

**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 the Rezoning Hearing  
Stream 13 –  
(Queenstown mapping)

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**OPENING REPRESENTATIONS / LEGAL SUBMISSIONS FOR  
QUEENSTOWN LAKES DISTRICT COUNCIL**

**Hearing Stream 13 – Queenstown Mapping**

**21 July 2017**

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**Appendix 1: Extract from *Colonial Vineyard Ltd v Marlborough District Council*  
[2014] NZEnvC 55 at [17]**

**Appendix 2: Further Submissions on Part 2 and Legal Test**

**Appendix 3: Council's Strategic Approach**

**Appendix 4: Case Law Supporting the Council's Position relating to the  
Infrastructure and Transport Evidence**

**Appendix 5: Legal Principles on Scope**

**MAY IT PLEASE THE PANEL:**

**1. INTRODUCTION**

**1.1** These legal submissions are made on behalf of Queenstown Lakes District Council (**Council**) in respect of Hearing Stream 13, the Queenstown mapping hearing. This hearing is concerned with the submissions on planning map annotations such as landscape lines and zone boundaries in the 'Queenstown' area, for land that has been notified in Stage 1.

**1.2** For efficiency and resourcing reasons, the Queenstown submissions have been split into the following four geographic sub-areas and are generally addressed in this way in the s42A reports / evidence of:

<b>Report</b>	<b>Queenstown Sub-Group</b>	<b>Author</b>
1A	Urban – Business and Industrial	Ruth Evans
1B	Urban – Frankton and South	Kimberley Banks
1C	Urban – Central, West and Arthurs Point	Rosalind Devlin
1D	Urban – Jacks Point Extension	Vicki Jones
2	Rural	Robert Buxton

**1.3** I also draw your attention to the Strategic Overview and Common Themes evidence of Ms Kimberley Banks, as this provides a strategic overview of the recommendations to the Panel and addresses a number of common themes. It also draws together the evidence that the Council has presented in earlier hearing streams on the Council's Strategic chapters, and the underlying approach taken in the key zones in issue, for example the Rural, and various residential zones.

**1.4** These submissions will cover:

- (a) overall legal considerations;
- (b) comparison of zones as methods;
- (c) Council's strategic approach;
- (d) residential and business land needs;

- (e) infrastructure and transport;
- (f) application of Definitions chapter;
- (g) annotations across, and rezonings relating to Stages 2-4 and Volume B land;
- (h) requests for Operative District Plan zones;
- (i) scope;
- (j) matters common across geographic areas;
- (k) 1A: Queenstown Urban – Business and Industrial legal issues;
- (l) 1B: Queenstown Urban – Frankton and South legal issues;
- (m) 1C: Queenstown Urban – Central, West and Arthurs Point legal issues;
- (n) 1D: Queenstown Urban – Jacks Point Extension legal issues;
- (o) 2: Rural legal issues;
- (p) Council evidence.

**1.5** These opening submissions address key legal issues that have been raised in the course of submissions and evidence filed by submitters. They do not address or set out the Council's position on each and every rezoning, which is represented by the Council planners' recommendations. Given the number and breadth of rezoning submissions being heard through the course of this hearing, it is anticipated that additional legal issues will arise that will need to be addressed in the Council's reply. Because a rezoning has been addressed in these opening submissions, this does not mean the Council has focused more or less on that particular rezoning through this process.

**1.6** A critique of every submitter's case has not been undertaken in these legal submissions due to the amount of resource required to address the high number of submissions. Experience in previous hearings suggests other counsel may undertake a detailed critique of the Council's evidence in their own legal submissions; however, the Council does not have the capacity to respond in kind. In the Council's submission, the evidence before the Panel must be read in totality and with the context and strategic framework in which it has been prepared in mind, and we suggest the Panel needs to approach

with caution, any cherry picking or selective criticism of Council's evidence.

## 2. OVERALL LEGAL CONSIDERATIONS

- 2.1 The following submissions have been presented to the Panel that presided over the Strategic Directions (and other subsequent) hearing, and counsel apologises for any repetition. However, given the involvement of new Panel members in this hearing it is considered appropriate to do so. The submissions expand on the specific test for this Panel, in the context of rezoning submissions.
- 2.1 The legal framework for plan reviews is set out in sections 31, 32 and 72-76 of the RMA. The matters that need to be addressed were comprehensively set out by the Environment Court in *Colonial Vineyard Limited v Marlborough District Council*,<sup>1</sup> the content of which is set out in **Appendix 1** to these submissions.
- 2.1 The Panel's recommendations must consider whether the zone assists the Council to carry out its functions in order to achieve the purpose of the Act, and whether the zone is in accordance with Part 2 of the RMA.
- 2.2 Section 5 of the Act sets out its sustainable management purpose. Applying section 5 of the RMA involves an overall broad judgment of whether a proposal will promote sustainable management. Exercising this judgment allows for the balancing of conflicting considerations in terms of their overall relative significance or proportion in the final outcome.
- 2.3 In addition, under section 6 identified matters of national importance<sup>2</sup> and most notably, ONLs, ONFs and SNAs must be protected from inappropriate use and development. What is "inappropriate" should be assessed by what is sought to be protected and will be heavily influenced by the context. Particular regard is to be had to the "other

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1 *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55, more recently summarised in *A & A King Family Trust v Hamilton City Council* [2016] NZEnvC 229.

