BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of Hearing Stream 10 – Definitions, Natural Hazards and Whole of Plan

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REPLY OF AMANDA JANE LEITH
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL

2 DEFINITIONS CHAPTER

27 March 2017

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1. INTRODUCTION

1.1 My name is Amanda Jane Leith. I prepared the section 42A report for the Definitions chapter of the Proposed District Plan (**PDP**), dated 15 February 2017. My qualifications and experience are listed in that s42A report.

1.2 I have reviewed the evidence filed by other expert witnesses on behalf of submitters, attended part of the hearing on 14 – 15 March 2017 and have been provided with information tabled by submitters and counsel at the hearing, including reports of what has taken place at the hearing each day.

1.3 This reply evidence covers the following issues:

(a) Delineation of definitions within the plan;
(b) Administration of definitions;
(c) Application of definitions to designations;
(d) Definitions transferred from Chapters 12 and 13;
(e) References to other legislation;
(f) Definitions previously recommended to be deleted;
(g) References to Stage 2 zones;
(h) Notes and advice notes;
(i) 'Radio communication facility';
(j) 'Outer control boundary';
(k) 'Domestic livestock';
(l) 'Ecosystem services';
(m) 'Ground level';
(n) 'MASL';
(o) 'Residential unit', 'residential flat' and 'sleep out';
(p) 'Exotic';
(q) 'Wholesaling' and 'warehousing';
(r) 'Antenna' and 'mast';
(s) 'Community activity';
(t) 'Cleanfill' and 'cleanfill facility';
(u) 'Minor upgrading';
(v) 'Earthworks within the national grid yard';
(w) 'Trade supplier' and 'retail';

(x) 'Passenger lift system';

(y) 'Visitor accommodation'; and

(z) Abbreviations.

1.4 Where I am recommending changes to the provisions as a consequence of the hearing of evidence and submissions, I have appended these as **Appendix 1** (**Revised Chapter**). I have also attached a section 32AA evaluation in **Appendix 2**.

1.5 Where I refer to a rule in my evidence I am referring to the Right of Reply version of the chapter.

2. DELINIATION OF DEFINITIONS WITHIN THE PLAN

2.1 In my s42A evidence I recommended adding a Note to make it clear that the definitions in this chapter apply throughout the Plan, every time the defined term is used. In my summary of evidence I confirmed that there is a need to make it clear in the note, that there is an exception in that the definitions do not apply to the Designations chapter.

2.2 The Panel suggested during the hearing that I consider identification of defined terms within each chapter through methods such as italics, underlining or capitalisation. I consider that use of these methods in highlighting a defined term can result in plan users interpreting that the defined term is of greater importance in a provision. However, should the Panel consider that identification is necessary; I have no preference as to the use of italics or underlining of defined words, and a method to be consistent with an ePlan layout may be preferable through the use of faint dotted underlining of defined terms. This is visible in both grey scale and colour printing without being overly distracting.

2.3 I note that capitalisation can be problematic as it can be confused with matters that are also capitalised, such as the names of documents.

2.4 In any event, as a result of points raised by the Panel during the hearing, I have given further consideration to the approach whereby definitions are to apply throughout the plan as outlined in the first note. I now recommend that this note be amended in order to allow some flexibility in the interpretation of District Plan provisions where unanticipated outcomes may occur as a result of the application of a definition. Consequently, I recommend insertion of the words '*unless the context otherwise requires'* into the note. I have made this change in **Appendix 1**. Consistent with this amendment, there is still no need to identify defined terms (whether through underlining, italics etc), within chapters.

2.5 The Panel also explored how confident they can be that the PDP was drafted and applied with the intent that the Chapter 2 defined terms whenever the defined term is used in the PDP (except for the designations chapter). I have discussed this with Mr Barr who, although did not draft all PDP chapters, was a member of the planning team at that time, and confirm that this is the assumption that has been used. I am not aware of anyone who has drafted the chapters in a different light. In any event, my '*unless the context otherwise requires*' note as recommended in paragraph 2.5 above, remedies this concern of the Panel.

2.6 The Panel questioned the intent of the second 'note' regarding the application of ordinary dictionary meanings, and how the plan reader is to pick what dictionary definition should be used given that if you look at multiple dictionary definitions of words, you may have vastly different results. In response to this query I looked at the approach utilised in the (Operative in part) Auckland Unitary Plan that states the following in this regard:

> *The meaning of the provisions in the Plan must be ascertained from all relevant text in the Plan and in the light of the purpose of the Resource Management Act 1991 and any relevant objectives and policies in the Plan.*

2.7 I favour this approach and have recommended a similar wording in **Appendix 1**.

2.8 I have also recommended a change to the fourth 'note' in Chapter 2, which uses clearer language. This change is included in **Appendix 1**.

