

**IN THE HIGH COURT OF NEW ZEALAND  
DUNEDIN REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
OTEPOTI ROHE**

**CIV – 2024-412-40**

Under the                    the Resource Management Act 1991

In the matter of        an appeal under clause 56 of the First Schedule to  
the Resource Management Act 1991

Between                    **Queenstown Lakes District Council**

**Appellant**

And                            **Otago Regional Council**

**Respondent**

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**Memorandum of Counsel in support of application for leave to join  
appeal**

**Dated 7 May 2024**

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**May it please the Court**

1. By Notice of Appeal dated 22 April 2024 (“Appeal”), the Appellant appealed a decision of the Respondent relating to the freshwater planning parts of the Proposed Otago Regional Policy Statement 2021 (“Decision”).
2. CODC supports the position of the Appellant as set out in the Appeal including the errors of law identified and relief sought.
3. As set out in the Appeal, due to the legal framework for the freshwater planning processes, appeals on recommendations by freshwater hearings panels that have been accepted by a regional council can only be appealed to the High Court on questions of law.
4. CODC as a local authority, is tasked with the delivery and management of wastewater facilities in its district. This includes consenting new and existing wastewater discharge facilities.
5. At the time submissions were due on the freshwater planning provisions (“provisions”), the three waters legislative reform was in transition, and pursuant to that regime the CODC were not going to be the entity responsible for wastewater. For that reason, CODC elected not to submit on the provisions. With the three waters legislation repealed, the CODC is in a position where its interests (and obligations) are now squarely and directly affected by the Decision.
6. In this case and as a result of the legislative framework, omitting the ‘usual’ Environment Court hearing process means parties that did not file a submission, such as the CODC, but who have an interest in the proceedings greater than the public in general, have no equivalent right to be a party to an appeal.<sup>1</sup> Rather, on any appeal to the High Court, s301 of the Resource Management Act 1991 (“RMA”) provides that

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<sup>1</sup> As provided for in s274, RMA

any party to the proceedings, or who appeared before the Environment Court (or in this case as we submitted before the freshwater hearings panel) may file a notice of intention to appear. CODC does not come within the ambit of s301.

7. Counsel refers to the following relevant propositions from the authorities on the joinder of interveners or interested persons in support of CODC's application for leave:<sup>2</sup>

- (a) **An applicant must show that its legal rights against or liabilities in relation to the subject matter will be directly affected.** As discussed above, CODC's obligations as a local authority tasked with the delivery and management of wastewater facilities, (and the consenting of the same under the regional council planning documents) will be directly affected. By way of example, there are some instances in Central Otago where there is a highly treated relatively small discharge to a large freshwater body with minimal impact. The Decision removes the policy basis for consenting new discharges of this nature. This has enormous cost implications which are unaffordable for the community to achieve in terms of an alternative land discharge system.
- (b) **If either party would be prejudiced by the intervention, or if the intervention would create an impression of partiality, the application will not be granted.** It is submitted that no party will be prejudiced by CODC joining the Appeal.
- (c) **The power to grant leave to intervene is discretionary and should be exercised with restraint to avoid the risk**

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<sup>2</sup> *Capital and Merchant Finance Ltd (in rec and liq) v Perpetual Trust Ltd* [2014] NZHC 3205, [2015] NZAR 228,

**of expanding issues, elongating the hearing and increasing the costs of the litigation.** CODC's participation will be confined to the errors of law pleaded and there is thus no risk of expanding issues, elongating the hearing and increasing the costs of the litigation. CODC may also explore the option of presenting a joint case with one or more of the parties who are in support of the Appeal.

- (d) **The underlying issue is whether it would be unjust to adjudicate on the matter in dispute without the intervener being heard.** The issues identified in the Appeal are of wide public importance for CODC and the other local authorities in the region. In the circumstances it would be 'just' for the CODC to be heard.

8. For the reasons set out above, Counsel respectfully submits that it is appropriate for the Court to exercise its discretion and grant leave for CODC to join and be heard on the Appeal.

Dated at Queenstown this 7<sup>th</sup> day of May 2024.



J E Macdonald

Counsel for Central Otago District Council