

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ**

Decision No. [2025] NZEnvC 399

IN THE MATTER	of the Resource Management Act 1991
AND	an appeal under clause 14 of the First Schedule to the Act
BETWEEN	GLENPANEL LIMITED PARTNERSHIP
	(ENV-2024-CHC-31)
	Appellant
AND	OTAGO REGIONAL COUNCIL
	Respondent

Court:	Environment Judge P A Steven
Hearing:	In Chambers on the papers
Submissions:	L Burkhardt for Glenpanel Limited Partnership S J Anderson & T M Sefton for Otago Regional Council B Watts, C Woodhouse and J Campbell for the Queenstown Lakes District Council
Last case event:	19 September 2025
Date of Decision:	10 December 2025
Date of Issue:	10 December 2025

DECISION OF THE ENVIRONMENT COURT

A: The relief sought to UFD-O1(1), UFD-O1(2) (and alternative new UFD-O1(3)), UFD-M2(5) and UFD-E1 is struck out under s279(4) RMA.

GLENPANEL LIMITED PARTNERSHIP v ORC



B: Costs are reserved.

REASONS

Background

[1] On 16 May 2024, Glenpanel Limited Partnership (Glenpanel) filed an appeal against decisions by Otago Regional Council (ORC) in relation to the non-freshwater planning instrument parts of the proposed Otago Regional Policy Statement 2021 (PORPS).

[2] In its case management memorandum dated 27 June 2025, ORC highlighted an issue as to the scope of Glenpanel's appeal on the 'UFD – Urban form and development' (UFD) chapter. ORC advised that both Queenstown Lakes District Council (QLDC) and ORC raised those issues with Glenpanel in July and August 2024.

[3] ORC raised that Glenpanel's appeal sought unspecified relief in respect of the UFD chapter.

[4] On 30 June 2025, the court directed Glenpanel to provide ORC and interested parties with its specific relief by 11 July 2025. By 11 August 2025, all parties were directed to state their positions on scope and propose an agreed timeframe for exchange of submissions.

[5] Glenpanel's response to the court's directions referred to its involvement in the fast-track process which was delayed by an application for leave to appeal to the Supreme Court. Glenpanel sought that its appeal be put on hold pending the Supreme Court's decision. That request was denied.

Latest iteration of relief sought by Glenpanel

[6] On 28 July 2025, a further memorandum was filed by Glenpanel specifying

its relief in terms of the UFD chapter (referred to hereafter as the memorandum).

[7] In its memorandum, Glenpanel sought to amend UFD-O1, UFD-O3, UFD-O4, UFD-M5 and UFD-E1, although in legal submissions filed on the scope issue, Glenpanel confirmed that the amendments to UFD-O3 and UFD-O4 are no longer being pursued.

[8] The ORC notes that there is no UFD-M5 in either the notified or decisions version of the PORPS.

[9] Glenpanel confirms that its relief in terms of the UFD chapter is now limited to changes to UFD-O1, with consequential changes to UFD-M2(5) (not UFD-M5) and UFD-E1.

[10] Changes sought to UFD-O1 are as follows (amendments show additions in underline and deletions in strikethrough):

UFD-O1 – 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 alternative relief 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.

[11] Glenpanel submits there is jurisdiction for these changes as consequential relief to the amendment sought to the definition for ‘Urban Area,’ in its original submission which was:

that is, or intended to be, predominantly urban in character.

[12] Glenpanel also sought to amend UFD-M5 as follows:

... 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.

[13] Glenpanel also sought to amend UFD-E1 as follows:

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) ...

[14] Glenpanel submits that each of these amendments are a necessary and logical consequential amendment to the primary relief sought to UFD-O1.

Position of parties on scope

[15] ORC and QLDC consider the relief sought by Glenpanel is outside of scope.

[16] Interested parties, Dunedin City Council, Royal Forest and Bird Protection Society of New Zealand Limited and Waterfall Park Developments Limited¹ are neutral on the issue of scope and indicate they will abide any scope decision, but if there is scope for relief, they have an interest in the merits of that.

Legal tests on scope

[17] Whether the relief sought by Glenpanel is within scope requires

¹ Waterfall Park Developments Limited subsequently withdrew its s274 notice from the appeal in its memorandum dated 26 August 2025.

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.

[18] Whether a submission is "on" the policy statement should be addressed with reference to the bipartite test in *Clearwater Resort Ltd v Christchurch City Council*,² as summarised in *Palmerston North City Council v Motor Machinists*.³

[19] However, the scope issues arising in this case do not engage with questions of whether the submissions were on the PORPS, and so those cases need not be addressed.

[20] More relevant is the extensive line of authorities that an appeal cannot ask for more than did the submissions on which the appeal is based. Amendments sought on appeal are within scope if they were "fairly and reasonably raised" in the appellants original submission/s.⁴

[21] A person's right to file an appeal is determined by clause 14(2) of Schedule 1, which states that:

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

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

⁴ *Re Vivid Holdings Ltd* [1999] NZRMA 467 at [19] and *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) HC Wellington AP 214/93, 7 March 1994, at 41 as applied in *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [115].

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...

(2) However, a person may appeal under subclause (1) only if—

(a) the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan; and

(b) the appeal does not seek the withdrawal of the proposed policy statement or plan as a whole. ...

[22] The court is required to give the words “provision or the matter” a liberal interpretation.⁵

[23] Notwithstanding that direction, changes proposed on appeal must be a foreseeable consequence of any changes directly proposed in the submission, as stated in the often cited decision in *Westfield (NZ) Ltd v Hamilton City Council*.⁶

[74] 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.

[24] The proper ambit or scope of an appeal is then a matter to be ascertained by reference to what is sought in the notice of appeal which, relates to the decision of the Council on submissions (usually referred to as the decisions version).⁷

⁵ *Horticulture New Zealand v Manawatu-Wanganui Regional Council* [2013] NZHC 2492 at [50]; *Option 5 Inc v Marlborough District Council* (2009) 16 ELRNZ 1 (HC) at [15].

⁶ *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556 (HC) at [72] – [74] per Fisher J.

⁷ *Gertrude's Saddlery Ltd v Arthurs Point Natural Landscape Society Ltd* [2021] NZCA 398 at [25].