3. APPLICATION OF DEFINITIONS TO DESIGNATIONS

3.1 In my Summary of Evidence dated 13 March 2017 I recommended[1] that the first 'note' within the chapter be amended to state that the Chapter 2 definitions do not apply to designations in Chapter 37, unless it is specifically stated within the designation that a definition in Chapter 2 applies. This matter was also canvassed in Council's legal submissions.

3.2 The Panel requested further consideration as to whether Chapter 2 should apply to designations on the basis that it could create an anomaly. The Panel referenced the definitions of 'air noise boundary' and 'site' in which it would be preferable that the same definition is utilised.

3.3 In reviewing the designations in Chapter 37, I note that Designations #570: Aurora[2] and #D.1: Aerodrome Purposes[3] include reference to the definitions in Chapter 2. No other designation conditions in Chapter 37 indicate that the definitions in Chapter 2 are required, in order to interpret the designations and their conditions. At the hearing, Ms Scott raised a number of concerns including that if the PDP definitions were to apply to designations that have been 'rolled over' from the ODP, particularly those that have been rolled over without modifications (where the Panel has no ability to recommend changes to the designations), then the applicability of a number of different definitions to the same designation, could result in a number of changes to the regulatory effect of both the purpose and conditions of the designation. Requiring authorities would not have anticipated that the works they can do under their respective designations may change, through a new definitions chapter, and particularly through

1 In paragraph 12.
2 'building height'
3 'air noise boundary', 'outer control boundary', 'activity sensitive to aircraft noise', '2037 noise contours' and 'indoor design sound level'

changes to submissions that have been made via site specific submissions on the PDP, for example.

3.4 With many of the PDP definitions being different to the ODP, I too am concerned that unanticipated outcomes may arise with this approach. I also anticipate that decision makers in their drafting of conditions on Notices of Requirements did not necessarily consider the wording of the conditions applied in relation to the defined terms within the ODP or PDP. In addition, as Council is not the decision maker for designations, any amendments to definitions used in designations (if the Council's approach was not followed) would need to be recommended and forwarded to each applicable requiring authority to determine.

3.5 In reviewing the s42A report and right of reply in relation to Chapter 37, I note that this does not appear to have been raised as an issue as part of the Hearing on this chapter. Consequently, I retain my recommendation that unless the designation specifically states that a definition in Chapter 2 is to apply, that in all other instances the definition in Chapter 2 does not apply.

4. DEFINITIONS TRANSFERRED FROM CHAPTERS 12 AND 13

4.1 The Panel at the hearing brought to my attention that chapter specific definitions have also been recommended within Chapters 12 and 13, as well as Chapter 26. In order to be consistent with the recommendation included within my Summary of Evidence relating to the transfer of the specific Chapter 26 – Historic Heritage definitions to Chapter 2, I also make the same recommendation in relation to the chapter specific definitions within Chapters 12 – Queenstown Town Centre[4] and 13 – Wanaka Town Centre[5] that have been recommended by Ms Jones.

4.2 These are shown in **Appendix 1** including the qualifier that these definitions only apply to Chapters 12 and 13.

4 'comprehensive development', 'landmark building' and 'sense of place'
5 'comprehensive development'

5. REFERENCES TO OTHER LEGISLATION

5.1 As outlined in my s42A report,[6] and Council's opening submissions I understand that 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 are replaced by the new corresponding Act. In accordance with this, the Panel noted that the definition of 'potable water supply' requires amendment. I have recommended deletion of '*or later editions or amendments of the standards'* from the definition and reworded the remainder of the definition to make sense. This is included in **Appendix 1** as a change.

5.2 A number of definitions refer directly to a definition within certain legislation. The Panel requested that I consider setting out the definition in full (from the legislation) for ease of use by plan users. I agree that this would make the plan more user friendly and have made these changes to a number of definitions[7] in **Appendix 1**. I do not consider this to be a substantial amendment given that I have copied the definitions over from the relevant legislation. This recommended amendment however has resulted in a few issues as detailed below.

'Common Property'

5.3 As a result of the above recommendation, an additional new definition is required. The definition of 'access' as notified referred to '*common property as defined in section 2 of the Unit Titles Act 2010'.* In order to delete this reference the definition of 'common property' is required to be inserted into Chapter 2 so that the 'access' definition can rely on it. This recommendation is included in **Appendix 1**.