2 Relating to the protection of outstanding natural features and landscapes, significant indigenous vegetation and habitats, the maintenance and the enhancement of public access to lakes and rivers, the relationship of Maori and the culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga and the protection of historic heritage and customary rights.

matters" listed in section 7, which include efficiency, amenity values and ecosystems. Under section 8, the principles of the Treaty of Waitangi are to be taken into account.

**2.4** The question of weight as between the Strategic Direction chapters, higher order planning instruments, and Part 2 of the RMA is a matter for the Panel's discretion, bearing in mind *Colonial Vineyards*.

**2.5** It is the Council's evidence (including through Hearing Streams 1-10 on the text of the PDP) that its reply version of the chapters do give effect to Part 2 of the RMA, and therefore give substance to Part 2 of the Act. It is also the Council's submission that no significant challenge to the Council's strategic approach was made in the earlier hearing streams, in terms of the need for the Council to protect its nationally important landscapes in section 6(b), significant indigenous vegetation and significant habitats of indigenous fauna section 6(c), and maintain its s(7) landscapes, which is at the heart of a large portion of the rezoning submissions before this Panel.

**2.6** It is also submitted that, with regards to its urban development approach, this was not seriously challenged (except for arguably, within the Wakatipu Basin, which was the consequence of the Panel's Minute recommending the Council initiate a further Landscape Study, on the Basin).

**2.7** In terms of a number of submissions before the Panel, it is submitted that:

- (a) the submitter has provided insufficient evidence to allow the Council to assess the potential effects of the zone being pursued;
- (b) the submitter has not demonstrated under section 32 that their preferred zone is an appropriate method;
- (c) the proposed zone (or new sub zone) is inconsistent with Part 2 of the RMA; and
- (d) the proposed zone (or new sub zone) promotes a level of activity and/ or a lack of control that would allow

inappropriate subdivision, use of development over a section 7 landscape.

### **Overall broad judgment approach remains valid**

- 2.8** There is no authority that counsel is aware of, that supports an approach where this Panel need not look beyond either the Strategic chapter objectives of the PDP, the RPS, or a relevant national policy statement (the latter two being documents that must be given effect, or implemented) in evaluating what is the most appropriate zone and/or location of an ONL /ONF boundary.
- 2.9** In the planning framework we are currently working under, it is both permissible and in fact probably mandatory for the Panel to have regard to Part 2 in making recommendations on rezonings and planning map annotations.
- 2.10** In my submission, *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*<sup>3</sup> does not alter the *Colonial Vineyard* test with respect to the relevance of Part 2 of the RMA in this PDP review. That is, the *King Salmon* presumption, that resorting to Part 2 is not appropriate in giving effect to a higher order document, unless one of the three exceptions<sup>4</sup> apply, cannot be applied in the Panel's recommendations.

### **PDP Strategic objectives in Chapters 3-6**

- 2.11** The *King Salmon* presumption (that the Panel need not look to Part 2) applies where higher order planning documents (or indeed, objectives and policies of the same plan under consideration) are established. Relevant case law is analysed in **Appendix 2**; there is no authority that counsel is aware of that has applied the *King Salmon* principle to proposed objectives and policies where they are subject to submissions, no decision has been made on them, and they are not beyond appeal. That is, one cannot assume that the PDP 'Strategic' objectives or policies give effect to Part 2 of the RMA (or any higher

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<sup>3</sup> [2014] NZSC 38 at [85].

<sup>4</sup> Where there is illegality, incomplete coverage of an issue, or uncertainty of meaning in a higher order planning document, Part 2 will still be relevant. See *King Salmon* at [88].

order document), before a decision has been made on them, and any appeals resolved.

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

**2.12** Next up the planning hierarchy in Queenstown is the higher order regional planning document, the Otago RPS, which is currently under review. Relevant objectives are identified in Ms Kimberley Banks' strategic evidence,<sup>5</sup> and none of these are highly specific nor directive (in the *King Salmon* sense) in relation to the issues at hand. The applicability of *King Salmon* depends on the particular wording of the higher order national planning documents, and the RPS is generally not worded in the same manner as the NZCPS. Consequently, the *King Salmon* principle is not binding on the Panel.