[25] In making findings about whether relief was fairly and reasonably raised in a notice of appeal in *Noakes v Waikato District Council (Noakes)*,⁸ the court observed that Form 7 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 requires a notice of appeal on a proposed plan to state the specific provision or matter that the appeal relates to, and to give precise details of the relief sought.⁹ 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.¹⁰

[26] *Noakes* acknowledged that notions of specificity and precision can be somewhat illusory, but for the sake of procedural fairness, parties must make reasonable efforts to state their interests, their concerns, and the relief they seek as clearly as they can. If generalised themes in a notice are relied on, those themes should reasonably foreshadow the themes of the provisions sought to be challenged.¹¹

[27] 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.¹²

What is the relevant version of the PORPS in this scope context

[28] In response to Glenpanel’s relief to UFD-O1, ORC highlights that the relief sought is marked up against the notified version of the PORPS, rather than against the decisions version. ORC submits that this makes it difficult to reconcile the relief sought against the decisions version of the PORPS, particularly in light of amendments subsequently agreed to through the mediation process.

⁸ *Noakes v Waikato District Council* [2023] NZEnvC 76.

⁹ At [79] – [80].

¹⁰ At [81].

¹¹ At [82] – [83].

¹² Above n 6.

[29] QLDC made a similar observation, submitting that it is unacceptable for the parties and ORC to not understand the specific relief sought by Glenpanel, or how to reconcile its relief with the mediation version of the PORPS, at this late stage of the appeal process.

[30] As to these difficulties, it must be remembered that the appeal can only relate to the decisions version of the relevant instrument that is under appeal. An appeal must be based upon a decision on an original submission made by the appellant.

[31] Reconciling relief that is within scope of an appeal with other amendments sought by other appellants participating in the mediation process is a separate issue, being one of merit.

Glenpanel's original submission

UFD-O1

[32] Glenpanel lodged an original submission to the notified PORPS on UFD-O1 seeking that it be retained in its notified form. Reasons included that:

UFD-O1 recognises that the form and function of urban areas will change, now and in the future, to meet the changing needs of Otago's people and communities. It is important this policy recognises the need for urban form to expand in areas with growth.

[33] I was not provided with a notified version of this provision, although I was provided with a link to the decisions version of the PORPS which tracks amendments. The notified version of each of the provisions which the original submission relates to, are identifiable by ignoring the tracked amendments in the decisions version which (in the case of UFD-O1) reads (in full):

The development and change form and functioning of Otago's urban areas occurs in a strategic and coordinated way, which:

(1) ~~reflects~~ accommodates the diverse and changing needs and preferences of Otago's people and communities, now and in the future.

(2) integrates effectively with surrounding urban areas and rural areas, ~~maintains or enhances the significant values and features identified in this RPS, and the character and resources of each urban area.~~

UFD-M2(5) and UFD-EI

[34] No original submission was made on these provisions.

[35] Glenpanel's original submission did contain the often requested "consequential relief":

Make further amendments necessary to improve the clarity and workability of the provisions to achieve the purpose of the submission.

[36] As I explain later in this decision, Glenpanel relies on this request for the changes now sought to both UFD-M2(5) and UFD-E1.

[37] The decisions version of these provisions are those with which an appeal should engage.

Relief sought on appeal – general observations

[38] In contrast to the terms of the original submission, the notice of appeal set out the particular provisions that were being appealed without stating the precise relief.

[39] The appeal was also prefaced with the comments that the parts of the decision appealed are those that "relate to, or effect, the provisions (and any equivalent, updated, or reordered or replacement provisions) raised in its Submission, these include but are not limited to...". The appeal then went on to list the provisions Glenpanel sought to amend on appeal.

[40] Accordingly, the outcomes sought on appeal can only be understood with reference to the amendments sought in the original submissions (which was to the notified version) alongside the reasons for the appeal noting that the notice of appeal contains general and specific reasons. However, even the specific reasons are broadly stated.

[41] Specific reasons include the statements that relate to “urban form and development,” and “outstanding natural features and landscapes,” and the relationship between these topics. Emphasis was given to the PORPS’s approach to categorising an outstanding natural landscape or feature. For the sake of completeness, these are included in an **attachment** to this decision.

[42] ORC and QLDC both comment that the central theme to the notice of appeal is that urban development should prevail over outstanding natural features and landscapes (ONF/Ls), whereas this was not a concept foreshadowed in the original submission. ORC further notes that the original submission supported the notified version of UFD-O1 without amendment, as did its submission on the ‘Urban Area’ definition.

[43] I now turn to consider the scope issues as addressed by the parties.

Summary of ORC and QLDC submissions

UFD-O1

[44] As to the amendment sought in the memorandum to UFD-O1(1), ORC considers that the decisions version of UFD-O1(1) and (2) clearly provides for development and change of urban areas.

[45] Accordingly, ORC considers that the wording that Glenpanel now seeks to insert into UFD-O1(1) is unnecessary, as its relief concerning additional or expanded urban areas is encompassed in that provision already. The ORC further notes that in its original submission, Glenpanel supported (and sought to retain)

the notified version of the definition for ‘Urban Area’.

[46] Despite the impression given in Glenpanel’s memorandum, the original submission on this definition did not seek the addition of the words “or intended to be” as those words were already in the notified definition. Moreover, the submission did not seek the addition of “including expansion of urban areas” to UFD-O1 as is now sought in the memorandum.

[47] QLDC took a position in support of ORC, submitting that Glenpanel’s relief sought in respect of UFD-O1(1) was not fairly and reasonably raised in its notice of appeal, as the RMA requires that an appellant set out the specific provisions that are being appealed and give precise details of the relief sought, such requirements being grounded in the need to maintain an adequate level of procedural fairness.

[48] QLDC further notes that Glenpanel participated in the mediation on the UFD chapter and agreed to a number of amendments to UFD-O1 through this process. QLDC submits that mediation 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, these could have been discussed (and potentially resolved) at mediation. QLDC considers that Glenpanel is now seeking to undo the progress made by the other parties at mediation by seeking further amendments to the objective. It further submits that Glenpanel has not taken all practicable steps to use timely, efficient, consistent, and cost-effective processes to resolve its appeal.

UFD-O1(2) and (3)

[49] As to the relief sought to UFD-O1(2), ORC notes that this no longer refers to maintaining other significant values and features (which was deleted from subclause (2) and replaced with other wording) in the decisions version, despite that not being an amendment Glenpanel originally sought.

[50] As to new subclause (3), Glenpanel's original submission on UFD-O1 did not seek explicit recognition that urban expansion may prevail over the values of ONF/Ls.

[51] ORC accepts that Glenpanel did seek an amendment to NFL-O1 and NFL-P2, in effect, to allow appropriate subdivision, use and development of ONF/Ls. ORC notes that the notified version of these provisions required that the ONF/Ls "are to be protected".