'Building', 'Reserve' and 'Road'

5.4 For other definitions, the insertion of the definition from the referenced legislation has proven difficult. For example, the Chapter 2 definition

6 Section 42A Report for Chapter 2 Definitions, at paragraph 19.8.
7 'access', 'accessway', 'amenity or amenity values', 'camping ground', 'lake', 'liquor', 'national grid', 'private way', 'river', 'service lane', 'subdivision', 'waterbody', 'wetland'.

of 'building' references the *Building Act 2004*. The *Building Act 2004* sets out a number of inclusions (Section 8) and exclusions (Section 9) from the term 'building' rather than providing a definition. These sections in themselves have numerous inclusions and exceptions and links to other related definitions. Further, the definition also covers structures that have been specifically excluded within the notified PDP definition. Consequently, the insertion of the content of Sections 8 and 9 of the *Building Act 2004* into Chapter 2 would result in changes to the definition that there is no scope to make via submissions, and therefore I have not recommended this change.

5.5 Similarly to the above, inserting the legislative definitions of 'reserve' and 'road' into the PDP is also difficult as both involve cross-referencing to other legislation and provisions within the applicable Acts. As a result, I have not recommended that either of these definitions be amended.

'Noise' and 'Sound'

5.6 The notified definition of 'noise' and 'sound' both reference the applicable New Zealand standards[8] (**NZS**). The definition of 'noise' is as follows:

> *'Acoustic terms shall have the same meaning as in NZS 6801:2008 Acoustics – Measurement of environmental sound and NZS 6802:2008 Acoustics – Environmental noise.*
>
> *L_{dn}:*
>
> *Means the day/night level, which is the A-frequency-weighted time-average sound level, in decibels (dB), over a 24-hour period obtained after the addition of 10 decibels to the sound levels measured during the night (2200 to 0700 hours).*
>
> *$L_{Aeq(15\ min)}$:*
>
> *Means the A-frequency-weighted time-average sound level over 15 minutes, in decibels (dB).*

8 NZS 6801:2008 and NZS 6802:2008.

L_{AFmax}:

~~m~~Means the maximum A-frequency-weighted fast-time-weighted sound level, in decibels (dB), recorded in a given measuring period.

Noise Limit:

Means a $L_{Aeq(15\ min)}$ or L_{AFmax} sound level in decibels that is not to be exceeded.

In assessing noise from helicopters using NZS 6807: 1994 any individual helicopter flight movement, including continuous idling occurring between an arrival and departure, shall be measured and assessed so that the sound energy that is actually received from that movement is conveyed in the Sound Exposure Level (SEL) for the movement when calculated in accordance with NZS 6801: 2008.'

5.7 In reading the start of the definition: *'Acoustic terms shall have…'*, it appears that the definition is intended to define more terms than only 'noise'. Furthermore, some, but not all of the terms listed in the definition above are included within the NZS and of the terms that are listed, the PDP defined term appears to be a summary of the more detailed definition in the NZS.

5.8 The notified definition of 'sound' refers to the meaning contained within the NZS, however although there are many definitions relating to more specific descriptions of 'sound', there is no definition of 'sound' in particular within the documents.

5.9 Neither Ms Evans nor Dr Stephen Chiles in their evidence on Chapter 36 – Noise raised any concerns with the above definitions, nor recommended any amendments. Further, no submissions were received seeking to amend the above definitions, with the exception of one from C Byrch (243) in relation to the definition of 'noise' to specifically delete the day/night level. Ms Evans responded to this submission in paragraph 8.68 of her s42A report and did not support the relief sought.

5.10 As a result of the above, I have not recommended any amendments to these definitions in **Appendix 1**.

6. DEFINITIONS PREVIOUSLY RECOMMENDED TO BE DELETED

6.1 In my s42A report I previously recommended the deletion of the definition of 'access lot' on the basis that it was not a term utilised in any of the Stage 1 chapters. The Panel however drew my attention to the fact that the term is used on subdivision plans (which generally form part of a subdivision consent). As Chapter 2 relates to the interpretation of the District Plan provisions only, to be consistent with my other recommendations, I do not consider it necessary to retain this definition in Chapter 2..

6.2 I also recommended deletion of the definition of 'all weather standard' for the same reason, however I now note that this term is used within the definition of 'formed road'. Finally, I no longer recommend that 'health care facility' be deleted as this term is used within the 'national grid sensitive activities' definition. Consequently, I now recommend the retention of these definitions in **Appendix 1.**

7. REFERENCES TO STAGE 2 ZONES

7.1 In paragraph 27.1 of my s42A report, I recommended deleting a number of definitions within Chapter 2 which are not used within the reply versions of the Stage 1 chapters or that relate to zones that have not been included within Stage 1. The Panel however noted that the definitions of 'height (building)' and 'home occupation' still include reference to the Three Parks Zone, which is not included within Stage 1 of the District Plan review. I have therefore recommended deletion of these references in **Appendix 1**.

7.2 While the definition 'development (financial contributions)' does not specifically mention a Stage 2 zone, this term is not used in any of the provisions within the Stage 1 chapters and therefore it is also recommended to be deleted in **Appendix 1**.

