporting progress of appeals on the non-freshwater instrument parts of the proposed Otago Regional Policy Statement, dated 27 June 2025 at [13].

- 3.12 As identified in the ORC submissions, no change was made to this definition in the Decisions Version. Therefore no scope for an appeal arises from this submission point. The relief that Glenpanel’s submission sought, namely retention of the notified definition, has been secured.
- 3.13 Glenpanel’s submission also included a submission point on UFD-O1. The submission supported the notified version of UFD-O1 and sought : “retain the definition **and ensure that it recognises that urban areas will change and grow**” [emphasis added]. The relief that Glenpanel has now specified in relation to UFD-O1(1) could therefore meet the second legal test set out in paragraph 2.1 above, if a liberal approach (rather than a specific approach) were taken to the question of whether the original submission fairly and reasonably raised the prospect of provision for expansion of urban areas being allowed.
- 3.14 However, the relief sought to UFD-O1(1) was not fairly and reasonably raised in Glenpanel’s notice of appeal (the third legal test set out in paragraph 2.1 above). The RMA requires that an appellant set out the specific provision that is being appealed, and give precise details of the relief sought. These requirements are grounded in the need to maintain an adequate level of procedural fairness: the Council and other submitters should be able to understand what amendments are or will be sought. Glenpanel’s May 2024 notice of appeal did not set out the change to UFD-O1(1) requested in July 2025.
- 3.15 Further, Glenpanel participated in mediation on the UFD chapter and agreed to a number of amendments to UFD-O1 through this process. This was the logical forum to discuss its relief and, had the changes to UFD-O1(1) been fairly and reasonably raised in Glenpanel’s notice of appeal, would have enabled the changes to be discussed (and potentially resolved) at mediation.
- 3.16 Glenpanel is now seeking to undo the progress made by the other parties at mediation, by seeking further amendments to the objective. Glenpanel has therefore not taken all practicable steps to use timely, efficient, consistent, and cost-effective processes to resolve its appeal.¹⁶
- 3.17 QLDC considers that the relief now sought to UFD-O1(1) was not fairly and reasonably raised in Glenpanel’s notice of appeal and this particular relief therefore fails the third legal test set out at paragraph 2.1 above.
- 3.18 In respect of the relief sought to UFD-O1(2), this is new and is not raised by the Glenpanel submission. In a similar vein, no new subclause (3) was sought by the Glenpanel submission.
- 3.19 This relief was neither fairly nor reasonably raised in Glenpanel’s submission, either as specific submission points, or even as a general theme. These purported outcomes fail the second legal test set out in paragraph 2.1 above.

UFD-O3

- 3.20 By its 28 July 2025 memorandum, Glenpanel sets out that it now seeks the following relief to UFD-O3:

¹⁶ Contrary to the procedural principles in s 18A of the RMA. The procedural principles were inserted to minimise the costs of using the processes of the RMA. They apply to every person exercising powers and performing functions under the RMA. It is therefore arguable that they apply to Glenpanel’s exercise of its appeal rights, a power conferred by the Act.

UFD–O3 – Strategic Planning:

Strategic planning is undertaken by the Council or an applicant, in advance of significant development, expansion or redevelopment of urban areas to ensure that ...

- 3.21 Glenpanel’s submission sought amendments to UFD-O3 to “make it clear strategic planning can be the formal strategic plans prepared by local authorities OR a separate strategic planning exercise (for example by the proponent of a private plan change)”. The relief sought to UFD-O3 would therefore meet the second legal test set out in paragraph 2.1 above.
- 3.22 However, for the same reasons as set out in respect of UFD-O1(1) above, QLDC submits that the relief was not fairly and reasonably raised in Glenpanel’s notice of appeal. The relief therefore fails the third legal test set out at paragraph 2.1 above.

UFD-O4

- 3.23 By its 28 July 2025, memorandum, Glenpanel sets out that it seeks the following relief to UFD-O4:

UFD-O4 – Development in Rural Areas

(3) only provides for urban expansion, rural lifestyle and rural residential development and the establishment of sensitive activities, in locations identified through strategic planning (including through private plan changes or consent applications) or zoned within district plans as suitable for such development; and

- 3.24 As set out in the submissions for ORC, the mediation agreement for the Land and freshwater topic dated 4 December 2024 records that Glenpanel is no longer pursuing its relief in relation to UFD-O4.¹⁷
- 3.25 The mediation agreement, which was signed by Glenpanel, is unequivocal that Glenpanel was not pursuing its relief on UFD-O4, and that its appeal point was resolved on that basis. This outcome is binding on Glenpanel. Glenpanel constrained its ability to propose amendments to UFD-O4 when it signed the mediation agreement.
- 3.26 It would be an abuse of the process and vexatious to allow a party who has signed a settlement agreement to subsequently demur from that agreement at will.¹⁸ If this relief is pursued, QLDC invites the Court to exercise its powers under s 279(4) RMA to strike out the relevant parts of Glenpanel’s appeal.

UFD-M2(5)

- 3.27 Glenpanel seeks the following relief to UFD-M2(5):

... identify and provide for locations that are suitable for urban expansion, if any, in accordance with UFD-P4, which may include some expansion into ONF/LS

¹⁷ UFD-O4 was moved to the Land and Freshwater (LF-LS) chapter as a result of ORC’s decisions on the pORPS.

¹⁸ See *Turner v Rotorua District Council* [2013] NZEnvC 3 at [14].

- 3.28 Glenpanel's submission did not include a submission point on UFD-M2, nor any other method in the UFD chapter. Nor did it raise the generalised theme of allowing urban expansion into outstanding natural features and landscapes. This change could not have been fairly or reasonably expected by ORC or other parties when reading Glenpanel's submission. The proposed relief therefore fails the second legal test set out in paragraph 2.1 above.

UFD-E1

- 3.29 Glenpanel seeks the following relief to UFD-E1:

This more detailed determination must, however, be informed by evidence and information collated through appropriately scaled strategic planning processes which will identify how purported constraints to urban development, such as hazards, landscapes, highly productive land, and limits are responded to (or overridden by the need for urban expansion) ...

- 3.30 Glenpanel did not submit on UFD-E1. As set out above, it did not raise relief seeking that urban development prevail (or override) other values, including landscape constraints. As the relief was not fairly and reasonably raised in Glenpanel's submission, it fails the second legal test set out in paragraph 2.1 above.

4 Conclusion

- 4.1 QLDC submits that there is no scope any of the amendments proposed by Glenpanel.
- 4.2 It is accepted that all of the amendments proposed by Glenpanel are "on" the pORPS, and therefore meet the first legal test articulated in paragraph 2.1. However, QLDC submits that:
- (a) The amendments to UFD-O1(2); UFD-O1(3); UFD-M2(5) and UFD-E1 were not fairly and reasonably raised in Glenpanel's submission and therefore fail the second legal test in paragraph 2.1; and
 - (b) The amendments to UFD-O1(1) and UFD-O3 were not fairly and reasonably raised in Glenpanel's notice of appeal and therefore fail the third legal test in paragraph 2.1.
- 4.3 In respect of Glenpanel's relief on UFD-O4, Glenpanel signed a mediation agreement setting out that this relief was no longer being pursued. If Glenpanel now seeks to resile from that position, QLDC submits this is an abuse of process and/or vexatious, and invites the Court to strike out the relevant part of its appeal.

Date: 1 September 2025



J C Campbell / B A Watts
Counsel for Queenstown Lakes District Council