[52] Glenpanel sought that these provisions follow the statutory language in s6(b) that they be protected "from inappropriate subdivision, use and development".

[53] The wording sought by Glenpanel was inserted by ORC in its decisions.

[54] ORC further submits that nowhere in Glenpanel's submission is an addition to UFD-O1 (by new subclause (3)) sought to recognise that "the need for urban expansion may prevail over the values of an ONL/F".

[55] That said, ORC submits that on reading Glenpanel's original submission as a whole, it becomes apparent that the relief now seeking that "urban expansion may prevail over the values of an ONL/F" has already been sought and granted.

[56] ORC submits that the addition of new UFD-O1(3) as sought by Glenpanel adds nothing to the relief sought in Glenpanel's original submission to the NFL provisions, which has already been granted.

[57] QLDC agrees that subclause (3) is new and was not raised in Glenpanel's original submission.

[58] QLDC submits that 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. QLDC notes that this was not a concept foreshadowed in Glenpanel’s original submission at all.

[59] QLDC considers that the scope issues inherent in this approach were apparent from the outset. It is further critical of Glenpanel’s approach, noting that mediation on the PORPS concluded in June 2025. Following a year of mediation on the PORPS, specific relief had still not been provided by Glenpanel.

UFD-M2(5)

[60] The ORC notes that there is no UFD-M5 in either the notified or decisions version of the PORPS, and it is assumed that the relief now sought relates to UFD-M2(5).

[61] While UFD-M2 is an appealed provision in Glenpanel’s notice of appeal, ORC observes that nothing else in the notice suggests the inclusion of a method enabling urban expansion into ONF/Ls as is now sought.

[62] ORC also notes that Glenpanel’s original submission does not specifically refer to UFD-M2 nor does it seek *any* method enabling urban expansion into ONF/Ls. ORC submits that the relief now sought is therefore outside scope of Glenpanel’s submission and appeal.

[63] QLDC agrees with ORC.

UFD-E1

[64] UFD-E1 is referred to in Glenpanel’s notice of appeal. However, ORC submits that the notice does not indicate any relief of the nature now sought i.e:

- (a) that constraints are described as “purported”; and

- (b) an additional response providing for constraints to be “overridden” by the need for urban expansion.

[65] ORC also notes that Glenpanel’s original submission on the PORPS does not mention UFD-E1. ORC submits that the relief now sought is therefore outside scope of Glenpanel’s submission and appeal.

[66] QLDC agrees with ORC.

Summary of Glenpanel’s position

UFD-O1

[67] In response to QLDC’s contention that the amendment now sought in the memorandum was not sufficiently raised in Glenpanel’s notice of appeal, or at mediation, Glenpanel argues that its notice of appeal raises:

- (a) a general concern that the PORPS does “not include objectives that represent the most appropriate way to achieve the purpose of the RMA, as required by section 32 of the RMA”;
- (b) a specific concern that “Property rights and the needs of the community must be prioritised over the outstanding natural features and landscapes” (with additional details); and
- (c) relief sought including “for features and landscapes that are appropriately categorised as outstanding natural features or landscapes, to direct for private property rights to prevail unless a Council acquires the land for a scenic or other reserve purposes” and “any alternative or other amendments to address the matters raised in this appeal, and to achieve the intent of this appeal”.

[68] Accordingly, Glenpanel submits that the nature of the relief now specified is sufficiently within scope of what was signalled in its notice of appeal.

[69] Glenpanel's submissions then address the relief sought to the mediated version of the PORPS. However, as I have already noted above, that is not the relevant version of the PORPS for the purpose of considering the scope issues.

[70] Counsel for Glenpanel acknowledges that the mark-up relief provided in Glenpanel's memorandum of 28 July 2025 erroneously used the notified version of the PORPS as the starting point, rather than the decisions version.

[71] However, Glenpanel considers that:

- (a) it is not difficult to reconcile the relief sought against the decisions version of the PORPS; and
- (b) it is unfortunate that counsel for ORC did not bring this error to Glenpanel's attention, so it could have been rectified before the filing of submissions by ORC and QLDC. Shortly after filing the 28 July 2025 memorandum, counsel did reach out to counsel for ORC seeking informal feedback as to ongoing concerns as to scope prior to the filing of formal submissions in reply. No response was given until ORC's submissions were filed.

[72] With this drafting error in mind, Glenpanel submits that the most appropriate way forward, in terms of the court's task of determining scope, is to reconcile the relief sought against the decisions version of the PORPS (or the mediation version where relevant) with the tests as to scope as identified by ORC which it proceeded to do in its legal submissions.

[73] Glenpanel maintains that the "forward-looking" aspect of the definition for 'Urban Area' should be reflected in the relevant objective (if not policies) relating to urban expansion, and that UFD-O1 is not presently sufficiently forward-looking. That submission relates to the amendment sought to UFD-O1(1).

[74] It is noted at this juncture, that Glenpanel did *not* respond to the point made by each of the Councils that this relief was given effect to in the decisions version

of the PORPS.

[75] Glenpanel submits it is more difficult to address the criticism of Glenpanel for not addressing its concerns at mediation without breaching the confidentiality of the mediation process. Counsel advises that Glenpanel did provide specific wording in its position paper that resembles what is now sought. Glenpanel maintained its position and sought to discuss the issues at mediation in good faith.

[76] Counsel advises it became clear that the other parties did not support the “gist” of what Glenpanel was seeking, and so there was no need to finesse specific wording for consideration at the mediation. She notes that Glenpanel did not agree to the mediation amendments to UFD-O1 and cannot have its relief curtailed because of this.

[77] Counsel submits that mediation is a voluntary process, and where there are fundamental points of difference in position or philosophy, it is not uncommon for parties to not reach agreement (or in some cases, to not attend mediation). Glenpanel submits that it should not be criticised, and certainly should not be penalised in respect of scope, for taking the approach it did to mediation.

[78] Glenpanel refers to the following commentary in its submission with respect to UFD-P4 and P7:

... The definition of ‘urban areas’ includes land “that is, or intended to be, predominantly urban in character.” E.g., at present an urban extension in accordance with UFD-P4 would run into issues with UFD-P7 as the land for the urban expansion may be zoned rural but can fall within the definition of an urban area as it is “intended to be, predominantly urban in character”. i.e., land on the edge of town could fall within both the ‘rural areas’ and urban areas’ definition.

Amend the policy to recognise in UFD-P7 that UFD-P4 could mean that rural areas change to urban areas as part of achieving UFD-P4.

Amend the policy to enable logical urban extensions into Rural areas as part of a

well-functioning urban environment.