8. NOTES AND ADVICE NOTES

8.1 In my Summary of Evidence[9] presented to the Hearings Panel, I outlined the changes I recommended within my s42A report with respect to 'advice notes' and 'notes' within definitions. The Panel questioned whether my statement about incorporation of 'notes' which are '*fundamental*' to the definition would result in a substantial change being undertaken, without the necessary scope provided through submissions.

8.2 In hindsight, I consider that my use of the word 'fundamental' was not the correct word to use in the context. As explained within my s42A report,[10] where I have considered that the intention was to include the content of the note within the definition, I have recommended a change as a matter of clarification. Notwithstanding this, should the Panel not agree that this is a point of clarification, these notes can be reviewed further as part of Stage 2.

9. 'RADIO COMMUNICATION FACILITY'

9.1 In considering the recommended definition of 'radio communication facility' further, I note that the last part of the definition which states '*and as defined in the Radio Communications Act 1989*' is unnecessary. This Act does not provide a definition of 'radio communication facility' and the other related definitions are already covered by the definition. Consequently, I recommend deletion of this portion of the definition in **Appendix 1**.

10. 'OUTER CONTROL BOUNDARY'

10.1 Ms Holden in her Right of Reply for Chapter 26: Airport Mixed Use Zone recommended combining the definition of 'outer control boundary (Queenstown)' and 'outer control boundary (Wanaka)', with the following resultant definition:

9 Section 42A Report for Chapter 2 Definitions, at paragraph 11.
10 Section 42A Report for Chapter 2 Definitions, at paragraph 33.2.

'Means a boundary, as shown on ~~the~~ District Plan Maps, the location of which is based on the future predicted day/night sound levels of 55 dBA Ldn from airport operations ~~in 2036~~.'

10.2 At the Hearing on definitions, the Panel questioned the insertion of 'future' into the definition without the qualifiers of the 2036 and 2037 noise contours being referenced, as this term would then be unspecified.

10.3 The 'outer control boundary' is identified on the planning maps around Queenstown and Wanaka airports and these boundary lines reflect the 2036 and 2037 noise contours. Furthermore, the airport designations also reference these noise contours. In order to amend the 'outer control boundary' notwithstanding the wording of the definition would require a plan change to be approved.

10.4 However, for the avoidance of doubt, I recommend that the definition be amended to reference the date for both airports. This change is included in **Appendix 1**.

11. 'DOMESTIC LIVESTOCK'

11.1 The Panel questioned whether the intent of the definition to control the keeping of poultry is a matter for a Council bylaw rather than the PDP. I have checked the QLDC bylaws and have confirmed that there is no such current bylaw in operation for the District.

11.2 I agree that the control of the number of poultry kept on properties would be better administered via a bylaw rather than resource consent; however potential effects on amenity (noise and odour) as well as potential effects on people (health) may occur from the keeping of a large number of poultry. These potential effects are covered by the RMA and with expert assistance, could be assessed. Consequently, in the absence of a bylaw, I recommend the inclusion of the definition and related rules within the PDP.

11.3 The Panel also queried why all of the applicable zones are not referenced within the definition. For example, sites within the

Gibbston Character and Large Lot Residential zones are akin to those in the Rural and Rural Residential zones, therefore why are they not included within the second bullet point.

11.4 The 'catch all' provided within the first bullet point applies to all zones which are not referenced in the second bullet point, but I acknowledge that the Gibbston Character zone has the same applicable characteristics as sites within the Rural, Rural Lifestyle or Rural Residential zone (being sites of larger size, used for production purposes and the like) and therefore should be treated the same. However, there is no scope provided through submissions to recommend this amendment.

11.5 With regard to the Large Lot Residential zone, I consider that its inclusion with the other zones that have a smaller site size is relevant given that this zone is across land located within the proposed urban growth boundary for Wanaka. It is also recommended to have a smaller minimum lot size over parts of the zone compared to the Rural Residential zone. As a result, the effects associated with the keeping of a large number of animals in the context of the proposed density of development may be significant. Consequently, I do not recommend any changes in this regard.

11.6 As outlined in my s42A report, I recommend that the portions of the definition that equate to rules be inserted into the applicable rules in the zone chapters. I do not consider that this is a substantive change to the provisions. However I noted in my Summary of Evidence that rules relating to the 'domestic livestock' activity only appears in two zone chapters, being the Rural and Gibbston Character zones notwithstanding the definition applying to all zones. No submissions were received to rectify this oversight, therefore Council will need to consider this further as part of Stage 2.

12. 'ECOSYSTEM SERVICES'

12.1 The Panel has requested my reasoning in not supporting C Byrch's submission (243) in relation to an amendment to the definition of 'ecosystem services'. C Byrch requested that the definition be

rewritten as people are not the only thing that benefit from 'ecosystem services'.

