

## MEMORANDUM

**To:** Staff Consents Panel

**From:** Ralph Henderson, Consultant Planner

**Date:** 13 March 2026

**Re:** **Recommendation to extend lapse period of RM20.338 under Section 125 of the Resource Management Act 1991**

### Purpose

To report and make recommendations on the determination of the above application under Section 125(1A) of the Resource Management Act 1991 (the Act).

RM26.130 is an application to extend the lapse period of Land Use Consent RM20.338. Land Use Consent RM20.338 was granted to the Otago Regional Council to:

- Extract gravel from the Buckler Burn for the purpose of hazard mitigation.

When a lapse period is not specified within a consent, Section 125 (1)(a) of the Resource Management Act 1991 (the Act) provides for a lapse period of 5 years from the date of commencement. The consents were issued 16<sup>th</sup> March 2021, the consents therefore lapse 16<sup>th</sup> March 2026 unless exercised or an extension is granted prior to this date, in accordance with Section 125 of the Act. The consents are yet to be exercised and the Consent Holder is seeking to have that date extended to 16<sup>th</sup> March 2028 accordance with Section 125(1A)(b) of the Act.

As a lapse period is not identified as a condition of RM20.338 the extension under Section 125 will not require a variation under Section 127 to change any consent conditions of RM20.338.

RM20.338 was approved with a 10-year term to enable gravel to be extracted from a specified area of the dry bed of the Buckler Burn for the purpose of hazard mitigation. The application was originally incorrectly located on the adjacent site owned by Land Information New Zealand. The area consented for extraction is shown on Figure 1 and Accela has been updated to show the correct location of the consented activity.

The potential effects of gravel extraction from the Buckler Burn within the 10-year duration of consent was robustly considered during the decision on that application. These effects have not changed since the consent was granted and although the consent has not been given effect to, the need to manage gravel in the Buckler Burn to avoid or reduce potential risk of natural hazard events remains. This in part

reflects why the consent has not been exercised and in hindsight a condition could have been included on the original consent seeking an extended lapse date more reflective of the nature of the purpose and duration of the consent. Overall, I consider that the extension of the lapse date of RM20.338 will not increase the nature or extent of effects assessed under that consent.



Figure 1: Area consented for gravel extraction (Source: Application)

## 1.5 Extension of lapse

Section 125 of the Resource Management Act 1991 states:

*(1) A resource consent lapses on the date specified in the consent.....*

*(1A) However, a consent does not lapse under subsection (1) if, before the consent lapses,—*

*(a) the consent is given effect to; or*

*(b) an application is made to the consent authority to extend the period after which the consent lapses, and the consent authority decides to grant an extension after taking into account—*

*(i) whether substantial progress or effort has been, and continues to be, made towards giving effect to the consent; and*

*(ii) whether the applicant has obtained approval from persons who may be adversely affected by the granting of an extension; and*

*(iii) the effect of the extension on the policies and objectives of any plan or proposed plan...*

An assessment of Section 125(1A)(b) is discussed below:

### **Section 125 (1A)(b)(i)- Substantial progress or effort made towards giving effect to the consent**

Case law (Body Corporate 970101 v Auckland CC (2000)) has established that the expression “substantial” does not require a majority of the work to be completed because it is used in the context of continuing progress. While continuity of progress or effort is required, there may be reasonable interruptions without breaking the overall picture of continuing towards the end in view. All endeavours, both on and off the site can be looked at in determining whether or not progress is continuing to be made.

The purpose of the extraction consent is to provide gravel for hazard mitigation purposes to erosion in the Buckler Burn and increase channel flow capacity in the river to minimise the flood risk for the Glenorchy township, i.e. if the instream / upstream river conditions in the Buckler Burn dictate that gravel extraction is required to maintain its normal conveyance function (i.e. if greater than normal volumes of sediment / gravel have been deposited due to upstream conditions e.g. high rainfall, landslips, instability).

In parallel to the actual extraction of gravel the ORC has been undertaking parallel work to understand the natural hazards in the Glenorchy area and specifically in relation to the Buckler Burn. These studies have contributed to the Head of Lake Whakatipu Natural Hazards Adaptation Strategy, Version 1, Otago Regional Council, May 2025. The studies are of particular relevance to this application as they inform decisions on where gravel extracted from the Buckler Burn will be utilised. This process must be coordinated with the territorial authority, the Queenstown Lakes District Council and works that may utilise the gravels from the Buckler Burn have been identified the QLDC Climate and Biodiversity Plan 2025-2028.