[79] Noting that most rural land in the Queenstown Lakes District is on ONF/Ls, Glenpanel considers it is implicit in extending urban areas into rural areas that this may also create tension with the protection of ONF/L values. Referring to its submissions on NFL-O1 and P2, which sought they be amended to allow (in effect) appropriate subdivision, use and development on ONF/Ls, Glenpanel submits that its submission as a whole clearly raises themes of enabling expansion of urban areas including into ONF/Ls.

[80] Referring to *Port Otago Ltd v Environmental Defence Society Inc*,¹³ counsel submits that the tensions between enabling expansion of urban areas and protecting ONF/L values is better addressed at the regional plan development stage where possible, rather than being left to resource consent and district plan changes.

[81] Counsel also highlights that Glenpanel’s original submission was prepared by a planner, not a lawyer. It was therefore not comprehensive but was broad in terms of identifying key themes and supporting, including with amendments, various objectives and policies, and definitions.¹⁴ She submits that the submission needs to be viewed with a tolerant eye, consistent with the “realistic workable fashion” approach, rather than from a “legal nicety”.

UFD-M2(5) and UFD-E1

[82] Glenpanel maintains its relief in respect of UFD-M2(5) and UFD-E1.

[83] While this relief is opposed by ORC and QLDC on the basis that those provisions were not referred to in Glenpanel’s original submission, Glenpanel

¹³ *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112.

¹⁴ On the court’s reading of these documents, it was the other way around; the submission was written by a planner although counsel was the signatory to the notice of appeal.

argues that its submission did seek “consequential relief” as stated above.

[84] Glenpanel submits it is important for a planning instrument to be internally consistent and for policies, methods and other provisions to implement the objectives.

[85] Glenpanel considers that if the changes to UFD-O1 are found to be within scope, then the consequential changes to UFD-M2(5) and UFD-E1 should also be found to be within scope.

[86] Accordingly, whether Glenpanel has scope to seek its relief in respect of UFD-M2(5) and UFD-E1 will depend on whether:

- (a) Glenpanel has scope to seek the relief sought in UFD-O1; and
- (b) whether the relief to UFD-M2(5) and UFD-E1 is considered “necessary and desirable” and is a “logical consequence” of the submissions grounding scope for the relief sought in UFD-O1.

[87] Glenpanel considers that each of these requirements are met. The issue of urban expansion into ONF/Ls provides scope for the relief sought to UFD-O1, which was sufficiently raised in Glenpanel’s original submission and continued on appeal. The specified relief it seeks to UFD-M2(5) and UFD-E1 is consequential to that relief.

[88] Glenpanel submits that if the changes to UFD-O1 are found to be within scope, then the consequential changes to UFD-M2(5) and UFD-E1 should also be found to be within scope.

ORC reply

UFD-O1

[89] As to Glenpanel’s submissions referred to at [67](a) to (c) above, ORC says

that:

- (a) paragraph (a) is so general as to be meaningless; and
- (b) the references in paragraphs (b) and (c) to property rights prevailing do not provide scope for the additions sought UFD-O1. Whether private property rights should prevail is an entirely different point.

[90] ORC considers that the closest the notice of appeal comes to providing scope is in the reasons section, which states:

the needs of the community must be prioritised over the outstanding natural features and landscapes.

...

particularly where... there is an overwhelming community need to use the land resource (eg for housing), noting that people and communities are an important part of the environment.

[91] Counsel highlights that the only specific relief sought in the notice of appeal are amendments that:

- (i) direct that to features and landscapes are only categorised as outstanding natural features or landscapes if they truly “outstanding” and are sufficiently “natural” to such an obvious extent that an objectively reasonable member of the community would consider them so;
- (ii) for features and landscapes that are appropriately categorised as outstanding natural features or landscapes, to direct for private property rights to prevail unless a Council acquires the land for a scenic or other reserve purposes;

[92] ORC submits that this relief does not alert a submitter reading the notice of appeal that Glenpanel may seek the relief now specified, that is, that urban expansion may prevail over the values of an ONF/L that have been categorised as such.

UFD-M2(5) and UFD-E1

[93] ORC submits there is no scope for the relief sought to UFD-O1 and therefore no scope for the consequential relief sought to UFD-M2(5) and UFD-E1. Accordingly, ORC submits that this part of Glenpanel's appeal should be struck out under s279(4)(a) RMA.

Evaluation

UFD-O1(1)

[94] Assuming there is scope to amend UFD-O1 in the manner sought in Glenpanel's memorandum, the question of whether the agreed amendments should also accommodate the drafting amendments as sought in the memorandum is a merit issue.

[95] That said, it is true that the relief identified in the memorandum tracked changes to the notified version of this provision which are already reflected in the decisions version as earlier observed.

[96] That said, as the notified version was originally supported, it was always open to Glenpanel to appeal the amendments made to the notified UFD-O1. As the notice of appeal did not propose any drafting of an amendment to the decisions version of UFD-O1 it is not possible to know precisely what objection was taken to the decisions version of that.

[97] However, because the appeal refers to the outcomes sought in the original submission, I am entitled to assume that Glenpanel sought an outcome reflecting that notified approach.

[98] From a solely merit-based perspective, it does appear that the relief now sought to the first limb of this provision as stated in the memorandum – when compared to the decisions version of this provision, is redundant, particularly

when reference is made to the reasons for the relief sought in the notice of appeal, as noted by the ORC.

[99] However, that has no bearing on the scope issue. As to that, I do not accept ORC's submission that Glenpanel's original submission did not contemplate a change that reads "including expansion of urban areas" as is now sought in the memorandum. That new areas will be opened up for urban development is implicit in the wording of UFD-O1 in both the notified and the decisions version of this provision.

[100] I am satisfied that on a plain reading of Glenpanel's submission on UFD-O1, a reader can reasonably foresee that Glenpanel seeks recognition in this objective that urban areas can change and grow as earlier stated. The outcome now sought by Glenpanel is consistent with its original submission. That was one of the reasons why the notified version was supported.

[101] I am satisfied that the addition Glenpanel seeks to UFD-O1(1) was reasonably foreseeable on the basis of its submission. I am further satisfied that this relief was continued on appeal given that:

- (a) UFD-O1 is listed as an appealed provision in the notice of appeal; and
- (b) paragraph [9](a) of the notice of the appeal seeks "the amendments sought to the relevant provisions ... of the PORPS as sought in its Submission...".

[102] Accordingly, I determine the relief sought to UFD-O1(1) to be within scope. Glenpanel could have pursued its appeal seeking reinstatement of the notified version of this.