12.2 I agree with C Byrch that people are not the only thing that benefit from 'ecosystem services' and that all manner of flora and fauna do also. However, when considering the use of 'ecosystem services' within the PDP, I note that 'ecosystem services' are usually identified alongside 'nature conservation values', 'indigenous biodiversity' as well as 'indigenous fauna habitat'. As such, I consider that the PDP provisions already address these other attributes without requiring a change to the definition.

13. 'GROUND LEVEL'

13.1 In relation to the definition of 'ground level', the Panel stated that this was a matter of detailed discussion during Stream 8 and that some submitters had outlined how confusing the definition is. The Panel suggested that the Council in the future consider implementing a type of 'line in the sand' approach that other Councils have adopted. This could be nomination of a specific date from which Council can source accurate topographical data, being the date from which 'ground level' is calculated.

13.2 I note that the original definition of 'ground level' in the ODP applied this 'line in the sand' approach. This definition is:

Means the actual ground level at the date of public notification of this Plan except for land for which subdivision consent has been obtained after the notification of this Plan, for which ground level shall mean the actual finished ground level when all works associated with the subdivision of the land were completed; and excludes any excavation or fill associated with building activity. Ground slope shall mean the slope of the ground measured across the above ground level(s).

13.3 A plan change (PC11, which was then superseded by PC11B) was undertaken to the ODP with the associated s32 report outlining the following difficulty with the definition (amongst others):

- *Determining primary ground levels at the time the partially operative district plan was notified – 10 October 1995 is difficult and in some cases impossible.*

13.4 Further details of the issue where provided in the s32[11] as follows:

While this approach is useful in that it provides a definite yardstick against which ground level is to be measured, the following issues arise in relation to this level:

I. Complete records of district wide ground levels at that date are not held. Where ground levels have been modified but actual records are not available, it is difficult, if not impossible for Surveyors to certify ground levels at that particular date.

II. The lapse of time - the more distant that particular date, the less relevant ground levels at that point in time become.

III. The date is arbitrary - it results in a situation where any modification to ground levels immediately prior to that date have altered ground levels in perpetuity, while any changes through excavation or development immediately after do not. There is no clear rationale to this distinction.

IV. Permitted earthworks – a certain level of earthworks can be carried out as a permitted activity. The lack of formal record in relation to such earthworks make it difficult to determine if and to what extent the 1995 ground level has been modified.

13.5 Plan Change 11B was made operative on 18 March 2010 following the resolution of appeals through the Environment Court. Consequently, although the approach suggested by the Panel would be a more simplified approach to the recommended definition of 'ground level' in **Appendix 1**, it appears that the current definition is the culmination of much previous assessment and consideration. I therefore do not recommend any additional amendments to the definition.

11 Page 18 of the s32 report for PC11.

14. 'MASL'

14.1 In my s42A report, I recommended relocation of the definition 'MASL' to the new acronym section of Chapter 2. No further amendments were recommended. The Panel at the hearing requested that I check consistency with Ms Jones' right of reply for Chapter 12 – Queenstown Town Centre. I have reviewed Ms Jones right of reply and MASL is still utilised and therefore explanation of the acronym is still relevant. 'MASL' is also utilised in other zone chapters in relation to location and floor level.

15. 'RESIDENTIAL UNIT', 'RESIDENTIAL FLAT' AND 'SLEEP OUT'

15.1 In my s42A report[12] I recommended that a definition of 'sleep out' be included within Chapter 2 to clearly differentiate between 'residential flats' and 'sleep outs'. Sleep outs are included within the definition of 'accessory building', which are also encompassed within the definition of 'residential unit'. Therefore, I no longer consider that a separate definition is required as they are covered both in definitions and in the applicable rules relating to 'residential units'.

15.2 Related to this, the Panel noted that with sleep outs being classed as 'accessory buildings' and dwellings often being designed as a series of separate pavilion buildings, that the classification of a sleep out as an 'accessory building' could result in dwellings being located within boundary setback distances. I acknowledge that there is the potential for this to happen across various zones in the PDP. However, the same can also occur under the ODP and it has not been proven through monitoring to be a significant issue. Further, sleep outs as 'accessory buildings' would only be permitted within a setback distance where they meet any height and wall length parameters set out within the standard for the applicable zone and not to have any openings along the wall facing the applicable boundary. Consequently, the potential effects of this development would be managed. As a result, I do not recommend any amendments to the definition of 'residential unit' or 'accessory building' in this regard and

12 Section 42A Report for Chapter 2 Definitions, at paragraphs 16.5 – 16.7.

no longer recommend a definition of 'sleep out'.[13] This change is shown in **Appendix 1**.