To a large extent the issue of the lapse date in relation to RM20.338 appears to relate to an oversight at the time of consenting by inexperienced applicants not seeking a longer lapse date to reflect the nature of the application and the 10-year term of the consent. While these conditions have not occurred in the period since approval of RM20.338, it is considered likely that the consented activity will be necessary within the term of consent for natural hazard mitigation / flood management purposes.

Overall, it is considered that although environmental conditions have not required the immediate extraction of gravels in response to a natural hazard event the applicant has been making significant progress to identify locations and funding to enable the extraction to be undertaken on a cost-effective basis outside of the immediate response to a natural hazard event.

***Section 125 (1A)(b)(ii) – Approval obtained from parties who may be affected by granting of the extension***

Land Information New Zealand (LINZ) was initially considered to be an affected party in the original application as landowner of the area of works. LINZ subsequently noted that the coordinates they were given for the location of the activity did not correspond to their land and identified the Department of Conservation (DoC) as the property owner of area of works. DoC provided affected party approval, and no other parties are considered to be affected by the proposal.

Written approval was received from DoC as landowner for the original application. No other parties were identified as potentially affected by the original application.

The terms of the consent will not change from what was consented and was anticipated to occur within the environment. There have been no material changes in the physical environment in the immediate area where the works are proposed since the consent was granted. Under the existing consent if the application had been given effect to it could continue to be exercised until 2031. The extension of the lapse date will not change the duration over which the consent will be exercised, and the potential effects are no greater in scale or duration than originally consented. The existing conditions of consent continue to apply and will require notice of extraction activity to be provided to the Consent Authority.

Overall, the extension of the lapse period for RM20.338 is not considered to adversely affect any party and no written approval is required.

***Section 125 (1A) (b)(iii)-Consistency with objectives and policies in a plan or proposed plan***

The Applicant has provided an assessment of the effect of the extension in terms of consistency with the policies and objectives of any relevant plan or proposed plan in Section 6 of the Application. The Application notes the original decision was issued in March 2021 and has considered changes to relevant statutory planning documents since that time, including:

- National Policy Statement for Freshwater Management 2020 (“NPSFM”);
- Otago Regional Policy Statement 2019 (“RPS”);
- Proposed Otago Regional Policy Statement 2021 (“Proposed RPS”)
- Regional Plan Water for Otago (“RPW”); and
- Kāi Tahu ki Otago Natural Resource Management Plan 2005 (“NRMP”).

I adopt this assessment and note the extension of the lapse period for RM20.338 will not have any adverse effect in terms of the implementation of a change in policy direction in relation to the management of natural hazards or the management of freshwater values in the documents identified.

In addition to the above, I consider the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 - The Cry of the People, Te Tangi a Tauira to be relevant as the Regional Plan

The Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 - The Cry of the People, Te Tangi a Tauira (“NRMP”) is considered to be a relevant other matter for the consideration of this application. This is because the RPW has yet to be amended to take into account this Plan and this Plan expresses the attitudes and values of the four Rūnanga Papatipu o Murihiku – Awarua, Hokonui, Ōraka/Aparima and Waihōpai.

Policies relating to gravel extraction are included in Section 3.3.2 and 3.5.15 of the NRMP. The most relevant to the application are policies 6 and 7:

- 3.3.2.6 Carry out gravel and sediment extraction from riverbeds in a manner that avoids or remedies adverse environmental impacts, including the establishment of weeds as a result of disturbance.
- 3.3.2.7 Avoid compromising cultural sites of archaeological value as a consequence of excavation activities that disturb older soil deposits, either directly or via unintended collapse of river and stream banks, or by erosion effects.

These policies are reflected in assessment of RM20.338 and the associated conditions of consent. The proposed extension of the lapse date is not inconsistent with the policies identified.

Overall, the proposed extension to the lapse date of RM20.338 is considered to be generally consistent with the policies and objectives of the relevant statutory planning documents.

There are no other matters that the Council considers relevant and reasonably necessary to determine the application.

## Decision on extension of lapse date

### Section 113 of the Resource Management Act 1991

**Date:** 16 March 2026

**Application No:** RM26.130 - Variation to RM20.338

**Subject:** *Decision on non-notified resource consent application under delegated authority*

### Decision on resource consent application decided under delegated authority

#### 2.1 Decision and Reasons for Decision

Pursuant to section s125 of the Resource Management Act 1991 ("the RMA"), the Otago Regional Council ("the Council") hereby extends the lapse dates for RM20.338 by two years to 16 March 2028.

I have considered the information provided, reasons and recommendation in the above report. I agree with those reasons and adopt them accordingly.

#### 2.2 Decision under delegated authority

Under delegated authority, this resource consent application and the extension to the lapse period is granted by the Otago Regional Council by:



Allan Cubitt

**Independent Decision Maker for Otago Regional Council**