[103] As noted by ORC and QLDC, had the decisions version been amended in a way that expressly excluded the prospect of future urban expansion, Glenpanel could have filed an appeal seeking to make its preferred approach explicit.

[104] However, that is not in fact what occurred. The decisions version of UFD-O1(1) refers to the “development and change” of Otago’s urban areas, making it apparent that it is forward-thinking in the sense that it contemplates further urban expansion.

[105] Accordingly, there is no need to consider Glenpanel’s arguments based upon consequential relief to its original submission to the definition for ‘Urban Area’, which was granted.¹⁵ This definition is entirely consistent with both the notified and decisions version of UFD-O1(1).

[106] ORC submits that an appeal point seeking relief which has already been granted is frivolous and/or vexatious and should be struck out under s279(4)(a) RMA. I return to that submission further on.

[107] It has to be emphasised that this determination only applies to the amendments sought to reworded UFD-O1(1). That issue is readily disposed of.

[108] I address the remaining changes sought by Glenpanel.

[109] As stated at the beginning of this decision, Glenpanel’s memorandum seeks that UFD-O1(2) be amended as follows:

(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/F.

[110] Glenpanel seeks an amendment to the notified version of UFD-O1(2) that

¹⁵ Glenpanel supported the notified definition for ‘Urban Area’: “...that is, or is intended to be, predominantly urban in character”. The Council’s decisions retained that definition.

makes it “subject to (1)”, however, there are two points to make in response to this change:

- (a) clause (2) has been deleted in the decisions version; and
- (b) Glenpanel supported the notified version in its original submission without any qualification in respect of the wording of clause (2). I have earlier noted that because of its support for the notified version of this provision, Glenpanel could have sought that the original wording be reinstated in its appeal. However, that would achieve an outcome that is the opposite to that which is now sought.

[111] That is fatal in terms of there being scope for this amendment.

[112] Turning now to Glenpanel’s rationale for these changes, for completeness, Glenpanel seeks to rely on generalised themes raised in its submission for the relief it now seeks by the inclusion of new UFD-O1(3), and as consequential relief, the changes to UFD-M2(5) and UFD-E1.

[113] While it is common for submitters to state generalised themes or rely on broadly stated relief in a submission or notice of appeal, there are limits to this generalisation. *Noakes* explained that problems arise where relief is too generalised; such that persons reading such submissions will not reasonably be able to understand clearly what amendments are or will be sought.¹⁶

[114] It is for this reason that the prescribed form¹⁷ expressly requires that a notice of appeal on a proposed plan (or policy statement) state:

¹⁶ At [78].

¹⁷ Form 7 in Schedule 1 to the Resource Management (Forms, Fees and Procedure) Regulations 2003.

the specific provision or matter that the decision includes in, or excludes from, the policy statement or plan or change or variation (or that the decision proposes to include or exclude)

[115] While R4 of the Resource Management (Forms, Fees and Procedure) Regulations 2003 provides that minor differences from the prescribed form do not render the appeal invalid, that is subject to the express condition that the form used has the same effect as the prescribed form and is not misleading.¹⁸

[116] ORC's view is that there is no scope for Glenpanel's relief to UFD-O1(2) or the alternative relief which would result in the inclusion of new subclause (3), and accordingly, there is no scope for the consequential relief it seeks to UFD-M2(5) and UFD-E1. ORC submits this relief should be struck out on those grounds.

[117] Glenpanel's appeal, which purports to build on its original submission, refers to common topics such as "urban areas" and "outstanding natural features and landscapes". However, Glenpanel's notice of appeal expressly seeks:

- (a) "Urban growth including extensions to urban areas needs to be appropriately supported...";
- (b) "There needs to be a return to common sense and a level of "outstandingness" as well as "naturalness" that warrants categorisation as an outstanding natural feature or landscape..."; and
- (c) "Property rights and the needs of the community must be prioritised over the outstanding natural features and landscape...".

[118] There is no need to identify themes in the original submission, as the actual amendments sought to each of the provisions are set out. However, the reasons for the amendments did not extend to the categorisation of ONF/Ls as it does in the notice of appeal. The only reference to ONF/L values was in the context of

¹⁸ Above n 7, at [81].

the submission on NFL-O1 and NFL-P2 where an amendment was sought to follow the language of s6(b).

[119] Moreover, neither document signals to a submitter reading the notice that Glenpanel may seek the relief now specified, being that urban expansion may prevail over the values of an ONF/L duly categorised. That does not relate to a “provision” included or a “matter” excluded from the PORPS referred to in the original submission or notice of appeal. Nor is the amendment fairly or reasonably raised in either document on either a strict or liberal approach.

[120] I further reject Glenpanel’s submission that it is implicit that extending urban areas into rural areas may also create tension with the values of ONF/Ls, therefore providing scope for the relief sought to UFD-O1(4). That is a submission that was a focus of the ORC opposition earlier referred to, which I agree with.

[121] There is only so far that themes extracted from a reading of a notice of appeal (as a whole) are able to be generalised to changes that are later particularised. There will be a point where such changes, while being within very broadly defined themes, go beyond those that are reasonably and foreseeably arising out of the original submissions, particularly where the relief was particularised in those submissions as they were in this case.

[122] It is true that the notice of appeal refers to prioritising the needs of the community over ONF/Ls, particularly where there is an overwhelming community need to use land for, say, housing. However, that was said in the context of a submission addressing the categorisation of an ONF/L. More relevantly, the “themes” in the notice of appeal must derive from the original submission, where nothing was said about categorisation of an ONF/L.

[123] Moreover, while the decisions version made the amendments to the NFL provisions as sought by Glenpanel, this resulted in an objective and policy that went no further than following the language of s6(b).

[124] While it is possible that some urban expansion may be found to be appropriate development within an ONF/L, that is different from an outcome that contemplates urban expansion prevailing over values of an ONF/L.

[125] In this respect, I disagree with ORC.'s submissions in relation to the amendments sought to UFD-O1(2) and new clause (3) that:

- (a) the addition of "recognises that the need for urban expansion may prevail over the values of an ONL/F" to UFD-O1 adds nothing to the relief sought in the original submission that sought to add "from inappropriate subdivision, use and development" to NFL-O1 and NFL-P2 provisions protecting ONF/Ls; and
- (b) to now seek further relief to like effect adds nothing to the relief sought in Glenpanel's original submission, which was granted in the decisions version of the PORPS, is frivolous and/or vexatious and should be struck out under s279(4)(a) RMA.

UFD-M2(5)

[126] The relief sought in Glenpanel's notice of appeal includes amendments to UFD-M2. However, Glenpanel's original submission did not extend to any of the method provisions in the PORPS.

