



## **Queenstown Lakes District Proposed District Plan – Stage 1**

**Section 42A Hearing Report  
For Hearing commencing: 13 March 2017**

**Report dated: 15 February 2017**

Report on submissions and further submissions

### **Chapter 2 – Definitions**

File Reference: Chp. 2 - S42A

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## 1. EXECUTIVE SUMMARY

- 1.1. The majority of submissions received in relation to definitions have already been addressed through preceding hearings on the Proposed District Plan (**PDP**) where they pertain to a topic or chapter within a particular hearing stream. This report collates those recommendations and also addresses the remainder of the definition related submissions (see **Appendix 2**), making recommendations in this regard.
- 1.2. For any substantive amendments, I have recommended within this report, I have assessed all of the proposed changes in terms of section 32AA of the RMA (see **Appendix 4**).
- 1.3. The amendments previously recommended to the notified definitions by Officers in the previous hearing streams, as well as the recommended new and deleted definitions by these Officers, are included in **Appendix 1** to this report. These previously recommended amendments are differentiated from those amendments that are being recommended as a result of this report in **Appendix 1** by colour. No further s32AA analysis has been undertaken for the amendments recommended via previous hearing reports as they have already been assessed in the preceding chapter s32AA reports.
- 1.4. I have also highlighted in this report a number of potential issues that I do not have scope to address that could be prudent to consider as part of the Stage 2 PDP review.
- 1.5. I consider that the revised chapter in **Appendix 1** is more effective and efficient than both the notified Chapter 2 and the changes sought by submitters that I have rejected. I consider that the revised chapter will better meet the purpose of the Resource Management Act 1991(**RMA**) through providing greater clarity and consistency in the interpretation of the plan.

## 2. INTRODUCTION

- 2.1. My name is Amanda Jane Leith. I am a consultant contracted by the Queenstown Lakes District Council (**Council** or **QLDC**) to prepare the Section 42A (**s42A**) report on Chapter 2 of the PDP. I am a full member of the New Zealand Planning Institute. I hold the qualifications of Bachelor of Arts and a Masters of Regional and Resource Planning from the University of Otago.
- 2.2. I previously held the positions of Senior Consents Planner and Senior Policy Planner at Council and prepared the s42A reports on Chapters 7 – Low Density Residential, 8 – Medium Density Residential and 11 – Large Lot Residential.
- 2.3. I am not the principal author of the notified PDP Chapter 2 – Definitions.

- 2.4. In this Evidence, where I refer to a provision number, I am referring to the 'reply' provision number that is Council's final position as put forward in an earlier Stage 1 hearing.

### **3. CODE OF CONDUCT**

- 3.1. Although this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

- 3.2. I am authorised to give this evidence on the QLDC's behalf.

### **4. SCOPE OF THIS EVIDENCE**

- 4.1. Throughout the evidence submitted to the Panel in the nine PDP hearing streams completed to date, the submissions and further submissions on various definitions relating to those streams have already been addressed. Consequently, my evidence is limited to those submissions and further submissions on definitions that have not already been addressed previously. This includes definitions with a district wide consequence, and where the submissions and further submissions have been deferred for consideration within this hearing. These submissions are identified in **Appendix 2** and in **Appendix 3** for reference purposes.

- 4.2. In considering the definitions against the submissions and further submissions that have been received, I have considered the application of the definition in all of the places it appears in the notified PDP, including objectives, policies, rules and standards.

- 4.3. In reviewing the definitions, I have also identified some anomalies and potential issues in the interpretation of a number of definitions that I have also addressed within this report. Where I consider that these equate to clarification, or involve non-substantial amendments, I have stated this and updated **Appendix 1**. However, for those that are substantial and are without scope I have not amended **Appendix 1**.

- 4.4. Although this evidence is intended to be a stand-alone document, to meet the requirements of s42A of the RMA, a more in-depth understanding can be obtained from reading the s32 Evaluation Report: Definitions (**Appendix 5**).

### **5. STATUTORY BACKGROUND AND RELEVANT BACKGROUND DOCUMENTS**

- 5.1. The s32 report attached as **Appendix 5** provides a detailed overview of the legislation and higher order statutory and planning documents that were considered when preparing Chapter

2 (pages 2 – 3). In addition to that, the following, more detailed summary of relevant legislation and documents is also provided.

### **The Resource Management Act (RMA)**

- 5.2. The RMA does not require that District Plans contain a list of defined terms. However definitions are an integral part of enabling the correct interpretation of plans and ensuring consistency with the application and assessment of the provisions.
- 5.3. In section 2 of the RMA it lists the definitions that are to be used in the interpretation of that Act.

### **Operative Otago Regional Policy Statement (1998) (Operative RPS)**

- 5.4. Section 75(3) of the RMA requires that a district plan prepared by a territorial authority must "*give effect to*" any regional policy statement.

### **Proposed Otago Regional Policy Statement 2015 (PRPS)**

- 5.5. Section 74(2) of the RMA requires that a district plan prepared by a territorial authority shall "*have regard to*" any proposed Regional Policy Statement. The PRPS was notified for public submissions on 23 May 2015, and decisions on submissions were released on 1 October 2016. The appeal period closed on 9 December 2016 with 26 appeals being received.
- 5.6. Of the appeals lodged against the decisions of the PRPS, a number were in relation to definitions in the PRPS. The following appealed PRPS definitions have relevance to the definitions contained (or recommended to be contained) within Chapter 2:

<b>Definition</b>	<b>Appellant</b>	<b>Relief sought</b>
Biodiversity offsets	Forest and Bird	Seeking that this new definition be included in the PRPS
No net loss	Forest and Bird	Seeking that this new definition be included in the PRPS
Wetland	Otago Water Resource Users Group	Seeking amendments to the definition

- 5.7. The definitions of 'biodiversity offsets' and 'no net loss' were recommended to be included in Chapter 2 by Mr Craig Barr in his s42A report for Chapter 33 – Indigenous Vegetation and Biodiversity. The decisions version of the PRPS does not include these definitions. However as outlined above, Forest and Bird have lodged an appeal for these definitions to be included in the PRPS. Although this is of relevance, the Council is not bound by the decisions (or outcome of these appeals) on the PRPS in terms of adopting the relevant definitions or not (or their content), only that the PDP must give effect to the PRPS.

5.8. The definition of 'wetland' in both Chapter 2 and the PRPS decisions version relies upon the definition provided by the RMA. The PRPS appeal lodged by Otago Water Resource Users Group seeks amendment to this definition. No submissions were received on the Chapter 2 definition.

## 6. ANALYSIS OF SUBMISSIONS

6.1. The PDP was notified on 26 August 2015. The submission period closed on 23 October 2015 and summaries of submissions were notified on 3 December and 28 January 2016. A total of 640 submission points were received on the Definitions Chapter.

6.2. Submissions are generally considered by definition. The summary of the submissions received on the notified chapter and recommendations of whether the submission should be rejected, accepted, or accepted in part are attached at **Appendices 2 and 3**.

6.3. **Appendix 2** sets out the submissions which are addressed within this report, being those that have not already been addressed in preceding hearing streams. I have read and considered all of the submissions in **Appendix 2**.

6.4. **Appendix 3** lists the submissions on definitions that have already been addressed in the earlier hearing streams and the recommendation of the officers outlined within their respective s42A report or right of reply. Where a recommendation relating to a definition was amended between the s42A report and right of reply, **Appendix 1** shows the right of reply recommended changes.

6.5. **Appendix 6** collates the s32AA assessments for the amendments recommended in the s42A reports and right of replies on chapters that have already been before the Hearings Panel.

6.6. The RMA, as amended in December 2013, no longer requires a report prepared under s42A or the Council decision to address each submission point but instead requires a summary of the issues raised in the submissions.

6.7. Some submission points canvas more than one issue, and will be addressed where they are most relevant within this evidence. At times, where a submission encapsulates a number of definitions, it will be discussed under a number of headings/ issues/topics.

6.8. I have discussed the relief sought in submissions under the following issues/ topics in this evidence:

- a. Issue 1 – How definitions are to be administered
- b. Issue 2 – Building

- c. Issue 3 – Domestic livestock
- d. Issue 4 – Ecosystem services
- e. Issue 5 – Formed road
- f. Issue 6 – Ground level
- g. Issue 7 – Precedent
- h. Issue 8 – Radio communication facility and Navigational facility
- i. Issue 9 – Residential flat
- j. Issue 10 – Residential unit
- k. Issue 11 – Reverse sensitivity
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- o. Issue 15 – Tourism activity
- p. Issue 16 – Urban development and urban growth boundary
- q. Issue 17 – Visitor accommodation
- r. Issue 18 – Earthworks, Waste, Mining activities and Cleanfill facility
- s. Issue 19 – Signage definitions
- t. Issue 20 – Maori definitions
- u. Issue 21 – Defined terms not included within the Stage 1 chapters
- v. Issue 22 - Definitions which equate to rules
- w. Issue 23 – 'Adjacent' and 'Adjoining'
- x. Issue 24 – 'Including' and 'Excluding'
- y. Issue 25 – 'Ancillary' and 'Accessory'
- z. Issue 26 – 'Activity' and 'Facility'
- aa. Issue 27 – Advice notes in definitions
- bb. Issue 28 – Miscellaneous issues

6.9. An analysis of the key issues identified by submitters is provided under the above headings. Where a provision / definition has not been submitted on or where a submission is without any coherent basis, the submission point is unlikely to have been directly discussed within this report (although a recommendation for the latter is set out in **Appendix 2**).