**2.13** The proposed Regional Policy Statement remains under appeal, and therefore is not an *established* higher order planning document, and in any event is currently a document that the Panel should have regard to, not give effect to. This also distinguishes the current situation from the *King Salmon* principle.

### ***National Policy Statement on Urban Development Capacity (NPS-UDC)***

**2.14** The NPS-UDC is also a policy document that the Panel is required to give effect to. The Council's evidence is that the Council's proposed zoning pattern (without additional land beyond the Council's recommendations), combined with the provisions in those zones, will enable the NPS to be given effect to. The Council's evidence also indicates that additional zones and/or more permissive zones (for example by further enabling increased density or relaxing built form standards beyond the Council's recommendations) are not required in order to enable the NPS to be given effect to, in both the Upper Clutha and Queenstown/ Wakatipu Wards. The NPS is enabling policy in that it requires the Council to ensure that at any one time, there is sufficient housing and business land capacity. Although it is accepted that the NPS is established, complete and valid (ie, it does not fall within one of the *King Salmon* exceptions). It includes

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5 At paragraphs 9.10-9.13.

requirements that are unequivocal (through policies that state what local authorities 'shall' and 'must' do), however the NPS does not include any 'environmental bottom lines' as was the case with the NZCPS. For example, it does not include any 'avoid' policies.

**2.15** In addition, the NPS states in its preamble that:

*This national policy statement does not anticipate development occurring with disregard to its effect. Local authorities still need to consider a range of matters in deciding where and how development is to occur, including the direction provided by this national policy statement.*

**2.16** Although the NPS requires the Council to provide a certain amount of development capacity, the NPS gives Council discretion to decide where and how. If the evidence was that the Council could not meet the NPS requirements for capacity (which is not the case in any event), where and how it should provide additional development is a question for the Council (ie, the up or out decision). It follows that the NPS cannot be an environmental bottom line, in that it cannot be determinative as to whether various rezoning submissions should be approved, particularly where the Council's evidence is that there is sufficient realisable development capacity in the Queenstown Ward to give effect to the NPS and there are other resource management reasons for not rezoning the land.

### **3. COMPARISON OF ZONES AS METHODS**

**3.1** A zone or sub-zone is a method in that it allocates certain provisions of a plan to a particular area of land, and that zoning should reflect that particular zone and sub-zone's objectives and policies. In terms of the structural approach of the PDP, those particular zone and sub-zone's objectives and policies should in turn reflect the broader objectives and policies set out in the 'Strategic' objectives and policies located in Chapters 3-6.

**3.2** Although the Panel is generally comparing what are two or more zones and deciding on which one is most appropriate, this

comparison cannot be completed in isolation from the provisions within the zones themselves. In effect the application of a zone means that a certain set of rules will be applied to the land, and therefore through section 76(3) the Council and subsequently the Panel must have regard to the actual or potential effects on the environment of any activities that would apply through the application of a rule within a rezoning request.<sup>6</sup>

**3.3** Although it is acknowledged that there is no presumption that the notified zone is more appropriate than a zone sought through a submission, submitters still need to provide a level of detail and analysis that corresponds to the scale and significance of the environmental effects that are anticipated from the implementation of the new zone,<sup>7</sup> and in the Council's submission, need to provide sufficient evidence to assist the Panel in considering whether actual or potential adverse effects are satisfactory, before it makes a recommendation that the zone is more appropriate than the notified zone.

#### **4. COUNCIL'S STRATEGIC APPROACH**

**4.1** Ms Kimberley Banks' strategic summary of evidence explains how the Council's approach to the rezoning submissions is based firmly on the strategic approach to urban development that is set out in the Strategic Direction chapters 3-6, and the PDP as a whole. The Strategic Direction chapter provides the overarching direction for the other chapters within the plan and sets out high-level, strategic objectives and policies for each of the seven goals listed.<sup>8</sup> This 'hierarchy' within the plan means that the zones and their associated rules need to achieve the relevant zone's objectives and policies, which in turn need to achieve the higher order objectives and policies as set out in the Strategic Direction chapter.

**4.2** A summary of the Council's strategic approach, as generally presented at the Upper Clutha rezoning hearing, is included in

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<sup>6</sup> RMA, section 76(3).

<sup>7</sup> RMA, section 32(1)(c).

<sup>8</sup> See 3.1 Purpose that relevantly states: *This chapter sets out the over-arching strategic direction for the management of growth, land use and development...This direction is provided through a set of Strategic Goals, Objectives and Policies which provide the direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan.*

**Appendix 3**, and Ms Banks will take you through this at a high-level, in her evidence summary.

- 4.3** To assist the Panel in making its recommendations, the Council's expert planners (Ms Ruth Evans, Ms Kimberley Banks, Ms Rosalind Devlin, Ms Vicki Jones and Mr Robert Buxton) have undertaken a weighting exercise for each submission in a thorough and careful manner. This exercise is supported by the expert Council evidence in, where relevant, the nature of landscape, ecology, transport, urban design, infrastructure, dwelling capacity, acoustics, and commercial/industrial economics.