[127] The notice of appeal does state that it relates to "any equivalent, updated, reordered or replacement provision" raised in its submission although it is doubtful that UFD-M2 can be construed as an updated, reordered or replacement provision for any of the specific objectives and policies and the single definition (for 'Urban Area') that were the subject of the original submission.

UFD-E1

[128] Similarly, Glenpanel's original submission did not seek an amendment to UFD-E1.

[129] Glenpanel's original submission did contain the often requested "consequential relief":

Make further amendments necessary to improve the clarity and workability of the provisions to achieve the purpose of the submission.

[130] Glenpanel relies on this request for the changes now sought to both UFD-M2(5) and UFD-E1. The amendments sought to these provisions are substantive in their effect. They do not relate to the clarity and/or workability of any of the PORPS provisions being submitted on. Moreover, the amendments exceed the purpose of Glenpanel's original submission, and accordingly they are beyond the scope of this prayer for relief.

[131] For these reasons, I exercise my discretion under s279(4) to strike out the relief sought to UFD-O1(2), the alternative new subclause (3), and consequentially UFD-M2(5) and UFD-E1.

Further discussion

[132] It is regrettable that these scope issues have had to be determined at this very late stage of the case management process. In this regard, I refer to QLDC's observation that mediation of all other appeals (which were successfully mediated), took place over a 12-month period, and concluding in June this year. Glenpanel's appeal is the only one that is to be resolved.

[133] QLDC notes that issues of scope arising out of the Glenpanel appeal were obvious from the outset of the process despite the fact that the notice of appeal did not specify any particular relief.

[134] Accordingly, it is no surprise that the parties have taken issue with the amendments that were finally set out in the memorandum filed in July this year. Parties are encouraged to raise potential scope issues as soon as they become obvious in the case management process and preferably before mediation occurs.

[135] The court notes that the standard track directions issued after appeals have been filed requires that issues be identified in the first case management memorandum filed with the court.

[136] It is further obvious that the Councils have experienced frustration arising from the fact that they and other parties entered into the mediation process not knowing precisely what relief was being sought by Glenpanel in its appeal, and from the court's perspective, that is understandable.

[137] Although the mediation process is a forum for the parties to explore opportunity to explore common ground in the process of settling their appeals, there are parameters around which this discussion can occur. These arise from the relief that is specified in the appeal, provided that is founded on the original submission from which the appeal is derived.

[138] That said, Glenpanel has failed to engage with the submissions made by both ORC and the QLDC as to the basis for the further changes sought to UFD-O1(1) once considered against the *decisions* version of this provision and not the notified version of that.

[139] I consider that to allow Glenpanel to pursue the relief sought to this provision as stated in the memorandum, is vexatious. Moreover, it would undermine the efficacy in the appeal and mediation process and would amount to abuse of the process of this court. Accordingly, that relief is also struck out.

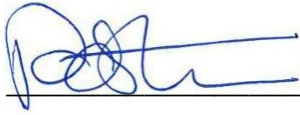
[140] This decision fully disposes of the remaining points of Glenpanel's appeal, and therefore, pending lodgement of the consent order on UFD provisions otherwise agreed by parties, disposes of all outstanding matters on the PORPS requiring determination.

Outcome

[141] The relief sought to UFD-O1(1), UFD-O1(2) (and the alternative new

UFD-O1(3)), UFD-M2(5) and to UFD-E1 is struck out under s279(4) RMA.

[142] Costs are reserved.

A handwritten signature in blue ink, appearing to read 'P A Steven', is written over a horizontal line.

P A Steven
Environment Judge



Written Submission on Proposed Otago Regional Policy Statement 2021

(Submissions must be received by Otago Regional Council by 3 pm Friday 3 September 2021)

To: Otago Regional Council

1. **Name of submitter** *(full name of person/persons or organisation making the submission. Note: The submissions will be referred to by the name of the submitter)*

Glenpanel Limited Partnership

2. This is a submission on the **Proposed Otago Regional Policy Statement 2021**.
3. I **could not** gain an advantage in trade competition through this submission. *(See notes to person making submission)*
4. I **am** directly affected by an effect of the subject matter of the submission that
- a. adversely affects the environment; and
 - b. does not relate to trade competition or the effects of trade competition *(See notes to person making submission)*
5. I **wish** to be heard in support of my submission
6. If others make a similar submission, I **will** consider presenting a joint case with them at a hearing
7. **Submitter Details**

- a. **Signature of submitter** *(or person authorised to sign on behalf of submitter)*



- b. **Signatory name, position, and organisation** *(if signatory is acting on behalf of a submitter organisation or group referred to at Point 1 above)*

Name Blair Devlin

Position Director / Senior Planner

Organisation Vivian and Espie Limited

c. Date

3 September 2021

Address for service of submitter (*This is where all correspondence will be directed*)

d. Contact person (*name and designation, if applicable*)

Blair Devlin

e. Email:

blair@vivianespie.co.nz

f. Telephone:

03 441 4189 or 021 222 6393

g. Postal address (*or alternative method of service under [section 352](#) of the Act*):

PO Box 2514, Wakatipu, Queenstown 9349

8. My submission is:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>The specific provisions of the proposal that my submission relates to are:</i>	<i>I support or oppose the specific provisions or wish to have them amended.</i>	<i>The reasons for my views are:</i>	<i>I seek the following decision from the local authority:</i>
Urban Area definition	<i>I support the specific provisions</i>	Support the definition as it includes land “that is, <u>or intended to be</u> , predominantly urban in character”. The definition enables private plan changes to be considered.	Retain the definition and reference to areas intended to be predominantly urban in character.