## 7. ISSUE 1 – HOW DEFINITIONS ARE TO BE ADMINISTERED

- 7.1 No guidelines are provided within the PDP as to how definitions are to be used or administered. However I consider these necessary in order to address a number of issues that are discussed below.
- 7.2 The PDP has been drafted and applied with the intent that the defined terms within Chapter 2 are to apply throughout the PDP whenever the defined term is used. This provides certainty and reduces ambiguity as to when a defined term is to be used or not. A note to this effect is recommended to be inserted into the start of Chapter 2 as shown in **Appendix 1**. I consider that this is a matter of clarification and a non-substantive change.
- 7.3 The submission lodged by Z Energy Ltd, BP Oil NZ Ltd and Mobil Oil NZ Limited (**Z Energy**) (768) requests clarification that where a term is not defined specifically within the PDP that reliance will be placed upon the RMA definition (where there is one). Otherwise, the ordinary dictionary meaning shall apply. I consider that this is a valid approach that should be stated at the start of Chapter 2 to aid consistent interpretation of the plan provisions. I note that some of the definitions within Chapter 2 already rely upon the RMA definition, however not all of the terms defined within the RMA are included within Chapter 2.
- 7.4 In addition to the above, I also recommend that where a term is expressly defined in the PDP and it differs from the RMA definition, that the PDP definition has primacy. This is on the basis that the PDP definitions have been drafted taking into account the intent of the plan's objectives and its particular framework of defined terms, rules and other methods. A clause to this effect is already included within Chapter 1 - Introduction (Reply clause 1.6.5) and I recommend its repetition within Chapter 2 as shown in **Appendix 1**.
- 7.5 Clarification is also recommended to address the many 'reliant definitions' in the chapter by stating that where a definition includes reference to another defined term, that this definition should be relied upon in the interpretation of the first definition. There are many instances of interrelated definitions in Chapter 2, such as the definitions of 'residential unit' and 'residential flat', which include the term 'residential activity'. This is also defined. Consequently, the definition of 'residential activity' should be taken into account in the interpretation of the definitions of 'residential unit' and 'residential flat'. A note to this effect is recommended in **Appendix 1**.
- 7.6 I have also recommended inclusion of a note in Chapter 2 (see **Appendix 1**) that states that where a word or phrase is defined, the definition applies also to any variations of the word or phrase (singular or plural).

7.7 In addition, for clarity, I have added a note in Chapter 2 (see **Appendix 1**) to advise that any notes are purely for information or guidance purposes only and do not form part of the definition. I discuss advice notes in more detail later on in this report.

7.8 I note that definitions are also provided within the notified Chapter 5: Tangata Whenua (glossary) and recommended within Ms Vicki Jones' right of reply in relation to Chapter 26: Historic Heritage (terms used in this chapter). The terms within the glossary in Chapter 5 are intended to apply not only to Chapter 5 but wherever a term is used within the Plan. Conversely, the terms recommended to be defined within Chapter 26 by Ms Jones are intended to only apply to that chapter, as is obvious in their drafting, with all of them beginning with:

*"For the purpose of this chapter, X means....".*

7.9 Two notes stipulating the above are recommended to be inserted at the start of Chapter 2 (see **Appendix 1**).

7.10 I note that an inconsistent approach has been taken by Officers in their Appendix 1 recommendations to the Panel regarding definitions. Where submissions have been received on Chapter 2 definitions that specifically relate to individual chapters, these have been addressed by Officers and any recommended amendments to the notified definitions, new definitions or deleted definitions have been included within the recommendations in Appendix 1 attached to the respective s42A reports and/or right of replies. However, it is not clear within some of those Appendices<sup>1</sup> what the recommendation is in regards to amending Chapter 2, or whether the recommendation was to incorporate the stated definitions within the specific chapter. For clarity, with the exception of Chapters 5 and 26, no specific definitions are proposed to be included within individual chapters and all of the recommendations are with regard to Chapter 2 only.

## **8. ISSUE 2 – BUILDING**

8.1. Numerous submissions were received in relation to the notified definition of 'building'. Many<sup>2</sup> of these were in relation to irrigation infrastructure and ski passenger lift systems. Mr Barr addressed these submissions within the s42A report on Chapter 21 – Rural.<sup>3</sup> I concur with his recommendations and do not intend to re-address these submissions for the purposes of this report.

1 Chapters 9 – High Density Residential, 16 – Business Mixed Use Zone, 17 – Airport Zone, 21 Rural Zone, 30 – Energy and Utilities.

2 Jeremy Bell Investments Ltd (784) (supported by FS1097), J Cooper (400) (supported by FS1097), Federated Farmers of New Zealand (600) (opposed by FS1034, supported by FS1209, FS1091 and FS1097), Soho Ski Area Limited and Blackmans Creek No. 1 LP (610) (supported by FS1097), Treble Cone Investments Ltd (613) (supported by FS1097), P Kane (701) (supported by FS1162), T Burdon (791) and Lakes Land Care (794).

3 Issue 7 – Ski Area Activities within the Ski Area Subzones and in Appendix 2.

- 8.2. The definition of 'building' was also considered by Mr Barr within his s42A report on Chapter 30 – Energy and Utilities in relation to a number of submissions<sup>4</sup> from telecommunications companies. I also concur with his recommendations in this regard and will not consider these submissions further.
- 8.3. The only remaining submission which has not yet been addressed is from Queenstown Park Limited (**QPL**) (806). This submission seeks to amend the definition of 'building' so that it excludes gondolas and associated structures. Mr Barr within the s42A report for Chapter 21 – Rural Areas<sup>5</sup> has recommended that a new definition be included within the PDP for 'passenger lift systems'. This definition covers gondolas and associated structures. In conjunction with this, Mr Barr also recommended a new policy<sup>6</sup> and amendments to two rules<sup>7</sup> in relation to 'passenger lift systems'.
- 8.4. Given that this is now expressly defined and that these systems are now differentiated from 'buildings' in the provisions, I consider that Mr Barr's recommendations have addressed the relief sought by the submitter, albeit in a different form.

## **9. ISSUE 3 – DOMESTIC LIVESTOCK**

- 9.1. C Byrch (243) submitted on the definition of 'domestic livestock' stating that it should be consistent with the definition of 'commercial livestock' in referring to the livestock rather than their keeping.

- 9.2. 'Commercial livestock' is defined in the PDP as follows:

*"Means livestock bred, reared and/or kept on a property for the purpose of commercial gain, but excludes domestic livestock."*

- 9.3. 'Domestic livestock' is defined as:

*"Means the keeping of livestock, excluding that which is for the purpose of commercial gain.*

- *In all Zones, other than the Rural General, Rural Lifestyle and Rural Residential Zones, it is limited to 5 adult poultry, and does not include adult roosters; and*
- *In the Rural General, Rural Lifestyle and Rural Residential Zones it includes any number of livestock bred, reared and/or kept on a property in a Rural Zone for family*

4 Chorus New Zealand Ltd (781), Vodafone NZ (179) (supported by FS1097 and opposed by FS1255), Spark Trading NZ Ltd (191) (supported by FS1097 and opposed by FS1255) and Two Degrees Mobile Ltd (421) (opposed FS1117 and FS1097).

5 Paragraphs 14.15 – 14.21.

6 Reply policy 21.2.6.4.

7 Reply rules 21.4.19 and 21.5.28.

*consumption, as pets, or for hobby purposes and from which no financial gain is derived, except that in the Rural Residential Zone it is limited to only one adult rooster per site.*

*Note: Domestic livestock not complying with this definition shall be deemed to be commercial livestock and a farming activity as defined by the Plan."*

- 9.4. In comparing the two definitions, I agree with C Byrch (243) and consider that the first sentence of the two definitions should be the same apart for the differentiating matter of whether they are for commercial gain or not. I have made this recommendation in **Appendix 1**.
- 9.5. The remainder of the definition of 'domestic livestock' acts as a rule. This issue is discussed more broadly below in Issue 21 where I recommend that the first sentence of the definition be retained, with the remaining criteria within the definition being relocated into each PDP chapter where the relevant rule or standard appears. However, I have not included this change in **Appendix 1** as additional changes would be required to many of the chapters that have already been considered by the Panel. If the Panel is inclined to recommend this change, some consideration/advice would be needed as to revisiting earlier recommendations.
- 9.6. I have also recommended a number of other non-substantive amendments in **Appendix 1** to the definition of 'domestic livestock' to amend the reference to the '*Rural General*' zone to only '*Rural*' to reflect the PDP terminology. I also recommend deletion of the words '*in a Rural Zone*' in the second bullet point, as the first part of the sentence already stipulates what zone this provision applies to.
- 9.7. Arcadian Triangle (836) in relation to the 'domestic livestock' definition raises a number of concerns about the consistency of the wording within the definition. These include the absence of any qualifier as to whether the numbers are limited per 'site' or by other means in the first bullet point, the use of the term 'property' instead of 'site' in the second bullet point and the removal of the superfluous words 'as defined in the Plan' at the end of the note. I agree with this submission and have therefore made amendments in **Appendix 1** to this effect.
- 9.8. Arcadian Triangle (836) also requested that adult peacocks be limited or excluded in the definition where roosters are limited or excluded, given that they are noisier than roosters and are found on some properties in the District. Upon further research of this issue it would appear that this is a potential problem, and I therefore agree with the submitter in this regard. These changes are also included as recommendations in **Appendix 1**.

## 10. ISSUE 4 – ECOSYSTEM SERVICES

- 10.1. C Brych (243) and QLDC (383) (in its corporate capacity) have both submitted in relation to the definition of 'ecosystem services'. C Brych (243) considers that the definition should be rewritten as they are not just the services that people benefit from. QLDC's (383) corporate submission states that a definition provided by Landcare Research is more effective and tangible than the notified definition, which was originally adapted from the PRPS. The definition proposed by QLDC (383) is as follows:

*"Ecosystem services are categorised as 'provisioning', such as food, timber and freshwater; 'regulating', such as air quality, climate and pest regulation; 'cultural' such as recreation and sense of belonging; and 'supporting', such as soil quality and natural habitat resistance to weeds."*

- 10.2. Since the date of notification of the PDP (26 August 2015) decisions have been released on the PRPS (1 October 2016). The decision version of the PRPS provides a definition of 'ecosystem services' as follows, and no appeals were received on this definition.

*"Are the resources and processes the environment provides that people benefit from e.g. purification of water and air, pollination of plants and decomposition of waste."*

- 10.3. The notified PDP version is consistent with the PRPS definition (with the exception of punctuation). As the PDP is required to 'give effect' to the PRPS, I recommend that the definition remain the same as the PRPS. Consequently, only punctuation changes are recommended as identified in **Appendix 1**.

- 10.4. I note that this recommendation is consistent with that in Mr Barr's right of reply on Chapter 33 – Indigenous Vegetation and Biodiversity.<sup>8</sup>

## 11. ISSUE 5 – FORMED ROAD

- 11.1. Federated Farmers of New Zealand (**FFNZ**) (600)<sup>9</sup> request that the notified definition of 'formed road' is amended to distinguish between publicly and privately owned roads in the District.

- 11.2. A definition of 'road' is provided within the PDP as follows:

*"Means road as defined in section 315 of the Local Government Act 1974."*

<sup>8</sup> Paragraphs 8.1 – 8.5.

<sup>9</sup> Opposed by FS1034 and FS1040 and supported by FS1209.