#### **ONLs / ONFs**

- 4.4** In relation to submissions relating to the location of an ONL or ONF line, or SNA boundary, the recent Court of Appeal case, *Man o' War Station*,<sup>9</sup> is relevant to the Panel's assessment. In that case the Court warned of the dangers of confusing the classification process of identifying ONLs with the consequences of the ONL classification on the relevant land. The first step is to establish whether there is an ONL and then apply the relevant provisions, as developed through the PDP process, to those areas.

- 4.5** Of relevance from *Man o War' Station*, at [61]:

*However, the issue of whether land has attributes sufficient to make it an outstanding landscape within the ambit of s6(b) of the act requires an essentially factual assessment based upon the inherent quality of the landscape itself. The direction in s 6(b) of the Act (that persons acting under the Act must recognise and provide for the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development) **clearly intends that such landscapes be protected.***

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9 *Man o' War Station Limited v Auckland Council* [2017] NZRMA 121.

4.6 Also of relevance, at [33]:

*MOWS's principal argument is that proposed change 8 was prepared prior to the Supreme Court's decision in King Salmon, and that both the policies it contains and the maps showing land identified as ONLs reflected the law as it was understood at that time. **This involved a common understanding that the protection to be afforded to an ONL was one factor in the overall judgment called for by s 5 of the Act.** Under that approach, consent might be granted for uses and developments in an ONL, including those adversely affecting the landscape, if considered appropriate by reference to other considerations based on achieving the Act's purpose of sustainable management. **Since such an approach is no longer possible after the Supreme Court's judgment in King Salmon, Mr Casey submitted. ...***

4.7 The Council anticipates that, like in the Upper Clutha rezoning hearing, submitters in this hearing will run a case where they argue that positive outcomes of any nature can be balanced against negative outcomes (for example on ONLs and possibly SNAs), and those positive effects whether related to the negative outcomes or not, justify what would otherwise be a failure to follow the direction in sections 6(b) and 6(c) of the RMA to protect the values that makes those landscapes, outstanding.

4.8 This approach is not accepted by the Council. Instead, it is submitted that there is a point where the type and/or density of development proposed within an ONL, cannot be absorbed without impacting on the inherent quality of the landscape and therefore becomes inappropriate. It is also important to note that the outcome must achieve the relevant objectives of the PDP, including the strategic direction and landscape chapters.

## **Landscape classifications on land other than rural**

- 4.9** Ms K Banks in her Strategic evidence has identified areas where a landscape line is located over a zone other than the Rural zone, which raises the question of whether the notified zone provides the necessary protection of the values that makes the landscape outstanding. Some of these are over ODP zones (ie the Quail Rise and Remarkables Park Zones), and as briefly addressed later in these submissions, the Panel has issued a minute to the effect that it has no jurisdiction over those lines.
- 4.10** For Stage 1 PDP zones, Ms K Banks has identified that ONLs have urban zones at Frankton (MDR) and at Jacks Point.<sup>10</sup> Ms Jones' and Dr Read's evidence for the Council in the Jacks Point Zone (**JPZ**) hearing was that the JPZ objectives and policies as recommended contain sufficient protection of the ONL from inappropriate subdivision, use, and development.
- 4.11** This leaves the zoning under the ONL at the Frankton MDR as an issue, as the MDR provisions enabling intensive residential development are not specifically designed to cater for section 6(b) landscapes (ONF/ONL), nor section 7(c) landscapes (RLC); nor do they restrict development in this area and the assessment matters in Chapter 21 are not triggered under urban zonings. Ms Banks has recommended that the Frankton MDR land (including land within the ONL) be rezoned to Rural, with the scope for this change in zoning being the Stephen Spence (8) submission. The rural zoning is able to address impacts on landscape values and the landscape assessment matters set out in Chapter 21, in a comprehensive way.
- 4.12** Subsequent to filing evidence, Council has identified a further issue at Arthurs Point, where the Planning Map indicates that there is an ONL zoned LDR. There would be scope within the Universal Developments submission (177) to amend either the underlying zoning or the location of the ONL. However, we have no landscape evidence to allow that to happen.

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10 At paragraph 29.10.