UFD-O1 – Form and function of urban areas	<i>I support the specific provisions</i>	UFD-01 recognises that the form and function of urban areas will change, now and in the future, to meet the changing needs of Otago’s people and communities. It is important this policy recognises the need for urban form to expand in areas with growth.	Retain the objective and ensure it recognises that urban areas will change and grow.
UFD-O2 – Development of urban areas	<i>I support the specific provisions</i>	UFD-02 is positive as Clause (1) recognises sustainable development can occur in and around urban areas.	Retain the objective.
UFD-O3 – Strategic Planning	<i>I wish to have the specific provisions amended.</i>	UFD-03 is unclear as to who is to do the strategic planning, and how this Objective would apply to a private plan change scenario. Clause (3) of the policy is unclear and uncertain as there is no clear definition of values and aspirations.	Amend the objective 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). Delete Clause (3) of the objective as the terms ‘values’ and ‘aspirations’ are not suitable in an objective as they are too uncertain.
UFD-O4 – Development in Rural Areas	<i>I wish to have the specific provisions amended.</i>	Clause (3) of the Objective requires amendment. The reference to urban expansion on zoned land does not make sense as if it is zoned for urban purposes then it would not come under the expansion objective which is for rural areas. Clause (4) of the Objective requires amendment. This clause would prevent the policy UFD-P4 from being implemented as an urban expansion	Amend Clause (3) to remove reference to areas already zoned for urban expansion, rural lifestyle, and rural residential development, because under the definition of Urban Area they would not be captured by this objective which is titled ‘Development in Rural Areas’. Amend Clause (4) so that it is consistent with policy UFD-P4 and so it will enable urban expansion, which by its very nature, will not maintain and enhance rural

		provide for under UFD-P4 will inevitably not maintain and enhance rural character.	character but rather recognise that change will occur as part of urbanisation.
UFD-O5 – Urban development and climate change	<i>I support the specific provisions</i>	It focuses on adapting to the impacts of climate change, rather than trying to manage emissions on a consent-by-consent basis.	Retain the objective.
UFD-P1 – Strategic Planning	<i>I support the specific provisions</i>	The Ladies Mile area has been identified in the QLDC Spatial Plan as a priority 'Future Urban' area.	Retain the policy.
UFD-P2 – Sufficiency of development capacity	<i>I wish to have the specific provisions amended.</i>	Providing 'sufficient' housing capacity will not help address the housing crisis being experienced in New Zealand. Replace the word 'Sufficient' with 'Significant' or 'More than sufficient' housing capacity. This also recognises land zoned for housing does not necessarily get developed for housing yet appears as part of development capacity calculations. i.e., a zoning is not actually capacity until it is released to the market as vacant land.	Replace the word 'Sufficient' with 'Significant' or 'More than sufficient'.
UFD-P3 – Urban Intensification	<i>I support the specific provisions</i>	Intensification should be encouraged.	Retain the policy.
UFD-P4 – Urban Expansion	<i>I wish to have the specific provisions amended.</i>	Generally support the policy, however the wording of clause (7)(c) does not read well. Clause (7)(c) could just be part of (b) as an either / or type policy.	Support the policy but amend wording of clause 7(c) to read better, it could just be part of (b) as an either / or type policy.
UFD-P7 – Rural Areas	<i>I wish to have the specific provisions amended.</i>	It is unclear how this policy relates to UFD-P4 and the definition of urban areas. The two policies and the definition need to be carefully worded to ensure they are not in conflict, as most urban extensions	Amend the policy to recognise in UFD-P7 that UFD-P4 could mean that rural areas change to urban areas as part of achieving UFD-P4.

		will occur on rural land. The definition of 'urban areas' includes land "that is, or intended to be, predominantly urban in character". E.g., at present an urban extension in accordance with UFD-P4 would run into issues with UFD-P7 as the land for the urban expansion may be zoned rural but can fall within the definition of an urban area as it is "intended to be, predominantly urban in character". i.e., land on the edge of town could fall within both the 'rural areas' and urban areas' definition.	Amend the policy to enable logical urban extensions into Rural areas as part of a well-functioning urban environment.
UFD-P10 – Criteria for significant development capacity	<i>I wish to have the specific provisions amended.</i>	The policy recognises that proposed plan changes (which includes private plan changes) are a key part of meeting development capacity.	Retain the policy but amend clause (5) to also enable smaller contributions. Having a large number of smaller contributions better achieves a competitive housing market rather than putting all of the supply under the control of one or two landowners. This is particularly the case in Queenstown where there is a large amount of zoned land but large areas of capacity are held by a small number of landowners.
NFL-O1 - Outstanding and <i>highly valued natural features and landscapes</i>	<i>I wish to have the specific provisions amended.</i>	The Objective requires amendment as it goes further than section 6(b) which requires that ONLs and ONFs are protected from "inappropriate" subdivision use and development The wording of the objective is just that they are to be protected. This is a level of protection similar to a national park and is not consistent with section 6(b) of the	Amend the wording to align with Section 6(b) and identify what is "inappropriate development", rather than just seeking that ONLs/ ONFs be "protected" full stop as this goes beyond section 6(b). The areas and values of Otago's outstanding and <i>highly valued natural features and landscapes</i> are identified,

		RMA. Section 6(b) recognises that some development in these areas can be appropriate.	and the use and development of Otago's <i>natural and physical resources</i> results in: <ul style="list-style-type: none"> (1) the protection of outstanding natural features and landscapes <u>from inappropriate subdivision, use and development</u>, and (2) the maintenance or enhancement of <i>highly valued natural features and landscapes</i>.
NFL-P2 – Protection of outstanding natural features and landscapes	<i>I wish to have the specific provisions amended.</i>	Amend the first sentence to reflect section 6(b) of the RMA. The policy requires amendment as it goes further than section 6(b) which requires that ONLs and ONFs are protected from “inappropriate” subdivision use and development. The wording of the objective is just that they are to be protected. This is a level of protection similar to a national park and is not consistent with section 6(b) of the RMA. Section 6(b) recognises that some development in these areas can be appropriate.	Amend the policy as follows: Protect outstanding natural features and landscapes <u>from inappropriate subdivision, use and development</u> by: <ul style="list-style-type: none"> (1) avoiding adverse <i>effects</i> on the values that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding, and (2) avoiding, remedying or mitigating other adverse <i>effects</i>.
All of the above provisions	<i>I wish to have the specific provisions amended.</i>	Consequential relief.	Make further amendments necessary to improve the clarity and workability of the provisions to achieve the purpose of the submission.



IN THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY

ENV-2024-CHC-

I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHĪ ROHE

UNDER	the Resource Management Act 1991 (the RMA)
IN THE MATTER	of an appeal pursuant to Schedule 1, clause 14 of the Act
AND	
IN THE MATTER	of the Non-Freshwater Parts of the Proposed Otago Regional Policy Statement 2021
BETWEEN	OTAGO REGIONAL COUNCIL
	Respondent
AND	GLENPANEL LIMITED PARTNERSHIP
	Appellant

NOTICE OF APPEAL ON BEHALF OF GLENPANEL LIMITED PARTNERSHIP

DATED 16 MAY 2024

LARA BURKHARDT
Barrister & Solicitor

PO Box 4432
Mount Maunganui South 3149

Telephone: +64 7 575 2569
 +64 27 222 8656
Email: lara@laraburkhardt.co.nz

TO: The Registrar
Environment Court
CHRISTCHURCH

1. Glenpanel Limited Partnership appeals against parts of the decision of the Otago Regional Council (**ORC** or **Council**) in respect of the Proposed Otago Regional Policy Statement 2021 (**PORPS**).