11.3. Section 315 of this Act states:

*"road means the whole of any land which is within a district, and which—*

- (a) immediately before the commencement of this Part was a road or street or public highway; or*
- (b) immediately before the inclusion of any area in the district was a public highway within that area; or*
- (c) is laid out by the council as a road or street after the commencement of this Part; or*
- (d) is vested in the council for the purpose of a road as shown on a deposited survey plan; or*
- (e) is vested in the council as a road or street pursuant to any other enactment;—*

*and includes—*

- (f) except where elsewhere provided in this Part, any access way or service lane which before the commencement of this Part was under the control of any council or is laid out or constructed by or vested in any council as an access way or service lane or is declared by the Minister of Works and Development as an access way or service lane after the commencement of this Part or is declared by the Minister of Lands as an access way or service lane on or after 1 April 1988:*
- (g) every square or place intended for use of the public generally, and every bridge, culvert, drain, ford, gate, building, or other thing belonging thereto or lying upon the line or within the limits thereof;—*

*but, except as provided in the [Public Works Act 1981](#) or in any regulations under that Act, does not include a motorway within the meaning of that Act or the [Government Rounding Powers Act 1989](#)"*

11.4. Taking the above definition into account, I consider that the notified PDP definition of 'road' is clear in that it refers to only public roads. Consequently, I consider that the definition of 'formed road' does not require amendment and I therefore reject this submission point of FFNZ.

## 12. ISSUE 6 – GROUND LEVEL

12.1. The notified definition of 'ground level' states:

*"Ground Level means:*

*The surface of the ground prior to any earthworks on the site, except that where the surface of the ground has been altered through earthworks carried out as part of a subdivision under the Resource Management Act 1991 or Local Government Act 1974 "ground level" means the finished surface of the ground following completion of works associated with the most recently completed subdivision.*

- *"Earthworks" has the meaning given in the definition of that term in this Plan and includes earthworks carried out at any time in the past.*
- *"Completed subdivision" means a subdivision in respect of which a certificate pursuant to section 224(c) of the Resource Management Act 1991 or a completion certificate under the Local Government Act 1974 has been issued.*
- *"Earthworks carried out as part of a subdivision" does not include earthworks that are authorised under any land use consent for earthworks, separate from earthworks approved as part of a subdivision consent.*

*Note*

1. *See interpretive diagram in the definition of BUILDING HEIGHT*
2. *Ground level interpretations are to be based on credible evidence including existing topographical information, site specific topography, adjoining topography and known site history.*
3. *Changes to the surface of the ground as a result of earthworks associated with building activity do not affect the "ground level" of a site.*
4. *Subdivision that does not involve earthworks has no effect on "ground level".*
5. *Special height rules apply in the Queenstown Town Centre, where "metres above sealevel" is used. "Original ground level" is not affected by the definition of "ground level" above, which applies elsewhere.*

*This definition does not affect or supersede the definition of "Ground Level" for the Remarkables Park Zone or the Industrial B Zone (Connell Terrace Precinct)."*

- 12.2. Arcadian Triangle Ltd (836) has raised an issue with the third bullet point of the definition as follows:

*"The third bullet point of the definition of 'Ground Level' potentially creates a problem. Up until a few years ago the Council did not require a subdivider to obtain separate land use consent for earthworks associated with a subdivision. However a few years ago the Council changed its interpretation of the provisions of the Operative District Plan and standard requiring subdividers to obtain separate land use consent for all earthworks associated with a subdivision. As a consequence, under the Operative District Plan, subdivisions have changed the defined "Ground Level" of subdivided sites through land use consents obtained for earthworks associated with the relevant subdivision. It appears that the third bullet point in this definition of "Ground Level" (together with the first bullet point) may operate retrospectively to*

*change the ground level applicable to sites created through subdivision consents issued under the Operative District Plan."*

12.3. By way of relief, the submitter seeks that the third bullet point be deleted or other amendments are undertaken as necessary to ensure that this bullet point only applies to subdivision consents granted after the date that Plan Change 49 (**PC49**) became operative.

12.4. As I understand it, prior to PC49 becoming operative, whether land use consent for earthworks being undertaken as part of subdivision was a grey area. PC49 introduced the following rule (22.3.2.1(e)) into the Operative District Plan (**ODP**):

*"Earthworks listed in (i)-(iii) below are also exempt from the rules in Section 22 of the District Plan:*

- (i) That are associated with a subdivision consented under Rule 15.2.20; or*
- (ii) That are associated with a subdivision consented prior to 29 April 2016, or*
- (iii) That are associated with the construction of a house within an approved residential building platform."*

12.5. As a consequence, when PC49 became operative on 27 July 2016, the grey area that existed previously was addressed. However, there will be numerous land use consents for earthworks that were assessed with subdivision consents prior to PC49 becoming operative that have changed the ground level of sites via land use consent rather than subdivision consent. Consequently, I agree with the submitter that the third bullet point of the definition should be amended to reference the same date as prescribed in the ODP (29 April 2016) to ensure that the ground levels approved via land use consent prior to this time are not captured. This amendment is recommended in **Appendix 1**.

12.6. Arcadian Triangle Ltd (836) also notes that the definition of 'ground level' does not apply to the Remarkables Park Zone or the Industrial B Zone (Connell Terrace Precinct). Further, the submitter notes that while there is a separate notified definition of ground level pertaining to the Remarkables Park Zone (which is recommended to be deleted), there is no corresponding ground level definition for the Industrial B (Connell Terrace Precinct) in the PDP.

12.7. In reviewing Plan Change 36 (**PC36**), which established the Industrial B (Connell Terrace Precinct), I have found that a 'Contour and Zone Plan' was adopted which is intended to set out the ground level for the zone. The last sentence of the PDP definition (and ODP) of 'ground level' was added as part of PC36 and is intended to mean that the requirements within the definition do not apply to the Industrial B (Connell Terrace Precinct). As a consequence, my understanding is that ground levels within the Industrial B (Connell Terrace Precinct) are those depicted on the 'Contour & Zone Plan' and they consequently do not need

to be defined in Chapter 2. Notwithstanding this, the Industrial B zone is proposed to be included within Stage 2 of the District Plan review and any necessary amendments to definitions in relation to this zone will be considered at this time.

### **13. ISSUE 7 - PRECEDENT**

- 13.1. A Cutler (110) requested that a definition of 'precedent' be included in the PDP for the following reason:

*"Some misinterpretation of the word 'precedent' has occurred by elected members and in planning decisions therefore it is essential to clarify the meaning. Substantial weight can be placed on the word 'precedent' not just in terms of (sic) the first changes to the landscape/zone but in relation to cumulative effects and incremental development."*

- 13.2. Precedent is not defined within the RMA. However consideration of potential precedent effects can be considered as a relevant matter in determining a resource consent application. Precedent effects and the extent to which these are applied are a frequent matter of resource management practice and of case law. Consequently, the RMA application of the term is still emerging and can change over time.
- 13.3. I also note that the term 'precedent' is not included within any of the Stage 1 chapters and therefore including a definition will not aid in the interpretation of any PDP provision. As such, I do not support the identification of a definition of 'precedent'.

### **14. ISSUE 8 – RADIO COMMUNICATION FACILITY AND NAVIGATION FACILITY**

- 14.1. The Airways Corporation of New Zealand Ltd (**Airways**) (566)<sup>10</sup> seek that two new definitions be included within Chapter 2, being 'radio communication facility' and 'navigation facility'. The submitter requests inclusion of these definitions as the terms are included within a number of PDP provisions in Chapter 30 – Energy and Utilities.
- 14.2. In his right of reply for Chapter 30<sup>11</sup> – Energy and Utilities, Mr Barr recommended amending the rules within the chapter for ease of interpretation. These recommended changes to the Chapter 30 rules resulted in the removal of references to 'radio communication facilities' and 'navigation facilities' as activities in themselves. Now the rules only reference the particular infrastructure used to undertake these activities instead, such as mast heights<sup>12</sup> and antennae

10 Supported by FS1106, FS1208, FS1253 and FS1340.

11 Dated 22 September 2016.

12 Redraft rules 30.4.46 and 30.4.47 in Mr Barr's right of reply.

dimensions.<sup>13</sup> Furthermore, there are no objectives and policies in Stage 1 that use these terms.

- 14.3 The definition of 'regionally significant infrastructure' recommended by Mr Matthew Paetz in his right of reply for Chapter 3 – Strategic Direction incorporates 'telecommunication and radio communication facilities'. Mr Barr recommended amendments to Mr Paetz' definition as part of his evidence on Chapter 30 – Energy and Utilities that included a footnote after the bullet point, which states '*as defined by the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008*'. This footnote however only relates to the telecommunications part of the bullet point as 'radio communications facilities' are not defined in these Regulations.
- 14.4 I consider that since 'radio communications facilities' are included within the definition of 'regionally significant infrastructure', a definition should be provided given their significance to the region. Accordingly, I support the definition included within the Airways (566) submission and this is shown in **Appendix 1**.
- 14.5. 'Navigation facility' is no longer utilised within any PDP objective, policy, rule or definition, consequently I do not see a need to include this definition within the PDP and I therefore do not support the Airways (566) submission in this regard.