15.3 The Panel raised the question of leasing or renting a 'residential flat' during the hearing. I confirmed to the Panel that I have recommended in my s42A report deletion of the words stating that you may lease a residential flat to another party on the basis that it is not needed. However the Panel raised the concept of 99 year leases and that they are effectively subdivision that would be contrary to the following bullet point within the definition:

- *is situated on the same site and held in the same ownership as the residential unit*

15.4 I am familiar with the concept of 99 year leases in the context of rural properties such as high country stations, where a property may be passed down through generations of a family. However I have no knowledge of similar leasing situations being utilised for the enduring use of a residential flat separate from a residential unit. I consider it unlikely that this would become a common situation in the District, due to the cost involved in paying for a 99 year lease being more than the cost of purchasing an entire residential unit. Also because ongoing tenure through generations of family occupying a residential flat, due to its small size and nature, is unlikely.

16. 'EXOTIC'

16.1 The Panel queried the definition of 'exotic' and whether it could be more specific to the District. I consider that this is the intent of the definition where it states '*not indigenous to that part of New Zealand*'. Consequently, I have amended the definition to be more specific to its use in the PDP as a matter of clarification. This change is included in **Appendix 1**.

13 I note that in my s42A Report I recommended that a definition of 'sleep out' be included within Chapter 2, however there was no scope to do so and it therefore was not included in Appendix 1 to the s42A Report.

17. 'WHOLESALING'

17.1 The definition of 'wholesaling' included within Appendix 1 to my s42A report is limited to the Three Parks, Industrial B and Airport zones. At the hearing, the Panel asked whether the definition really needs to be limited to those zones. Upon reviewing the definition, I do not see a need for the term to be limited to the specific zones stated as 'wholesaling' could be undertaken in many of the other business zones in Stage 1. Notwithstanding, I do not have the scope via submissions to recommend this change and consequently, have not included this change in the **Appendix 1.**

18. 'ANTENNA' AND 'MAST'

18.1 Ms O'Sullivan on behalf of the Queenstown Airport Corporation (433)[14] outlines concerns in relation to Rules 30.4.41 – 30.4.53 of Chapter 30 – Energy & Utilities and the recommended definitions of 'antenna' and 'mast'. Ms O'Sullivan states that as drafted, these two definitions constrain these rules to telecommunication activities only and do not address radio communications, navigation or meteorological activities despite the heading of the rule table suggesting otherwise.

18.2 In my Summary of Evidence presented to the Panel, I responded to the relief sought by Ms O'Sullivan agreeing that changing the definitions of 'antenna' and 'mast' to widen the application of them would be beneficial, however that I could not find any scope through submissions to do this. At the hearing, the Panel suggested consideration of a more generalised definition of both terms to specify the transmission or receipt of radio waves.

18.3 In considering this suggestion, I consider that this amendment to each of the definitions would address the problem outlined by Ms O'Sullivan in relation to Rules 30.4.41 – 30.4.53 of Chapter 30. However, I again find that there is no scope through submissions to recommend this change and have therefore not included it in **Appendix 1**.

14 In paragraphs 2.20 – 2.25 of her tabled evidence.

19. 'COMMUNITY ACTIVITY'

19.1 Mr O'Flaherty tabled further information in support of the New Zealand Police (57) request to amend the definition of 'community activity' to incorporate 'police purposes' rather than 'police stations'.

19.2 Although Chapter 2 does not apply to Chapter 37 – Designations (unless specifically stated within the designation) and Mr O'Flaherty references the New Zealand Police designations, based on the additional information supplied by Mr O'Flaherty, I see merit in amending the definition of 'community activity' as requested, as there may be a time when the NZ Police seek resource consent for a 'community activity' for police purposes on land which is not designated. I have recommended this change in **Appendix 1**.

19.3 The Panel also queried why the definition of 'community activity' excludes 'recreational activities'. 'Recreational activities' are defined within the chapter as follows:

> *Means the use of land and/or buildings for the primary purpose of recreation and/or entertainment. Excludes any recreational activity within the meaning of residential activity.*

19.4 The Panel raises a valid point and I note that Council aquatic facilities or indoor courts could be captured by this exclusion. However these by their nature would be a facility open to the public for health, education and wellbeing. There is no scope provided through submissions to address this matter. Consequently, I have not made any amendments to the definition.

20. 'CLEANFILL' AND 'CLEANFILL FACILITY'

20.1 In my s42A report[15] I recommended as a result of the Z Energy Ltd, BP Oil NZ Ltd and Mobil Oil NZ Ltd (**Z Energy**) (768) submission that the definition of 'earthworks' be amended to be the same as that introduced into the ODP by Plan Change 49 (**PC49**). Further, due to

15 Section 42A Report for Chapter 2 Definitions, at paragraph 24.6.

the definition of 'earthworks' including the terms 'cleanfill' and 'cleanfill facility' and there being no corresponding definitions proposed within the PDP, I recommended that the PC49 definitions of these two terms be included in Chapter 2 also.