BACKGROUND AND DECISIONS APPEALED

2. Glenpanel Limited Partnership made a submission on the PORPS (**Submission**).
3. Glenpanel Limited Partnership is not a trade competitor for the purposes of section 308D of the RMA.
4. The Decision was received on 28 March 2024, and again on 30 March 2024. ORC advised (on its website) that *“the appeal period ... ends on 16 May 2024”*.
5. The Decision was made by ORC. This followed the recommendations made by the Hearing Panel appointed to hear and make recommendations on submissions.
6. Glenpanel Limited Partnership appeals all parts of the Decision 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.

GENERAL REASONS FOR APPEAL

General reasons

7. General reasons for the appeal are that the Provisions:
 - (a) do not promote the sustainable management of resources in accordance with section 5 of the RMA in that they:
 - (i) do not manage the use, development, and protection of natural and physical resources which enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety, as required by section 5 of the RMA;
 - (ii) do not sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, as required by section 5 of the RMA;
 - (b) do not promote the efficient use and development of natural and physical resources; and
 - (c) do not recognise and provide for, or otherwise acknowledge, and/or prioritise, the property rights of landowners; and
 - (d) do not include objectives that represent the most appropriate way to achieve the purpose of the RMA, as required by section 32 of the RMA;
 - (e) do not include policies and methods that represent the most appropriate way to achieve the objectives of the PORPS, as required by section 32 of the RMA.

Specific reasons

8. Without limiting the generality of paragraph 2.1, the more specific reasons for appealing include:

Urban form and development

- (a) Urban growth including extensions to urban areas needs to be appropriately supported, including where district plans have failed to “catch-up” to need and other changing circumstances. Generally, provided that infrastructure can be appropriately addressed, extensions to urban areas should be clearly supported.

Outstanding natural features and landscapes

- (b) The actual identification of outstanding natural features and landscapes has become fundamentally flawed, such that features and landscapes which are not outstanding (to any objectively reasonable member of the community) are categorised as such, and are blighted from reasonable use by their landowner, without compensation of the taking of the land by the relevant Council for setting it aside as a reserve (scenic, or otherwise).
- (c) There needs to be a return to common sense and a level of “outstandingness” as well as “naturalness” that warrants categorisation as an outstanding natural feature or landscape, such as recognised by the Environment court in *Wakatipu Environmental Society Incorporated and Ors v Queenstown-Lakes District Council* [2000] NZRMA 59 at [99]:
 - ... ascertaining an area of outstanding natural landscape should not (normally) require experts. Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis.
- (d) There also, where an outstanding natural feature or landscape categorisation is warranted, a need to provide a clearer direction for activities that are clearly not inappropriate. For example, where the only reason that a feature or landscape is recognisable as “outstanding” (subject to the approach identified at (b) above) is that it has been significantly modified by, for example farming, then

activities that support ongoing farming are not only *not* inappropriate, but are essential to be supported if the feature or landscape is to remain outstanding. More specifically, farm buildings, and farm housing for the owner/ farmer and their workers needs to be specifically recognised as appropriate or otherwise supported at a policy level.

- (e) Simply put, the only way to protect such outstanding natural features and landscapes in the long term, is to allow its reasonable use. Or, if the Council wants them as a scenic or other reserve, then it should acquire it as one to protect it. The provisions of the PORPS need to address this.

Relationship between urban form and development and outstanding natural features and landscapes

- (f) Property rights and the needs of the community must be prioritised over the outstanding natural features and landscapes, particularly where:
 - (i) any such categorised features and landscapes are not in fact truly outstanding and are sufficiently natural (to any objectively reasonable member of the community);
 - (ii) the outstanding natural features and landscapes are already compromised, for example because of existing urban and other development on them (which makes it unfair for the particular landowner to be unable to develop their land in a similar manner); and/ or
 - (iii) there is an overwhelming community need to use the land resource (eg for housing), noting that people and communities are an important part of the environment.

RELIEF SOUGHT

9. Glenpanel Limited Partnership seeks:
 - (a) the amendments sought to the relevant provisions (or their any equivalent, updated, reordered or replacement provisions) of the PORPS as sought in its Submission;
 - (b) any other amendments to the Provisions to address the matters or issues raised in its Submission and in this Appeal;
 - (c) without limiting the above, any other amendments to:
 - (i) direct that to features and landscapes are only categorised as outstanding natural features or landscapes if they truly “outstanding” and are sufficiently “natural” to such an obvious extent that an objectively reasonable member of the community would consider them so;
 - (ii) for features and landscapes that are appropriately categorised as outstanding natural features or landscapes, to direct for private property rights to prevail unless a Council acquires the land for a scenic or other reserve purposes;
 - (d) any alternative or other amendments to address the matters raised in this appeal, and to achieve the intent of this appeal (including as raised in the general and specific reasons given in this appeal);
 - (e) any similar, alternative, consequential and/or other relief as necessary to address the issues raised in this appeal; and
 - (f) that the PORPS be withdrawn or rejected in its entirety, or, at least all appeals suspended, pending the outcome of this Government’s signalled changes to national direction, including a replacement to the RMA.

Attachments

10. Glenpanel Limited Partnership attaches the following documents to this notice:

- (a) A copy of Glenpanel Limited Partnership's submission (**Attachment A**);
- (b) A copy of the relevant decision (**Attachment B**); and
- (c) A list of names and addresses of persons to be served with a copy of this notice (**Attachment C**).

Signature: **GLENPANEL LIMITED PARTNERSHIP** by its duly authorised agent



Lara Burkhardt
Counsel for the Appellant

Date: 16 May 2024

Address for service of Appellant:

Lara Burkhardt
Barrister & Solicitor
PO Box 4432
Mount Maunganui South 3149
Tel: 07 575 2569
027 222 8656
Email: lara@laraburkhardt.co.nz

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must, —

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.

Attachment A

Submission

Attachment B

Decision of the respondent

Attachment C

Names and addresses of persons to be served with copy of appeal

(Names and email addresses as provided by Council, with duplicates deleted; noting that a number of submitters did not have address for service provided, and have not been included.)

	SUBNAME_FULL	AFS_EMAIL
1.	Abraham, Ben	abrahambm@gmail.com
2.	Achari, Komal	komal_achari@hotmail.com
3.	Adams, GYPSY-JAZZ	gypsy.jazz666@hotmail.com
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