## 15. ISSUE 9 – RESIDENTIAL FLAT

- 15.1. The definition of 'residential flat' has been discussed by Mr Barr as part of his right of reply on Chapter 21 – Rural Zone,<sup>14</sup> and also within my s42A report on Chapter 7 – Low Density Residential.<sup>15</sup> Changes to the notified definition were recommended in both. However, the Hearings Panel on 27 October 2016 requested that consideration of the definition be deferred until the hearing on Chapter 2 – Definitions. Notwithstanding this, in listening to the evidence presented on 26 October 2016 by Mr Goldsmith of Arcadian Triangle (836) to the Hearings Panel, I do not recommend any additional amendments to the definition beyond those recommended within paragraphs 14.17 – 14.30 of my s42A report on Chapter 7, which also incorporates Mr Barr's recommendation.<sup>16</sup>
- 15.2. In the abovementioned paragraphs of the s42A report for Chapter 7, I recommended the deletion of the reference to 'leasing' within the definition as a result of the submission received from Arcadian Triangle (836) for the following reasons:

*"Submitter 836's (Arcadian Triangle Limited) request for the deletion of the 'leasing' reference is on the basis that it could mean any form of use by somebody other than the*

13 Redraft rules 30.4.48 and 30.4.49 in Mr Barr's right of reply.

14 Paragraphs 6.3 – 6.6.

15 Paragraphs 14.17 – 14.30.

16 Aside for the minor amendments detailed under Issue 26 below relating to the advice notes.

*occupants of the residential unit, whether commercial or non-commercial. The submitter therefore recommends the deletion of this point or moving it to the advice notes. With regard to this point, the s32 report states that flats can continue to be leased which is a continuation of the status quo under the ODP.*

*I anticipate that the inclusion of this 'leasing' statement is as a point of clarification in the context of the preceding clause "is situated on the same site and held in the same ownership as the residential unit...", and that it may be the word 'leasing' causing the problem. This word could be replaced by 'rented' to give a more residential context, however this wording could also have implications for the ability or restriction on the letting of residential flats for visitor accommodation purposes, which is to be considered in Stage 2 of the District Plan review for the residential zones. I note that the notified definitions of both 'Residential Activity' and 'Residential Unit' do not preclude renting of properties for permanent residential purposes. Consequently, given the above considerations, I recommend that the reference to leasing to another party is deleted as it is not necessary."*

15.3. I therefore continue to recommend the same amendments to the definition in **Appendix 1**.

## **16. ISSUE 10 – RESIDENTIAL UNIT**

16.1. H Leece and A Kobienia (126) have submitted in relation to the definition of 'residential unit' noting that the term hinges upon kitchen and laundry facilities. The submitters request that the definition should include flats, apartments and sleep outs on a site when installed with ablution facilities that enable independent living. I note that the submitter also seeks to ensure that the proposed residential density of the Rural Residential and Rural Lifestyle zones preserve the current density of the existing area and that this is defended when proposals to further subdivide are lodged.

16.2. Whilst I understand the submitters are seeking this amendment to preserve their rural living amenity values, I do not agree that defining the ancillary residential flats or sleep outs as 'residential units' and therefore imposing a minimum density on these activities is likely to promote a better outcome, district wide. The term 'residential unit' is used within the PDP to control the number and intensity of residential activities within each zone. This definition is therefore fundamental to the operation of the PDP and its consistent interpretation of density.

16.3. The definition of 'residential unit' is not intended to incorporate 'residential flats'. 'Residential flats' are intended to be a minor form of accommodation that is within the same ownership as the 'residential unit'. However, 'residential flats' enable self-contained living separate from the 'residential unit'. These are commonly referred to as granny flats and can be used to accommodate guests, elderly parents, teenagers and the like. More recently, it has become common in the District for people to rent their 'residential flat' out to short or long term tenants

as an income source. Through the way they are specifically defined, 'residential flats' are of limited size, are limited to one per 'residential unit' and are not able to be subdivided from the 'residential unit'. Enabling 'residential flats' is one way that the PDP is promoting housing diversity. As a result, I do not agree with the submitter's submission that seeks for 'residential flats' to be included within the definition of 'residential units' as this would give rise to density restrictions and car parking requirements.

- 16.4. I also note that self-contained apartments are already considered 'residential units' and are provided for within that definition.
- 16.5. 'Sleep outs' are not defined within the PDP (or the Oxford Dictionary), however they are included within the definition of 'accessory building' in the PDP. I consider that 'sleep outs' are standalone buildings capable of residential living that are not completely self-contained and therefore require access to the 'residential unit' for kitchen and other facilities.
- 16.6. 'Residential flats' are becoming more common within the District and as they trigger a requirement for development contributions and 'sleep outs' do not, I recommend that a definition of 'sleep out' be included within Chapter 2 to clearly differentiate the two. There is no scope to do this as part of this report; however I recommend that this be considered as part of Chapter 2 in Stage 2 of the District Plan review.
- 16.7. A 'sleep out' that contains only a bathroom and no kitchen (or without both) would not be considered self-contained and therefore would not be deemed a 'residential flat'. It would instead be considered an 'accessory building' which is part of the 'residential unit'. Without their relationship with the 'residential unit' on the site, for kitchen, laundry and possibly bathroom facilities, 'sleep outs' could not easily be resided in for long term purposes and as such are an accessory building.
- 16.8. As outlined in the reasons above, I do not support the relief sought by the submitters and reject the submission.

## **17. ISSUE 11 – REVERSE SENSITIVITY**

- 17.1. Transpower New Zealand Ltd (**Transpower**) (805) and Z Energy (768) seek that a definition of 'reverse sensitivity' be included within the PDP.
- 17.2. Mr Barr in his s42A report<sup>17</sup> in relation to Chapter 30 – Energy and Utilities addressed the submission received from Transpower (805) and recommended rejection of the submission on the following basis:

17 Paragraphs 9.35 – 9.37.

*"I understand that reverse sensitivity applies to a wide range of effects. For example, it could be in relation to noise, smell, lighting, and visual effects to name a few. The concept and phrase 'reverse sensitivity' is broadly understood and accepted. However I am reluctant to recommend a definition in the District Plan because the meaning of reverse sensitivity has been defined by case law, and there is the potential it could be further redefined, therefore making any definition locked in the District Plan redundant and create confusion for plan users. For this reason, I recommend that Transpower's submission is rejected.*

- 17.3. The Z Energy (768) submission was however not considered by Mr Barr. Z Energy (768) seek that 'reverse sensitivity' be defined as follows (or something to the same effect):

*"The potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment or intensification of other activities which are sensitive to the established activity."*

- 17.4. Since the date of Mr Barr's s42A report on Chapter 30 – Energy and Utilities (19 August 2016), the Otago Regional Council has released its decisions on the PRPS. The decision version of the PRPS includes a definition of 'reverse sensitivity' which is identical to that proposed by Z Energy (768). I note that no appeals were lodged in respect of this definition.

- 17.5. Mr Barr's recommendation within the Chapter 30 s42A report was to leave this definition to continue to be defined via case law. I note however that the term is used multiple times throughout the PDP<sup>18</sup> and is included within provisions seeking to control potential reverse sensitivity effects of Queenstown Airport operations, the State Highway network, reduced setbacks, mixed use environments, day care facilities, the operation of utilities or electricity transmission and noise. Given the breadth of issues the PDP covers in the assessment of 'reverse sensitivity' effects, I consider that a definition of this term would benefit the consistent interpretation and application of the PDP. Given that the Z Energy (768) recommended definition is the same as that within the PRPS, I support the submission and have recommended the inclusion of a definition of 'reverse sensitivity' in **Appendix 1**.

## **18. ISSUE 12 – SENSITIVE ACTIVITIES**

- 18.1. X-Ray Trust Ltd (356) seek a new definition to define the term 'sensitive activities' in relation to Reply Objective 21.2.4. In considering this request, I have identified that the term 'sensitive activities' is used in a number of other places in the PDP as detailed below.
- 18.2. The words 'sensitive activities' are incorporated within two notified definitions: 'national grid sensitive activities' and 'sensitive activities – transmission corridor'. These definitions are

<sup>18</sup> Reply provisions: 4.2.6.1, 7.2.7B, 8.2.10, 9.2.7, 11.5.3, 15.2.3.2(b), 16.2.1.1, 16.2.1.6, 16.4.5, 22.5.4, 27.2.2.9, 30.1.2, 30.2.6.5, 36.2.1.2.

discrete in dealing with sensitive activities associated with electricity transmission and are not relevant to the submitter's request.

18.3. In addition to the objective outlined by the submitter, the term 'sensitive activities' is also used within Reply Objective 22.2.5 and Policy 30.2.8.1 and is not included within any rules.

18.4. The intent of Reply Objectives 21.2.4 (Rural) and 22.2.5 (Rural Residential and Lifestyle) are similar, these provisions state:

*21.2.4 Objective – Situations where sensitive activities conflict with existing and anticipated activities are managed to minimise conflict between incompatible land uses.<sup>19</sup>*

*22.2.5 Objective – Sensitive activities conflicting with existing and anticipated rural activities are managed.<sup>20</sup>*

18.5. Reply Policies 21.2.4.1, 21.2.4.2 and 22.2.5.1, which are derived from these objectives, are also similar. The policies seek acknowledgement that permitted and established activities occurring within the zone may result in adverse effects such as noise, odour and the like, which may be noticeable to residents and visitors. I consider that the wording of these related policies provides the necessary explanation of the term 'sensitive activities' as referring to residents and visitors in rural areas.

18.6. As such, I do not consider that there is a need to define the term 'sensitive activities'.

## **19. ISSUE 13 – SITE**

19.1. At the hearing on Chapter 27 – Subdivision and Development, the Panel requested that Mr Nigel Bryce review the definition of 'site', in particular clauses b) and c) below:

*"In addition to the above.*

*a) A site includes the airspace above the land.*

*b) If any site is crossed by a zone boundary under this Plan, the site is deemed to be divided into two or more sites by that zone boundary.*

*c) Where a site is situated partly within the District and partly in an adjoining District, then the part situated in the District shall be deemed to be one site."*

19.2. However, in his right of reply, Mr Bryce deferred consideration of 'site' until this hearing on Chapter 2 – Definitions.

<sup>19</sup> Mr Barr's right of reply version.

<sup>20</sup> Mr Barr's right of reply version.