## 5. RESIDENTIAL AND BUSINESS LAND NEEDS

### Population and occupied dwelling projections

- 5.1 The population and occupied dwelling growth projections used to feed into both the residential dwelling capacity model (**DCM**), and the retail and commercial growth modelling were completed by Rationale. These projections represent growth projections specific to the District factoring in the unique growth drivers.
- 5.2 Mr Clarke's evidence is that nominally, the population in the District is projected to increase to approximately 49,500 by 2028 (the life of this plan), to 58,000 by 2038 (20 years), and to nearly 66,500 people by 2048 (30 years). Over the next 32 years (2016 start point), this will see demand for nearly 14,000 additional dwellings, or under 30 years (2018 start point), just over 12,500 additional dwellings.

### Residential development capacity

- 5.3 Memoranda have been filed for the Council in relation to the NPSUDC on 3 March and 19 April 2017. Subsequently, the Council and Property Economics have now focused on updating and refining the DCM for the notified PDP as it relates to residential dwelling capacity for the Upper Clutha, Queenstown and Wanaka areas. Important concepts referred to in evidence for the Council are:
- (a) plan enabled capacity: this illustrates, under the provisions of the PDP (Stage 1) and otherwise the ODP, the opportunity available to the market;
  - (b) feasible capacity: Mr Osborne's evidence explains that this represents what is economically feasible to develop due to market conditions and other influencing factors (ie. if the cost of the enabled capacity is recovered through the sales value and a predetermined return is achieved, then the development capacity is deemed feasible); and
  - (c) realisable capacity: Mr Osborn's evidence also explains that this estimate reflects an estimated proportion of

unimplemented development, and therefore takes into account a variety of differing motivations that will change in terms of what the market actually provides (sometimes referred to as 'development chance').

**5.4** This realisable capacity is also now encapsulated in the NPS, essentially in Policy PC1, which requires that a Council factor in the proportion of feasible development capacity that may not be developed, by factoring in an additional margin of feasible development capacity over and above projected demand of at least 20% in the short and medium terms, and 15% in the long term. Under both Mr Osborne's "realisable capacity" assessment or through adding on an additional margin under Policy PC1, there is sufficient development capacity under the Council's recommendations.

**5.5** In relation to this hearing, Council's evidence is that:

- (a) the projected dwelling demand for the Queenstown Ward area is as follows:
  - (i) using a 2016 base date:
    - (i)1. to 2028:<sup>11</sup> rounded to 4,800;
    - (i)2. to 2048:<sup>12</sup> rounded to 9,500;
  - (ii) using a 2018 base date
    - (ii)1. to 2028: 3,126;
    - (ii)2. to 2048: 8,133;
- (b) the plan enabled capacity for the Queenstown Ward area under the PDP provisions is 27,159 dwellings, with current market conditions (i.e. realisable capacity) providing 15,100 dwellings; and
- (c) this realisable capacity is sufficient to provide for the projected dwelling demand beyond 2048, which is a 30 year planning period and well beyond the life of this PDP.

**5.6** If a 20% margin is added to realisable capacity for the Queenstown Ward, this means 18,120 development capacity, which is again over the projected dwelling demand to 2048.

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11 ie. life of PDP and 'medium term' under the NPS-UDC.

12 ie. 'long term' under NPS-UDC.

- 5.7** On the basis of the DCM output, the PDP Strategic Directions (Chapters 3-6) and the spatial application of recommended zonings and overlays in terms of the Stage 1 PDP zones and the Queenstown UGB, are appropriate and no alternative response are required to address the dwelling capacity as it relates to the Queenstown area.
- 5.8** In Appendix 1 to Ms Banks' Summary of Evidence on the DCM is a table that sets out this information clearly.
- 5.9** The only evidence opposing the Council's DCM evidence is that of Mr Geddes. Comments on this evidence are made in Ms K Banks and Mr Osborne's evidence summaries, and will be addressed more thoroughly in Reply as necessary.

#### **Within 'Urban Environments'**

- 5.10** As well as considering demand and capacity at a Ward level, the Council has also considered the demand within the 'urban environment', given that a strict interpretation of PA1 arguably requires the Council to compare capacity against demand, within the bounds of the 'urban environment' only. The Council does not have growth projections isolating the Urban Environment only, so it is not a matter of comparing apples with apples in terms of the geographic area, but overall, even within the Queenstown urban environment, the Council's evidence is that there will be more than sufficient realisable development capacity, at 15,100 dwellings, to service projected population growth across the wider Ward. Ms Banks in her summary of evidence estimates the capacity provided within the Queenstown and Arrowtown UGBs, which generally aligns with what is considered by Council to be the 'Queenstown Urban Environment'.
- 5.11** Other parts of the NPS expressly state that the application of various policies is not restricted to the boundaries of a particular 'urban area', and the Council therefore needs to consider dwelling capacity at a district-level, given there is a high-growth urban area within the District's boundaries. This in particular includes PB1, which is the requirement for the three-yearly housing and business development capacity assessment.