20.2 Mr Laurenson in his tabled statement on behalf of these submitters has identified that the PC49 definitions of 'cleanfill' and 'cleanfill facility' are a '*significant departure from established definitions of comparable terms*' and details the definitions of these terms provided within the Ministry for the Environment's (**MfE**) Guide to the Management of Cleanfills (2002).

20.3 Upon reviewing the definitions provided by Mr Laurenson and also other similar definitions used for these terms, I agree that the PC49 definitions, particularly that of 'cleanfill' should be expanded upon further. Notwithstanding, I do not consider that the original submission by the above oil companies, nor the submission by H W Richardson Group (252)[16] provides the scope to introduce the MfE definitions.

20.4 I note that the Earthworks chapter will be included within Stage 2 of the District Plan review and that this would be the best time for consideration of the definitions of 'cleanfill' and 'cleanfill facility' to be undertaken. As such, I no longer recommend definitions of 'cleanfill' and 'cleanfill facility' be included within Chapter 2 at this time. I do not consider that that this will raise any significant issues in the interim as reference to 'cleanfill' and 'cleanfill facility' are not included within any of the right of reply versions of the Stage 1 chapters. This change is shown in **Appendix 1**.

21. 'MINOR UPGRADING'

21.1 Ms Bould on behalf of Transpower New Zealand Limited (805) (**Transpower**) tabled evidence repeating and referencing Ms McLeod's evidence on behalf of the submitter for Chapter 30, requesting that the definition of 'minor upgrading' include a 15% increase to the height of support structures.

16 Submitter sought the PC49 definition of 'cleanfill' be included within Chapter 2.

21.2 Mr Barr in his Right of Reply[17] for Chapter 30 addressed a similar relief to that outlined by Ms Bould. Notwithstanding this, I do not support the amendment sought, primarily as judging compliance would be very difficult. Furthermore, the relief sought could allow significant increases to the height of support structures undertaken incrementally over time as a permitted activity, without the potential effects being considered. Accordingly, I do not support the relief sought.

21.3 Ms Black on behalf of Real Journey's Limited (621) and Te Anau Developments Limited (607) presented evidence to the Panel seeking that the definition of 'minor upgrading' be expanded upon to enable minor changes to private infrastructure without the need to go through a resource consent process. I note that the requested relief goes beyond just a change to the definition as it would also require that corresponding rules be inserted into the relevant chapters. Ms Jones in her s42A report on Chapter 12 – Queenstown Town Centre addressed the submitter's relief in this regard and none of her recommendations give rise to the need to update the subject definition. As such, I do not recommend any further changes to the definition.

22. EARTHWORKS WITHIN THE NATIONAL GRID YARD

22.1 Ms Bould also reiterates Ms McLeod's evidence on behalf of Transpower (805) seeking a new definition of 'Earthworks within the National Grid Yard'. I understand that the primary issue the submitter has with the current recommended PDP provisions is in relation to earthworks undertaken for activities that are not captured by the definition of 'structure', such as tree planting. Upon reviewing the rules recommended by Mr Barr in Chapter 30,[18] I note that Rule 30.4.30.6 specifically excludes earthworks undertaken as part of agricultural activities or domestic gardening. As a result, the requested new definition (or an amendment to the definition of 'earthworks') would not provide the relief sought by the submitter and

17 Reply of Craig Barr for Chapter 30 Energy and Utilities dated 22 September 2016, at paragraphs 16.3 – 16.4.
18 Rule 30.4.30.

would be inconsistent with the rules being recommended by Mr Barr in Chapter 30.

22.2 Transpower's submission was also considered by Mr Barr in Chapter 30 and Ms McLeod's evidence was also heard on this matter, which included the suggested new definition. I consider that the Hearings Panel for Chapter 30 has already been provided with sufficient evidence to make a recommendation on this requested definition and therefore I do not make any further recommendations on this matter.

23. 'TRADE SUPPLIER' AND 'RETAIL'

23.1 Ms Bowbyes in her evidence relating to Chapter 16 – Business Mixed Use zone recommended two new definitions be included, one of 'trade supplier' and the other of 'building supplier' (which is a subset of 'trade supplier'). I supported these recommended definitions and incorporated them into the Appendix 1 to my s42A report.

23.2 Since this time, I have also considered the pre-lodged evidence, the evidence presented at the hearing and the Memorandum of Counsel on behalf of Bunnings Limited (746), which originally sought a change to the definition of 'retail', however later changed this to an amendment to the definition of 'trade supplier'. I consider that a 'trade supplier' such as Bunnings should be included within the definition of 'retail' as their primary function is for the sale of goods from the site. Consequently, I do not support the submitter's earlier submission that 'trade suppliers' should be expressly excluded from the definition of 'retail'.