- 19.3. Also in response to questioning by the Hearings Panel in relation to developments occurring across more than one lot and the intended application of the definition of 'site' to cross lease, company lease, unit titles and strata titles, Ms Kim Banks in her right of reply for Chapter 9 – High Density Residential<sup>21</sup> addressed the definition of 'site' and in paragraph 12.13 of her reply concludes:

*"To address all of these matters, and simplify the definition of 'site' a possible revision to the definition is set out below. I maintain however that this should be reconsidered at the Definitions hearing, or addressed via a variation.*

*Site – Any land on which an activity is carried out or is proposed to be carried out, whether such land comprises the whole or part of a legally defined parcel of land and held in a single Certificate of Title; or more than one legally defined parcel of land where these are contiguous."*

- 19.4. In considering this definition further, I prefer the definition of 'site' that is included within the Operative (in part) Auckland Unitary Plan as follows:

*"Any area of land which meets one of the descriptions set out below:*

*(a) An area of land which is:*

- (i) Comprised of one allotment in one certificate of title, or two or more contiguous allotments held together in one certificate of title, in such a way that the allotments cannot be dealt with separately without the prior consent of the council; or*
- (ii) Contained in a single lot on an approved survey plan of subdivision for which a separate certificate of title could be issued without any further consent of the council;*

*Being in any case the smaller area of clauses (i) or (ii) above; or*

*(b) An area of land which is composed of two or more contiguous lots held in two or more certificates of title where such titles are:*

- (i) Subject to a condition imposed under section 37 of the Building Act 2004 or section 643 of the Local Government Act 1974; or*
- (ii) Held together in such a way that they cannot be dealt with separately without the prior consent of the council; or*

*(c) An area of land which is:*

- (ii) Partly made up of land which complies with clauses (a) or (b) above; and*

21 Paragraphs 12.6 – 12.13.

(iii) *Partly made up of an interest in any airspace above or subsoil below a road where (a) and (b) are adjacent and are held together in such a way that they cannot be dealt with separately without the prior approval of the council;*

*Except in relation to each description that in the case of land subdivided under the Unit Titles Act 1972, the cross lease system or stratum subdivision, 'site' must be deemed to be the whole of the land subject to the unit development, cross lease or stratum subdivision."*

- 19.5. I consider that the above Auckland Unitary Plan definition addresses the Hearing Panel's questions to Ms Banks in relation to cross leases and strata subdivisions.
- 19.6. The above definition does not however address the questions put to Mr Bryce by the Hearings Panel, and I note that the Unitary Plan definition does not include the same provisions relating to zone and district boundaries. In practice, I do not see the need for a change in zoning or district within the land area of a property to necessitate a site being considered as two (or more) sites. The potential effects upon the environment and people as a result of development remain the same notwithstanding this technicality. This definition necessitates arbitrary assessment such as assessing breaches of setbacks within the middle of a site. I consider that the zone (or District) rules that are applied should be those that apply where the development is located. If it is located across two zones, two sets of rules may apply. As a result, I do not consider that the abovementioned provisions are necessary within the definition of 'site'.
- 19.7. Notwithstanding the above, I note that only one submission in relation to the definition of 'site' has been received. This was from Patterson Pitts Group (370), who seek amendments to reflect "*replacement Acts*", or "*Unit Titles Act 2010*". I do not believe that this submission provides adequate scope to recommend extensive amendments to the notified definition of 'site'. As a consequence, I have not made any of the changes expressed above within **Appendix 1**. If it is decided that it is necessary to amend this definition, I recommend that a variation be undertaken as part of Stage 2 of the plan review to address this.
- 19.8. In relation to the Patterson Pitts Group (370) submission, I understand it is *ultra vires* to refer to future legislation within the PDP via a term such as 'replacement Acts' and that the *Interpretation Act 1999* provides that references to a repealed Act is replaced by the new corresponding Act. Notwithstanding this, I consider that reference to the current *Unit Titles Act 2010* is of benefit. Consequently, I have made this recommendation in **Appendix 1**. I also note that the dates of other legislation references within the definition have not been included and I have therefore recommended that these dates be inserted as a matter of clarification in **Appendix 1**.

## 20. ISSUE 14 – SH6 ROUNDABOUT WORKS

- 20.1. The New Zealand Transport Agency (**NZTA**) (719) have submitted in opposition to the definition of 'SH6 Roundabout Works' as the works described in the definition are part of a Notice of Requirement and therefore are inappropriate to be included as a definition.
- 20.2. I concur with this submission and recommend deletion of this definition in **Appendix 1**.

## 21. ISSUE 15 – TOURISM ACTIVITY

- 21.1 The proposed insertion of a definition of 'tourism activity' by a number of submitters was addressed by Mr Barr in his s42A report on Chapter 21 – Rural Zone.<sup>22</sup> This report however missed four additional parties<sup>23</sup> who also sought the same relief. I have considered those additional submissions, and continue to support the assessment and recommendation of Mr Barr in paragraphs 13.9 – 13.14 of his evidence to reject the proposed definition. I therefore do not support the relief sought.

## 22. ISSUE 16 – URBAN DEVELOPMENT AND URBAN GROWTH BOUNDARY

- 22.1. Mactodd (192) seek that the definitions of 'urban development' and 'urban growth boundary' be amended to be in accordance with the Environment Court's decision in *Monk v Queenstown Lakes District Council* [2013] NZENVC12. This Court decision was in relation to Plan Change 29 (**PC29**) to establish an urban boundary around Arrowtown.
- 22.2. Within the reasons for the PC29 decision,<sup>24</sup> the Court described the ODP definitions of 'urban development' and 'urban growth boundary' as "*ambivalent and circular*" and applied its own assumption of the intention of the definitions.
- 22.3. The notified PDP definitions of 'urban development' and 'urban growth boundary' have been copied from the ODP.
- 22.4. The definition of 'urban development' was discussed in detail during the hearing on Chapter 4 – Urban Development (although I note that the Mactodd (192) submission was not considered) and in response Mr Matthew Paetz recommended an amended definition in his right of reply on the chapter as follows:<sup>25</sup>

<sup>22</sup> Paragraphs 13.9 – 13.14.

<sup>23</sup> D & M Columb (624) (supported by FS1097), Cardrona Alpine Resort Ltd (615) (supported by FS1105), Amrita Land Ltd (677) (opposed by FS1035, FS1074, FS1312, FS1364 and supported by FS1097 and FS1117), Ngai Tahu Tourism Ltd (716) (supported by FS1097 and FS1117).

<sup>24</sup> Paragraphs 20 – 28.

<sup>25</sup> In Paragraphs 4.7 – 4.12.

*"Development that by its scale, intensity, visual character, trip generation and/or design and appearance of structures, is of an urban character typically associated with urban areas. Development in particular Special Zones (namely Millbrook and Waterfall Park) are excluded from the definition."*

22.5. Although the above definition is not as the Court suggested in *Monk v QLDC*, I consider that Mr Paetz' recommended wording addresses the issues raised by the Court. I therefore concur with Mr Paetz' recommendation.

22.6. With regard to the definition of 'urban growth boundary', I consider that the recommended amendment to the definition of 'urban development' has resolved the problems identified with this ODP definition by the Court. I do note however that the definition is unnecessarily repetitive and consequently recommend a non-substantive amendment in this regard. These changes are identified in **Appendix 1**.

### **23. ISSUE 17 – VISITOR ACCOMMODATION**

23.1. Numerous submissions have been received in relation to the definition of 'visitor accommodation'. The PDP notified definition states:

*"Means the use of land or buildings for short-term, fee paying, living accommodation where the length of stay for any visitor/guest is less than 3 months; and*

- i. Includes such accommodation as camping grounds, motor parks, hotels, motels, boarding houses, guest houses, backpackers' accommodation, bunkhouses, tourist houses, lodges, homestays, and the commercial letting of a residential unit; and*
- ii. (May include some centralised services or facilities, such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with the visitor accommodation activity.*

*For the purpose of this definition:*

- a. The commercial letting of a residential unit in (i) excludes:*
  - A single annual let for one or two nights.*
  - Homestay accommodation for up to 5 guests in a Registered Homestay.*
  - Accommodation for one household of visitors (meaning a group which functions as one household) for a minimum stay of 3 consecutive nights up to a maximum (ie: single let or cumulative multiple lets) of 90 nights per calendar year as a Registered Holiday Home.*

*(Refer to respective definitions).*

- b. *"Commercial letting" means fee paying letting and includes the advertising for that purpose of any land or buildings.*
- c. *Where the provisions above are otherwise altered by Zone Rules, the Zone Rules shall apply."*

23.2. C Brych (243) suggests that buildings and infrastructure that are used to provide for visitor accommodation be defined so that separate resource consents can be obtained for the infrastructure and for its use as visitor accommodation (rather than "use of buildings" as is the case in the notified definition). I do not support this submission as I consider there is no clear advantage in managing buildings and infrastructure separately from the visitor accommodation activity itself. In my view, it is unnecessary to separate the activity from the buildings within which visitor accommodation will be undertaken and for separate resource consents to be required for these. Such an approach is inefficient and the submission doesn't set out any benefits of such an approach.

23.3. Pounamu Holdings 2014 Limited (552)<sup>26</sup> and Varina Propriety Limited (591) have requested the definition be amended to specifically outline that centralised facilities such as restaurants, bars, conference rooms and the like can be utilised by the public in addition to guests of the establishment. I concur with these submissions, as services and facilities in hotels such as bars, restaurants and conference rooms are often utilised by people not staying at the venue. Furthermore, conference facilities provide an important service and economic benefit to the community (and wider District) in providing spaces for conferences, meetings, weddings and the like. While at present Queenstown does not have a dedicated conference facility, it should do so in the future. In any event it is still likely that hotel conference facilities will still be utilised for smaller events and weddings (less than 250 people)<sup>27</sup>, as these are generally more suited to hotel based facilities. I have made these amendments in **Appendix 1**.

23.4. Furthermore, the Millennium and Copthorne Hotels New Zealand Limited (679)<sup>28</sup> seek that the definition provide for all of the activities likely to be associated with hotel visitor accommodation. Part (ii) of the notified definition already includes a list of the types of centralised facilities that may be included, however to remove any ambiguity that may arise I recommend adding 'and others of a similar scale and nature' to the end of the list of facilities. This amendment is shown in **Appendix 1**.

23.5 S Jefferson (278) requests a change to the definition to specify "*the letting of a residential unit that is the primary residence where the letting occurs for less than 30 days per calendar year*". This change is suggested by the submitter to limit the length of stay but to also support

26 Opposed by FS1170 and supported by FS1244.

27 Section 5.1 of 'Proposed Queenstown Conference Centre Feasibility Study' dated July 2012: [http://www.qldc.govt.nz/assets/OldImages/content/your\\_council/Conference%20Centre/Queenstown\\_Conference\\_Centre\\_Report\\_23\\_July\\_2012\\_-\\_Final\\_excluding\\_appendices.pdf](http://www.qldc.govt.nz/assets/OldImages/content/your_council/Conference%20Centre/Queenstown_Conference_Centre_Report_23_July_2012_-_Final_excluding_appendices.pdf).

28 Opposed by FS1063.

households in aiding the affordability of their property. The submitter highlights that many households let their houses out when they are away on holiday and long weekends and that this supplements their income whilst living in a District that has affordability problems. The submitter notes that the three month timeframe in the notified definition is beyond that which people residing in the District would rent out their primary residence. T Henderson (449)<sup>29</sup> raises very similar concerns.

22.6 The exception to the controls on visitor accommodation for up to 90 days per year is intended to facilitate intermittent commercial letting at a level of use that is unlikely to adversely affect amenity values in residential or rural areas, this being the resource management purpose. While the 90 day timeframe is arbitrary and difficult to monitor and enforce, I consider that some sort of a limit is appropriate. However I do not have any detailed evidence showing why a 30 day timeframe (or another such timeframe) is more appropriate. Notwithstanding, detailed work is being undertaken as part of Stage 2 of the PDP review in relation to visitor accommodation and I consider that until this work is undertaken that I cannot make a recommendation that these submission points be accepted.