## Commercial land

**5.12** The NPS-UDC applies to the supply of business land as well as residential development capacity. For the purposes of this hearing, Mr Heath has undertaken an analysis of commercial land (retail, service and office activities) needs of the District. His evaluation has involved reviewing the current supply of business zoned land, based on the PDP Stage 1 zones as notified to date and otherwise under the ODP; estimating the vacant commercial zoned land 'available' to meet future demand; and comparing projected demand (by using the Property Economics Retail Expenditure Model) over the 2017-2048 period against this supply.

**5.13** Mr Osborne's evidence determining office land requirements has fed into Mr Heath's conclusion, which is that there is sufficient commercial land provision in the Wakatipu Ward (ie, retail, service and office activities) to meet projected commercial land demand requirements over the next 10 year (to 2028) and 20 year (to 2038) timeframes. In the longer term 20-30 year timeframe, additional commercial land might be required in this Ward, as shown in the table below:<sup>13</sup>

	<b>Total</b>	<b>Wakatipu</b>	<b>Upper Clutha</b>
<b>Vacant Capacity</b>	71.7ha	46.9ha	25.1ha
<b>Demand to 2048 (30 years)</b>	(+) 89ha	(+) 63ha	(+) 26ha
	-17.3ha	-16.1ha	-0.9

**5.14** Council's evidence is therefore that there is more than sufficient commercial capacity within the Council's recommended version of the zones for the life of this district plan. In addition, the NPS-UDC also places a higher onus on the Council to monitor this issue, including that every three years it completes a Housing and Business Capacity Assessment. There is an additional assurance in that the Council is required to review this plan ten years after it becomes operative, and the NPS suggests that if the Council's monitoring identifies that there is a capacity shortfall, it must respond within 12 months.

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13 Evidence of Mr Heath, at Table 3 and Table 4.

- 5.15** No evidence has been provided by submitters that challenge Council's evidence on commercial capacity, and as a consequence it is submitted that there is no merit in any arguments that the Council needs to rezone additional business or office land, in order to give effect to the NPS or to, for example, achieve the purpose of the RMA.

### **Industrial land**

- 5.16** Mr Osborne's evidence determining industrial land requirements has concluded that the current industrial zoned land is expected to meet the market needs to the beginning of 2030, although neither Wakatipu nor Upper Clutha have sufficient industrial land to meet 2048 demand requirements.

- 5.17** The Council is underway with a comprehensive analysis of Industrial land needs for the purposes of Stage 2 of this review. The first of the Capacity Assessments, to be completed by 31 December 2018, will also include a full analysis of industrial land (which is not included in the evidence before you because industrial zones have not been notified in Stage 1, although some submitters have sought ODP industrial zoning). For example, a group of submitters<sup>14</sup> have proposed a Coneburn industrial zone of some 19.46 ha near the base of the Remarkables. Mr Osborne in his rebuttal evidence has responded to the economic evidence of Mr Copeland for the submitter. Mr Osborne continues to disagree with the proposed provisions allowing for office activity as a restricted discretionary activity, considering that this represents an economic risk to existing commercial zones and centres.<sup>15</sup>

## **6. INFRASTRUCTURE AND TRANSPORT**

- 6.1** The Council's infrastructure and transport evidence is relevant to the Panel's overall decision making, specifically what the Panel's approach should be where an Urban Zone is sought but no capacity or insufficient capacity currently exists in the infrastructure or roading

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<sup>14</sup> Grant Hylton Hensman, Sharyn Hensman & Bruce Herbert Robertson, Scope Resources Ltd, Grant Hylton Hensman & Noel Thomas van Wichen, and Trojan Holdings Ltd (361).

<sup>15</sup> Rebuttal evidence of Philip Osborne dated 7 July 2017 at paragraph 3.11.

networks, and the Long Term Plan (**LTP**) has not made provision for the relevant infrastructure upgrade.

**6.2** In relation to infrastructure, Council's position is that a rezoning request should be declined where an urban zone is sought but no or insufficient capacity currently exists in the infrastructure network and no LTP provision is made for the relevant infrastructure upgrade. There are three exceptions to this approach, where the Council does not consider it to be a fatal flaw in relation to the Rural, Rural Residential and Rural Lifestyle zones, where on-site infrastructure can be privately provided, and where the zonings are not anticipated to connect to the Council network.<sup>16</sup> This is consistent with Mr Glasner's evidence on the various rezoning submissions. I understand only the Rural zone is in issue in this hearing stream.

**6.3** In relation to the transport network, Council holds a similar position in that a rezoning request should be declined where an urban zone is sought but no or insufficient capacity currently exists in the transport network or a key intersection for that rezoning. The exception to this is where either Chapter 27 is sufficient to address the lack of capacity or there is a site specific rule requiring the upgrade of a road or intersection before development occurs.