23.3 The relief now sought by Bunnings in their Memorandum of Counsel is to amend the definition of Trade Supplier as follows (addition shown as underline and deletion shown as ~~strikethrough~~):

> *'Means a business engaged in sales to businesses and institutional customers and may also include sales to the general public, and ~~wholly~~ consists of suppliers of goods in one or more of the following categories:*
>
> - *automotive and marine suppliers;*
> - *building suppliers;*

- *catering equipment suppliers;*
- *farming and agricultural suppliers;*
- *garden and patio suppliers*
- *hire services (except hire or loan of books, video, DVD and other similar home entertainment items);*
- *industrial clothing and safety equipment suppliers; and*
- *office furniture, equipment and systems suppliers.*

Trade Suppliers are to be treated in the Plan as both retail and industrial activities, unless Trade Suppliers are otherwise specifically provided for.'

23.4 Whilst I support the deletion of the word 'wholly' in order to allow for some flexibility in the definition, I do not support the remainder of the relief sought. I consider that the addition of the last sentence into the definition is pre-empting the notification of the Stage 2 Industrial chapter and any other chapter that may be suitable for a trade supplier, such as Three Parks.

23.5 Chapter 16 – Business Mixed Use zone specifically provides for 'trade suppliers' and therefore does not require the above amendment to the definition. Should Council in its preparation of the Industrial zone chapter (and any other applicable chapters) also consider that 'trade suppliers' are suitable within this zone (depending upon industrial land supply, potential effects and other relevant factors), I consider that the same approach should occur. A zone by zone bespoke approach would deliver a more certain outcome to both Bunnings Ltd and the community.

23.6 I also consider that the catch all suggested by Bunnings Ltd would possibly create uncertainty given that two or three land uses would apply to the activity and therefore assessments for car parking (and the like) could be confusing.

23.7 Overall, I do not support the relief sought by Bunnings Limited in relation to the definitions of 'retail' and 'trade supplier', however I acknowledge that the 'trade suppliers' definition is in need of further

consideration in the formulation of the zoning provisions as part of Stage 2.

24. 'PASSENGER LIFT SYSTEM'

24.1 I understand that the Panel questioned Mr Williams, who presented evidence on behalf of Queenstown Park Limited and Remarkables Park Limited, in relation to the definition of 'passenger lift system' and whether the definition should be confined to only transporting passengers within or to a Ski Area Sub-Zone. I understand the Panel's query to be in the context of the likes of Skyline Gondola, which exists in Queenstown and is not associated with a ski area sub-zone, and the numerous smaller examples of 'passenger lift systems' in Wellington, which are used to service individual properties due to the constraints provided by topography.

24.2 In considering the Panel's questions, I note that the definition has been recommended by Mr Barr as part of his Chapter 21 in response to the Mount Cardrona Station Limited (407) submission and that the scope of this submission (and others seeking similar relief) was with respect to integration between ski area sub-zones and nearby urban and resort zones. I am unaware of any other submissions that have been received requesting a definition of a similar system not in the context of the Ski Area Sub-Zones, and therefore do not consider that there is scope to make this change. Furthermore, rules and standards for 'passenger lift systems' have not been included within zone chapters other than Chapter 21 – Rural, which is where the Ski Area Sub-Zone rules are situated. Consequently, without additional provisions the change to the definition is not considered necessary.

25. 'VISITOR ACCOMMODTION'

25.1 In relation to the recommended definition of 'visitor accommodation', the Panel questioned the intention of adding '*and others of a similar scale and nature'* into the definition in reference to centralised services or facilities, given that these facilities can range widely in scale from bathrooms to conference rooms to golf courses. I accept this and note that the words '*similar scale'* add little to the description

of the activity. Consequently, I recommend deletion of the reference to scale in **Appendix 1**.

25.2 A limit on the size or proportion of these centralised services or facilities in relation to the visitor accommodation overall may be beneficial to ensure these are ancillary to the predominant visitor accommodation use, However this would be tantamount to a rule that should be included within the applicable zone chapters and not inserted into the definition. Further consideration of this issue should be undertaken as part of the visitor accommodation work being undertaken as part of Stage 2.

25.3 I also recommend a further amendment to the 'visitor accommodation' definition to bring the primary role of the services and facilities being for guests of the visitor accommodation to the forefront. I have included this change in **Appendix 1**.

26. ABBREVIATIONS

26.1 I have recommended deletion of the acronyms 'ODP' and 'PDP' in **Appendix 1** on the basis that these terms represent the phases in the current plan making process rather than the interpretation of any plan provisions.

27. CONCLUSION

27.1 Overall, I consider that the recommended changes provide greater clarity and will inform the consistent interpretation of the PDP provisions. I therefore consider that the revised chapter as set out in **Appendix 1** is the most appropriate way to meet the purpose of the RMA.

Amanda Jane Leith

27 March 2017