23.7. P Barrow (258) has also submitted in relation to this definition requesting either the retention of the ODP definition or for the introduction of the new rules to be delayed until further discussions are held with people involved in the holiday home rental industry. For the same reasons as outlined above in relation to the submissions of S Jefferson (278) and T Henderson (449), I cannot accept this submission until further work is undertaken by the Council in relation to visitor accommodation within the residential zones.

23.8. It is therefore my recommendation that the submission points raised by S Jefferson (278), T Henderson (449) and P Barrow (258) be rejected at this time. The submitters will however have the opportunity to make a new submission on the outcomes of the Stage 2 visitor accommodation work at a later date. This is detailed in **Appendix 2**.

## **24. ISSUE 18 – EARTHWORKS, WASTE, MINING ACTIVITIES AND CLEANFILL FACILITIES**

24.1. PC49 relating to earthworks was made operative on 29 April 2016, which was after the date of notification of the PDP (26 August 2015). Consequently, some of the definitions now included within the ODP via PC49 were not considered for inclusion or amendment in the PDP.

24.2. Earthworks are scheduled to be considered as part of Stage 2 of the District Plan review, notwithstanding this, some Stage 1 PDP chapters incorporate earthworks provisions, which therefore necessitates inclusion of earthworks related definitions through Stage 1.

29 Opposed by FS1059.

- 24.3. PC49 introduced or amended a number of definitions within the ODP and in comparing these with the notified PDP definitions, a number of these have not been included in the PDP, while other definitions are different. This includes the following definitions:

PC49 Definition	Comparison with Chapter 2 of PDP
Archaeological Site	Not included in the PDP <sup>30</sup>
Bed	Not included in the PDP
Bulk Earthworks	Not included in the PDP
Cleanfill Facility	Not included in the PDP
Earthworks	PDP definition differs from PC49 definition <sup>31</sup>
Mining Activity	PDP definition differs from PC49 definition <sup>32</sup>
River	PDP definition differs from PC49 definition
Waste Management Facility	PDP definition differs from PC49 definition

- 24.4. To avoid discrepancies in interpretation, I consider that it would be beneficial to have the abovementioned definitions included within the PDP and for them to be consistent with the PC49 decision. I note however that the submissions on the PDP do not provide scope to make this change for all of the abovementioned definitions. As earthworks are scheduled to be included within Stage 2 of the District Plan review, the remaining definitions can be considered for inclusion/notification in the chapter at this time. I now consider those submissions I have scope to make recommendations on now.
- 24.5. Z Energy (768) in its submission specifically requested that the PDP definition of 'earthworks' be consistent with the definition established through PC49. For the reasons outlined above, I agree with the submitter and have recommended amendment of the definition of 'earthworks' in **Appendix 1**. The wording I have recommended in **Appendix 1** is consistent with the Environment Court consent order on PC49 dated 13 April 2016 with the exception of a change to the reference of 'Rural General zone' to 'Rural Zone'.
- 24.6. The recommended definition of 'earthworks' includes reference to 'cleanfill facilities', however neither this term, nor 'cleanfill' is defined within the notified Chapter 2. As this may lead to confusion, I recommend that the PC49 definitions of 'cleanfill' and 'cleanfill facility' be included within the PDP. I consider that the Z Energy (768) submission provides scope to add these definitions. However I note that HW Richardson Group (252) have requested a definition of 'cleanfill' to be included in the PDP to differentiate this from the definition of 'waste'. This submission also provides the necessary scope.

30 A definition is recommended by Ms Jones to be included within Chapter 26 – Historic Heritage (reply 26.6.X) but only for use within Chapter 26.

31 Addressed further above.

32 Addressed further above.

- 24.7. The recommended 'earthworks' definition also includes reference to 'mining activities'. 'Mining activities' are defined within Chapter 2 and Mr Barr in his s42A report<sup>33</sup> and right of reply for Chapter 21 – Rural recommended amendments to this definition. Although Mr Barr's recommendation<sup>34</sup> is different to the definition adopted within PC49, Mr Barr's definition expands upon the PC49 definition and is based upon the definition within the *Crown Minerals Act 1991*. I therefore consider it to be superior and support Mr Barr's recommendations.
- 24.8. HW Richardson Group (252) seeks amendments to the definition of 'waste' to expressly specify that cleanfill is not included within the definition of 'waste'. I consider this to be a helpful amendment to the definition and therefore have included this change in **Appendix 1**.
- 24.9. The PC49 definitions that I think should be considered in Stage 2, are 'archaeological site', 'bed', 'bulk earthworks', 'river' and 'waste management facility'. This is because I do not have scope to either recommend adding them to Chapter 2, or amend the definitions for consistency with PC49.

## 25. ISSUE 19 – SIGNAGE DEFINITIONS

- 25.1. QLDC (383) requested that all definitions relating to signage be replaced with those recently made operative under recent Plan Change 48: Signs (**PC48**) to the ODP. The submission notes that the notified PDP definitions relating to signage contain minor differences compared to the PC48 definitions and that this may lead to discrepancies in interpretation.
- 25.2. The definitions included within PC48 include the following:

PC48 Definition	Comparison with Chapter 2 of PDP
Ground Floor Area (For Signs)	The same as PC48 <sup>35</sup>
Sign and Signage	PDP definition differs from PC48 definition

- 25.3. The PC48 definition of 'sign and signage' differs from the notified PDP definition as it has split the content into three separate definitions of 'sign and signage', 'sign area' and 'sign types'. Aside from the separation of the definition into three, the wording is exactly the same as the PC48 definition. I consider that the breaking up of the PC48 definition into the three separate definitions in the PDP is more user friendly. Consequently, I support the PDP version and I reject this submission point.
- 25.4. Notwithstanding the above, I note that none of the abovementioned defined terms, with the exception of 'signs' and 'signage', are included within the Stage 1 chapters. Consequently, I

33 Paragraphs 12.11 – 12.14.

34 Paragraph 13.2 of Mr Barr's right of reply on Chapter 21 – Rural Areas.

35 With the exception of punctuation differences.

have recommended that all but 'sign and signage' sign related definitions be deleted from the Revised Chapter (see **Appendix 1**). Signs are to be included within Stage 2 of the District Plan review and the signage related definitions should all be considered at that time.

## 26. ISSUE 20 – MĀORI DEFINITIONS

26.1 QLDC (383) requested that all references to Māori words within Chapter 2 are deleted and that instead reliance should be placed on the glossary within the PDP Chapter 5 – Tangata Whenua. The reasoning provided in the submission for this request is that the definitions of Māori words carried over from the ODP should be replaced by the more up to date versions as included in Chapter 5.

26.2 In reviewing Chapter 2 I note that there are four Māori definitions included; 'hapu', 'iwi', 'koiwi tangata' and 'tino rangatiratanga'. Both 'hapu' and 'iwi' are included within the Chapter 5 glossary. However the other two definitions are not included.

26.3 'Hapu' is defined slightly differently between the glossary in Chapter 5 and the defined term in Chapter 2. According to the QLDC (383) submission, the definitions in Chapter 5 are more up to date. A check of the PDP has found that the word 'hapu' only occurs in Chapter 5. Therefore, I recommend that the definition of 'hapu' is deleted from Chapter 2 (see **Appendix 1**).

26.4 The definition of 'iwi' is the same in both Chapters 2 and 5 and is referenced multiple times throughout the PDP.<sup>36</sup> As the definition is consistent between the two chapters, I recommend its deletion from Chapter 2 (see **Appendix 1**). Notwithstanding this, I anticipate that when a plan user is considering a term within any chapter (other than perhaps Chapter 5), that they are likely to firstly refer to Chapter 2 for a definition, even for a Māori term. Accordingly, I recommend a note be included within the start of Chapter 2 to state that for Maori terms, the glossary within Chapter 5 is also of relevance. I consider this to be a point of clarification and not a substantive change. I have therefore made this change in **Appendix 1**.

26.5 'Koiwi Tangata' is defined in Chapter 2 as:

*"Means unidentified human skeletal remains."*

26.6 This term does not appear in the glossary in Chapter 5 and I note that it is only found in three places within Chapter 37 – Designations. As designations do not trigger the definitions within Chapter 2, I recommend deletion of this definition from Chapter 2. This change is shown in

36 Clauses 1.6.14, 21.7.1.3b, 21.7.2.6, 23.7.4.1, 26.2.2, 27.9.2bc and 37 – C53.

**Appendix 1.** If a note is necessary in Chapter 2 to confirm that Designations do not trigger definitions, then I would support one being added.

- 26.7 The word 'tino rangatiratanga' in Chapter 2 appears to have been replaced by the term 'rangatiratanga' in the glossary in Chapter 5, both meaning chieftainship. As the terms within the Chapter 5 glossary are more current I support the deletion of this definition in **Appendix 1.**

## **27. ISSUE 21 – DEFINED TERMS NOT INCLUDED WITHIN THE STAGE 1 CHAPTERS**

- 27.1 A number of definitions are identified within Chapter 2 that are not used within the reply versions of the Stage 1 chapters, or they directly relate to zones that have not been included within Stage 1 (such as Three Parks) or are not being included within the District Plan review (Remarkables Park Zone). I have recommended deletion of these definitions within **Appendix 1**<sup>37</sup> as they are unnecessary in the context of the Stage 1 chapters. As a result, definitions required for the interpretation of terms used within the Stage 2 chapters will need to be considered in the drafting of these chapters and notified in Chapter 2.

## **28. ISSUE 22 – DEFINITIONS THAT EQUATE TO RULES**

- 28.1 In preparing this s42A, I have identified that there are a number of definitions contained within Chapter 2 that are tantamount to rules as they include criteria that are to be met in order for the definition to apply. For example, the maximum number of people or the area required.
- 28.2 I have identified the definitions (which are not recommended to be deleted as per Issue 21 above) in Chapter 2 where this is an issue as follows:
- a. Domestic livestock;
  - b. Residential flat; and
  - c. Visitor accommodation.