**6.4** In addition, where no or insufficient information on traffic and service infrastructure has been provided by a submitter, Council has not been able to assess the potential effects of the future development, and how any effects are proposed to be avoided, mitigated or remedied.

### **NPS-UDC**

**6.5** Council and a number of submitters were asked during the Upper Clutha hearing whether the Council could use the NPS as a determinative reason to reject an urban zoning, when either no or insufficient capacity currently exists in the infrastructure network, or no LTP provision is made for the relevant infrastructure upgrade.

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<sup>16</sup> The policy framework for the Rural Lifestyle zone addresses on-site servicing, as does the Rural Residential zone, noting that the Council expresses unease with these zones being located on the periphery of urban areas because of the expectation that they will be serviced. However overall, the Rural Residential and Rural Lifestyle Zones can be and are self-sufficient in most locations.

- 6.6** This is not the Council's position. The Council is not relying on PA1 (ie short (3 years) and medium (10 years) term) as a determinative reason to reject rezoning requests. Instead, the relevance of PA1 to the Council is that, in order to give effect to this policy, it must ensure that sufficient development capacity in the short term is serviced, and in the medium term there is sufficient development capacity that is either serviced, or the funding for the development infrastructure required to service that development capacity is identified in the LTP.
- 6.7** The policy is enabling rather than an 'environmental bottom line'. Mr Osborne and Ms Bank's evidence is that there is plenty of sufficient (realisable) development capacity within the notified Queenstown UGB. The relevance of the Council's evidence is that submitters cannot use the NPS as a 'lever' to require the Council to release (ie. rezone) additional land for urban development purposes, as there is already sufficient (realisable) capacity under the Council's recommendations. The Council is already giving effect to the NPS under its recommended position, including that it has factored in realisable capacity, as required by PA 1 and PC1.

### **Effects on the Environment and integrated management**

- 6.8** Council's position is that the strategic objectives and policies give effect to Part 2 of the RMA and that infrastructure constraints, as identified in the Strategic Directions Chapter, are a good reason for not rezoning (particularly if land is outside the UGB), for the reasons provided in the Council's evidence to the Strategic Directions hearing supporting the introduction of a UGB into the PDP. Also of relevance is Council's evidence that additional urban zoning to enable urban development, beyond what is recommended by the Council in reply, is not required in order to achieve and give effect to the NPSUDC. In addition:
- (a) under section 31, the broad functions of the Council are the establishment, implementation and review of objectives, policies and methods (which includes zones) to achieve the *integrated management of the effects of the use,*

*development* or protection of *land* and associated natural and *physical resources* of the District; and

- (b) this approach is embedded within the objectives and policies of the Strategic chapters, including that Council's objective is to ensure urban development occurs in a logical manner that promotes a compact, well designed and integrated form, manages the cost of infrastructure, and protects the District's rural landscapes from sporadic and sprawling development.<sup>17</sup> Chapter 4 also addresses the need for integrated development, and provides that urban development be integrated with infrastructure and services. Objective 4.2.3 also seeks that efficiency of infrastructure operation and provision be maximised, and Policy 4.2.3.4 is particular directive – *Urban development occurs in locations that are adequately serviced by existing public infrastructure, or where infrastructure can be efficiently upgraded*, as is Policy 4.2.8.2- 4<sup>th</sup> bullet point – Wanaka.

- 6.9** Set out in **Appendix 3** is a more detailed analysis of recent case law, which supports the position that it would be contrary to the purpose of the Act to zone land for an activity, when the necessary infrastructure to allow that activity to occur without adverse environmental effects does not exist and there is no commitment by Council to provide it.

### Long Term Plan

- 6.10** The preparation of an LTP is governed by the Local Government Act 2002 (**LGA**) and involves an extensive process including LGA consultation. The LTP sets the budget for future development, replacement and upgrade of infrastructure, services and assets.<sup>18</sup> Through this process, the Council gives all-encompassing consideration and analysis into where it will spend its money to support future growth. As Mr Glasner described it in his evidence filed in the Strategic Directions hearing:<sup>19</sup>

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17 Objective 3.2.2.1.

18 Evidence of Ulrich Glasner on behalf of the Council dated 19 February 2016, filed in Hearing Streams 1A and 1B, at paragraph 4.2.