37 Access Lot, Airport Operator, All Weather Standard, Amenity Tree Planting, Amenity Vegetation, Automotive and Marina Supplier (Three Parks and Industrial B Zones), Back Lane Site (Three Parks Zone), Backpacker Hostel, Balcony, Block Plans (Three Parks Zone), Boundary Fencing, Building (Remarkables Park Zone), Bus Shelters (Mount Cardrona Station Special Zone), Comprehensive Residential Development, Condominiums, Design Review Board, Elderly Persons Housing Unit, Erection of a Building, Farming and Agricultural Supplier (Three Parks and Industrial B Zones), Farm Yard Car Park, Flatboard, Food and Beverage Outlet (Three Parks Zone), Free Standing Sign, Front Site, Garden and Patio Supplier (Three Parks and Industrial B Zones), Ground Floor Area (For Signs), Ground Level (Remarkables Park Zone), Habitable Space (Three Parks Zone), Hazardous Wastes, Health Care Facility, Historic Equipment, Home Occupation (Three Parks Zone), Large Format Retail (Three Parks Zone), Manufacturing of Hazardous Substances, Meeting Place, Multi Unit Development, Night Time Noise Boundary Wanaka, North Three Parks Area, Office Furniture, Equipment and Systems Suppliers (Three Parks and Industrial B Zones), On Site Works (Three Parks and Industrial B Zones), Outline Development Plan, Park and Ride Facility, Place of Assembly, Place of Entertainment, Relocatable, Retention Mechanism, Rural Selling Place, Sandwich Board, Secondary Rear Access Lane, Secondary Unit, Secondhand Goods Outlet (Three Parks and Industrial B Zones), Sign Area, Sign Types, Specialty Retail (Three Parks Zone), Stakeholder Deed, Step In Plan, Storey (Three Parks Zone), Temporary Worker Household – In The Three Parks Zone, Tenancy (Three Parks Zone), Under Verandah Sign, Visually Opaque Fence, Wall Sign, Yard Based Industrial Activity, Yard Based Service Activity, Yard Based Supplier (Three Parks and Industrial B Zones), Zone Standard.

- 28.3 These definitions have mostly been copied over from the ODP, albeit with some wording modifications. While submissions were received with respect to these definitions, none of the submission points were in relation to the definition acting as a rule, or sought for the content of the definition to be included within the relevant chapters rather than within the definition.
- 28.4 I also note that the recommended amendment to the definition of 'residential flat' by Mr Barr within the Chapter 21 – Rural Areas right of reply introduced different criteria for the size of residential flats between rural zones and other zones. This is also the case within the notified definition of 'domestic livestock'.
- 28.5 I consider that in best practice, a definition should define the activity and that any specific criteria to be satisfied would be best included within the rules in the chapter. For example, the definition of 'residential flat' should be reduced to state *'means a residential activity that comprises a self-contained flat that is ancillary to a residential unit'*, with the remainder of the definition being outlined within the applicable chapter rules.
- 28.6 In reviewing each of the definitions outlined above, I note that all could be reduced to only defining the activity via retaining the first sentence of each definition, with the criteria being relocated into each PDP chapter where the relevant rule or standard appears. I consider that this amendment could be undertaken as an administrative change – there would be no change of regulatory effect.
- 28.7 While I recommend this approach, the abovementioned changes are not included within **Appendix 1** as additional changes would be required to many of the chapters that have already been considered by the Panel.

## 29. ISSUE 23 – 'ADJACENT' AND 'ADJOINING'

- 29.1 The terms 'adjacent' and 'adjoining' are used throughout the PDP as they are within the ODP. I note that in the administration of the ODP people often do not understand the difference between the two terms.
- 29.2 The notified Chapter 2 includes a definition of 'adjoining land' (which applies only to subdivision) and no definition of 'adjoining' or 'adjacent'. The notified definition of 'adjoining land' is as follows:

*'In relation to subdivision, land shall be deemed to be adjoining other land, notwithstanding that it is separated from the other land only by a road, railway, drain, water race, river or stream.'*

29.3 I consider that the above definition of 'adjoining land' could be amended to no longer be restricted to apply to only subdivision. This would provide for the consistent application of the term 'adjoining' between land use and subdivision consent applications. Further, in considering this definition in the context of the PDP chapters, I consider that it would not raise any anomalies. I note that this definition is similar to that adopted by Christchurch City in its Christchurch Replacement District Plan:

*'has its ordinary dictionary meaning but, if the context requires, includes land separated from other land only be a road, railway, drain, water race, river or stream.'*

29.4 The Oxford Dictionary definition of 'adjacent' is as follows:

*'Next to or adjoining something else'*

29.5 I consider that this ordinary dictionary meaning is sufficient and therefore do not see the need to define the term within the chapter.

29.6 Notwithstanding the above, no submissions were received requesting these terms be defined and therefore I do not consider that there is scope to make change in this regard. This could be further considered in Stage 2 of the District Plan review.

## **30. ISSUE 24 – 'INCLUDING' AND 'EXCLUDING'**

### **Including**

30.1 Numerous definitions within Chapter 2 define a term or activity as 'including' and then list a number of matters. However, an inconsistent approach has been taken to the drafting of the definitions whereby in some definitions it appears that this list is intended to be exhaustive and for others it is only intended to be an example.

30.2 Examples of this are two of the definitions recommended to be amended by Ms Rebecca Holden as part of Chapter 17 – Airport zone: 'airport activity' and 'airport related activity'. The notified version of these definitions included the words *'...including but not limited to:'* Ms Holden's recommendation was to delete the words *'but not limited to'* to create an exhaustive list of activities that would be included. Other PDP definitions are similar, with the lists of activities in the definitions of 'building'<sup>38</sup> and 'building coverage' for example, appearing to be exhaustive.

- 30.3 However, other PDP definitions intend for the lists to be an example of the activities that could occur. In many of these cases, the definitions include words that signal this, such as the definition of 'accessory building', which states '*or any similar structure*', or 'building supplier', which states '*and without limiting the generality of this term, includes*:'.
- 30.4 In other definitions, it is more unclear. For example, in the definitions of 'erection of a building', 'factory farming' and 'hard surfacing' it is unclear whether the list is intended to be exhaustive or not. This inconsistency in the use of the term within the definitions may lead to inconsistent interpretations and unanticipated consequences. As a result, I recommend that this anomaly be rectified within the applicable definitions by specifying whether the list is exhaustive or not. As these changes may result in substantive changes to the effect of these definitions and the submissions do not provide any scope to make these changes, I have not amended the applicable definitions within **Appendix 1**. However I note that this is something that could be addressed as part of Stage 2 of the District Plan review.

### **Excluding**

- 30.5 Conversely, the use of the word 'excludes' in numerous definitions in the Chapter 2 is more clear in its intent. The definitions that state that a term 'excludes' a thing or activity or a list of these is clearly intending for only those specified things or activities to be excluded. While a note stating this could be included at the start of the chapter, I do not consider this to be necessary as the wording of the definitions is unambiguous in this regard.

## **31. ISSUE 25 – 'ANCILLARY' AND 'ACCESSORY'**

- 31.1 The term 'ancillary' is frequently used within the PDP, primarily in relation to activities that are ancillary to a predominant use, but also to describe a subservient relationship such as a 'residential flat' to a 'residential unit',<sup>39</sup> or associated structures such as platforms associated with a milking or dairy shed.<sup>40</sup> No definition of 'ancillary' is included within Chapter 2, nor is a definition provided within the RMA. Consequently, as recommended above, the ordinary meaning of the definition would prevail. The Oxford Dictionary defines 'ancillary' as follows:

*'Providing necessary support to the primary activities or operation of an organisation, system, etc'*

*'In addition to something else, but not as important.'*

39 For example in notified rule 27.4.2(d).

40 Notified standard 30.5.10.4(c).

31.2 I consider that these dictionary meanings would result in a correct interpretation of the word and do not anticipate extraneous interpretations. Consequently, I do not consider it necessary to include a definition within Chapter 2. In any event, there are no submissions that provide scope. However, if a definition of 'ancillary' is considered necessary by the Panel; this is another matter that could be considered as part of Stage 2.

31.3 A definition of 'accessory building' is provided in Chapter 2, however the notified definitions of 'net floor area' and 'retirement village' also incorporate the term 'accessory' that is not covered by this definition. I note 'accessory' is not used elsewhere within the Stage 1 chapter provisions. These definitions state:

### **Net Floor Area**

*'Shall be the sum of the floor areas, each measured to the inside of the exterior walls of the building, and shall include the net floor area of any accessory building, but it shall exclude any floor area used for:*

- *lift wells, including the assembly area immediately outside the lift doors for a maximum depth of 2m;*
- *stairwells;*
- *tank rooms, boiler and heating rooms, machine rooms, bank vaults;*
- *those parts of any basement not used for residential, retail, office or industrial uses;*
- *toilets and bathrooms, provided that in the case of any visitor accommodation the maximum area permitted to be excluded for each visitor unit or room shall be 3m<sup>2</sup>*
- *50% of any pedestrian arcade, or ground floor foyer, which is available for public thoroughfare;*
- *parking areas required by the Plan for, or **accessory** to permitted uses in the building. (Emphasis added).*

### **Retirement Village**

*'Means the development of residential units (either detached or attached) and associated facilities for the purpose of accommodating retired persons. This use includes as **accessory** to the principal use, any services or amenities provided on the site such as shops, restaurants, medical facilities, swimming pools and recreational facilities and the like which are to be used exclusively by the retired persons using such accommodation.'* (Emphasis added).

31.4 The Oxford Dictionary defines 'accessory' as:

*'A thing which can be added to something else in order to make it more useful, versatile, or attractive'*

*'Contributing to or aiding an activity or process in a minor way; subsidiary or supplementary'.*

- 31.5 I consider that these ordinary dictionary meanings would result in a correct interpretation of the word 'accessory' within these definitions. Furthermore, given that this issue is limited to only two definitions<sup>41</sup>, I do not see a need to include a definition of 'accessory'.

## **32. ISSUE 26 – 'ACTIVITY' AND 'FACILITY'**

- 32.1 The term 'facility' is used in numerous places in the PDP and quite predominantly in the definitions to describe the use of land or buildings, for example in 'waste management facility' and 'day care facility'. It is also used to describe a place that would be used for a certain purpose. For example a central waterfront facility in Queenstown Bay<sup>42</sup> or a 'closed landfill and transfer facility',<sup>43</sup> or a structure erected for a certain purpose. For example a 'telecommunication facility' or 'radio communication facility'. Consequently, the use of the term 'facility' is closely aligned, and in some places overlaps with the use of the word 'activity', as 'facility' is used in places in the PDP to describe both an 'activity' taking place as well as the structures or buildings it involves.

- 32.2 I note that neither 'facility' or 'activity' are defined within the PDP or the RMA, consequently, the ordinary dictionary meaning of both would be employed where interpretation of the definition or provision was being queried. Notwithstanding, I note that these terms are both utilised in a similar manner in the ODP with little issue to my knowledge. Furthermore, no submissions have been received highlighting an issue with the use of either of these words in relation to Chapter 2. As a result, although there is a potential discrepancy between these terms and the drafting within the chapter, I do not see a need to recommend any changes to the chapter.

## **33. ISSUE 27 – ADVICE NOTES IN DEFINITIONS**

- 33.1 The following definitions include 'advice notes' or 'notes':

- a. Boundary;
- b. Domestic livestock;
- c. Ground level;

41 In the notified PDP

42 See notified rule 12.4.7.

43 See designation 50 in Chapter 37 – Designations.

- d. Informal airport;
- e. Internal boundary;
- f. National grid corridor;
- g. National grid subdivision corridor;
- h. National grid yard;
- i. Registered holiday home;
- j. Registered homestay;
- k. Residential flat;
- l. Road boundary;
- m. Sign and signage; and
- n. Temporary events.

33.2 I have been advised that these 'advice notes' or 'notes' have no legal standing within a definition. In reviewing the advice notes / notes attached to some of the definitions above, I consider that the content in some of the notes is more substantive than just guidance. I therefore consider that the intention was to include that content within the definition. For other definition notes, I consider that they are purely guidance for the Plan user and therefore can be retained as such. I have considered each of the abovementioned definitions individually below.

#### **Boundary and Internal boundary**

33.3 The definitions of 'boundary', 'internal boundary' and 'road boundary' include notes that reference the other two definitions. I consider that these notes are unnecessary because, as outlined below, the final version of the Plan will be electronic in which words that have a corresponding definition within Chapter 2 will be signified by hyperlink. Consequently, I recommend their deletion in **Appendix 1**.

#### **Domestic Livestock**

33.4 The notified definition of 'domestic livestock' incorporates the following note:

*'Note: Domestic livestock not complying with this definition shall be deemed to be commercial livestock and a farming activity as defined by the Plan.'*

33.5 The purpose of this note is to guide the reader to what an activity is to be defined as if it does not meet the definition of 'domestic livestock', this is important as it may not be readily identifiable. I consider that this note is purely guidance and therefore recommend that the note be retained in its current form.

- 33.6 To signify that any notes within the definition are for guidance or information purposes only, I have recommended an additional point at the start of Chapter 2 that specifies this (see **Appendix 1**).

### **Ground level**

- 33.7 For the definition of 'ground level', I recommend retaining two of the notes as guidance for the Plan user, being the notes referring to the interpretive diagrams and the special height rules that apply to Queenstown Town Centre. I consider that these notes do not require any legal standing and are purely guidance for the plan user.
- 33.8 In relation to the first note, I also recommend replacement of the words 'building height' with 'height' as this is the defined term in the chapter. Furthermore, I have also recommended deletion of the words 'original ground level' from the last bullet point (relating to the special height rules in the Queenstown Town Centre), as this term which was previously used within the ODP to assess the height of buildings in the area bounded by Man, Hay, Brecon and Shotover Street, has been amended to 'metres above sea level' in the PDP. I understand that this wording has been retained within the definition by error. I consider that all of these changes are non-substantive and therefore have shown the changes in **Appendix 1**.
- 33.9 For the remaining notes, I recommend their relocation to form part of the definition as I consider that these bullet points are important in the interpretation of the term 'ground level'. I also consider the remaining notes to be more substantive than just guidance.
- 33.10 I also recommend that the last sentence of the definition, which states that it does not apply to the Remarkables Park Zone or Industrial B Zone (Connell Terrace Precinct), be deleted as these two zones are not included within Stage 1 of the District Plan review.

### **Internal airport**

- 33.11 The notified definition of 'informal airport' includes the following note:

*'Note: This definition does not apply to the airspace above land or water located on any adjacent site over which an aircraft may transit when arriving and departing from an informal airport.'*

- 33.12 The content of this note is fundamental to the interpretation of the definition. Consequently, I recommend that it be incorporated into the definition as an exclusion to the definition. I have made this change in **Appendix 1**.

### **National grid corridor**

33.13 The notified definition of 'national grid corridor' also incorporated a note. However as Mr Barr has recommended its deletion in his evidence on Chapter 30 – Energy and Utilities, I have not recommended any changes to the definition. The replacement definition of 'national grid subdivision corridor' recommended by Mr Barr however also includes a note which states:

*'Note: The National Grid Subdivision Corridor does not apply to underground cables or any transmission lines (or sections of line) that are designated.'*

33.14 As this is fundamental to the definition, I consider that this note can be turned into an exclusion within the definition and have therefore recommended this non-substantive amendment in **Appendix 1**. I also recommend the same amendment to the note in the 'national grid yard' definition for the same reason.

### **Registered holiday home**

33.15 The notified definition of 'registered holiday home' includes two advice notes as follows:

- '(i) A formal application must be made to the Council for a property to become a Registered Holiday Home.*
- '(ii) There is no requirement to obtain registration for the non-commercial use of a residential unit by other people (for example making a home available to family and/or friends at no charge).'*

33.16 I consider that the inclusion of the word 'registered' within the definition name as well as the first sentence of the definition that states: '*which has been registered with the Council*', makes the first advice note unnecessary and I therefore recommend its deletion (I also make the same recommendation in relation to the note within 'registered homestay' for the same reason). Furthermore, I recommended that the second advice note be incorporated into the definition as an exclusion. These amendments are considered to be non-substantive and are identified in **Appendix 1**.

### **Residential flat**

33.17 For the two notes included within the definition of 'residential flat', Arcadian Triangle (836) submitted that they appear to be part of the definition but are not given their location under '*Notes*'. Additionally, the submitter considers the notes to be legally unnecessary. Further, the submitter states that '*if they are considered desirable for information purposes that should be made more clear*'.

33.18 I previously addressed the Arcadian Triangle (836) submission in my evidence on Chapter 7 – Low Density Residential. However, having considered the notes further, I consider that the second note relating to development contributions and rates is unnecessary to be included within the definition (although this should be made clear elsewhere, with the Council website being the most obvious location). Consequently, I recommend deletion of this note in **Appendix 1**.

33.19 Being consistent with my recommendation above in relation to 'domestic livestock', I recommend that the first bullet point be retained as a note as it provides guidance to the Plan user as to what a building may be defined as if not a 'residential flat'. I consider that this is important as for people that are unfamiliar with the PDP, the default to a 'residential unit' may not be obvious. These amendments are identified in **Appendix 1**.

### **Sign and signage**

33.20 The notified definition of 'sign and signage' incorporates two notes. The first note amounts to an exclusion of corporate colour schemes from the definition and consequently can be amended to be incorporated within the definition. The second bullet point refers the reader to two other definitions and I therefore consider that this can be deleted without impediment to the interpretation of the provisions. These changes are shown in **Appendix 1**.

### **Temporary events**

33.21 Ms Banks in her right of reply<sup>44</sup> in relation to Chapter 35 – Temporary Activities and Relocated Buildings in response to a suggestion from the Panel, recommended that additional notes be added to the notified definition of 'temporary events', to identify that the PDP does not regulate the sale of food or alcohol associated with temporary events. As these notes are for information purposes only, I have not made any changes to this definition beyond that recommended by Ms Banks.

## **34. ISSUE 28 – MISCELLANEOUS MATTERS**

### **Consistency**

34.1 A standard approach has been taken in the drafting of the majority of the definitions through starting the definition with '*Means...*', however there are some that are not framed in this way. For consistency purposes, I have recommended that where possible, these definitions are amended. For those definitions commenced with a qualifier, such as '*In relation to*

<sup>44</sup> Paragraph 5.1.

*buildings...*", I have relocated the qualifier to sit in brackets under the definition heading to specify that the definition is only applicable to that specified zone or situation referenced in the brackets. I consider that this is a non-substantial change and have identified these changes in **Appendix 1**. I have also inserted an additional note to the start of the chapter to outline this approach.

- 34.2 However, for a few of the definitions I consider that this change is not possible without a more substantive amendment or complete re-wording of a definition, for which I do not have scope. These definitions include 'adjoining land', 'amenity or amenity values', 'building', 'development', 'garage', , 'lake', 'liquor', 'noise', 'private way', 'river', 'sound', 'subdivision', 'waterbody' and 'wetland'.
- 34.3 In line with the above, I note that the definition of 'energy activities' recommended by Mr Barr in his evidence on Chapter 30 – Energy and Utilities does not include an explanatory sentence as to what the meaning of the term is, it instead lists a number of facilities that it includes. I have recommended in **Appendix 1** a brief explanation of the activity. I have also made a similar amendment to the definition of 'ground floor area (for signs)' as this definition also did not include a description of the term, only the method of measuring. As my recommended explanation simply sets out the ordinary dictionary meaning, I consider this is a non-substantive change.

### **Acronyms**

- 34.4 A number of acronyms are used within the PDP. For ease of use by plan users, I recommend inclusion of a list of acronyms used within the PDP at the end of Chapter 2. This is shown in **Appendix 1** with the list comprising all of the acronyms that arise from the definitions in Chapter 2. I consider that this is a non-substantive change that will simply provide clarification to plan users.

### **Formatting**

- 34.5 Arcadian Triangle Limited (836) made a general administrative point in relation to the capitalisation of definitions (or not) and that this should be consistent throughout the District Plan. It is my understanding that once the PDP becomes operative that a web version (or e-plan) will be created (in addition to the original sealed hard copy) in which defined terms are identified and a hyperlink to the definition will be activated by clicking on the terms within the text. I concur that a consistent approach to capitalisation should occur across the PDP. I have recommended changes to Chapter 2 to this effect, removing all of the unnecessary capitals, however I consider that this consistency should be applied Plan wide. This recommendation goes beyond the scope of this report and can occur administratively once decisions on the PDP are released.

34.6 I have also undertaken a number of formatting changes throughout **Appendix 1**. These involve removing unnecessary capitalisation and changing lists to bullet points where necessary. Where possible, without amending the wording or intent of definitions, I have also made the definitions more succinct.<sup>45</sup>

## **35. CONCLUSION**

35.1. On the basis of my analysis set out within this evidence, I recommend that the changes within the Revised Chapter in **Appendix 1** are accepted.

35.2. The changes will improve the interpretation, clarity and administration of the Plan.



**Amanda Leith**  
**Consultant Planner**  
**15 February 2017**

<sup>45</sup> See definitions of 'building supplier', and 'secondhand goods outlet (Three Parks and Industrial B Zones)'.