19 Evidence of Mr Glasner dated 19 February 2016, at paragraph 4.2.

*The balance between meeting service demands of the community, while balancing financial requirements are highly relevant factors in the LTP. Specifically, the LTP strategically manages the growth in Queenstown Lakes area, including the location and timing of that growth.*

- 6.11** In addition, the LTP sets out the agreement between the Council and the community as to the infrastructure and services to be provided and how they will be funded.<sup>20</sup> Mr Glasner also goes on to comment that consistency in these decisions required a *coherent strategic growth management framework*, which is the subject of extensive community consultation as required by the LGA.<sup>21</sup> Further:<sup>22</sup>

*Commitments to investment through the LTP process in land, consents, buildings and operations rely on the predictable emergence of communities and developments. Sporadic unanticipated development, or development considered on a site by site basis only, risks undermining the delivery of these services, by increasing the likelihood of misplaced assets, and the genuine unaffordability of additional unplanned and inefficient assets to support development in unplanned localities being required.*

- 6.12** It is respectfully submitted that these decisions about how the Council will spend its available funds on development infrastructure to service land is one for the Council to make. The Council has a right to decide its priorities, which is decided through the extensive community consultation required under the LGA. The resulting LTP is relevant to the RMA District Plan process, and this has recently been reinforced through its relevance to urban development capacity, in the NPS.

### **Relevance of case law authority to Transport issues**

- 6.13** The case law set out in **Appendix 3** is submitted to apply equally to transport. Paragraph 21 of the *Foreworld* case is of particular relevance, where the Environment Court confirmed that its reasons,

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20 Evidence of Mr Glasner dated 19 February 2016, at paragraph 4.3.

21 Evidence of Mr Glasner dated 19 February 2016, at paragraph 4.3.

22 Evidence of Mr Glasner dated 19 February 2016, at paragraph 4.5.

including that unmeetable expectations are raised and the Council is put under pressure to spend money it has decided to commit elsewhere, were directly relevant to [then] Transit's concern about the potential for unintegrated development to place State Highway 2 under capacity and access pressure. The Environment Court confirmed this to be "a valid concern".

**6.14** As noted in Ms Wendy Banks and Mr Mander's evidence, they have concerns about potential adverse effects associated with various rezoning submissions, which can be summarised generally as:

- (a) safety of road users and pedestrians;
- (b) efficiency of the transport network, and the lack of capacity to deal with additional zonings;
- (c) traffic effects associated with new zonings and associated State Highway accesses required to service new zonings; and
- (d) a lack of information or evidence provided in order to properly assess effects on the transport network.

**6.15** This is also consistent with the likes of Mr Carr's evidence for the JPROA,<sup>23</sup> who is concerned that the proposed restricted discretionary activity status for new accesses to the State Highway, or increased use of existing accesses, will not be sufficient to achieve a safe and efficient highway network in the absence of a more accurate assessment of the traffic effects.

**6.16** A number of rezoning submissions will require access onto parts of State Highway 6 in the Frankton Flats and Jacks Point areas. Legal submissions have been filed by the NZ Transport Agency that explain the separate process for considering new accesses directly onto the State Highway (where a limited access road). Under section 91 of the Government Rounding Powers Act 1989 (**GRPA**) the Transport Agency's authorisation must be obtained before a new access onto limited access road can be constructed. In relation to any new accesses, under the GRPA legislation the Agency needs to be satisfied that additional accesses are necessary, and are designed in

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23 Evidence of Mr Carr dated 7 July 2017 at paragraphs 33-34.

a way that promotes the safe and efficient functioning of the State Highway network, before it would be in a position to authorise additional accesses.

- 6.17** The Council has agreed to including advice notes in the PDP that refer to the requirement to consult with, and/or obtain authorisation from the Agency under the GRPA. In addition to this process outside the district plan, it is still preferable from the Council's perspective (and it is understood from the Agency's perspective) that the PDP include clear rules regulating access directly onto State Highways, and that zoning takes into account both current and planned future State Highway operations.
- 6.18** In addition, through some rezoning submissions, the Council is recommending that effects on the State Highway be a matter for assessment. For example, in the case of Coneburn Industrial zone (361), Gibbston sub zone (827), Queenstown Park Special Zone (806), and Loch Linnhe Station (447). The Council also accepts that there are some instances where site specific rules are appropriate, that for example provide that development will not occur until a certain upgrade or work has taken place. I return to this issue, below.

### **Relevance of Housing and Infrastructure Fund**

- 6.19** Earlier this month the Government confirmed that three out of four Housing and Infrastructure Fund (**HIF**) bid proposals submitted by QLDC have progressed to the next (detailed business case) phase of the fund approval process. This could mean the Council will be able to draw on up to \$50 million to help finance key infrastructure to enable two new greenfield sites (at Ladies Mile<sup>24</sup> and Quail Rise South (which is referred to as 'Ladies Mile' in Ms Banks' evidence)<sup>25</sup>), and an extension to the Kingston township.<sup>26</sup> The HIF fund is a billion dollar interest free (for ten years) loan facility available to high-growth Council's to help fund infrastructure associated with enabling residential development. The key purpose of the fund is to address

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24 <http://www.qldc.govt.nz/assets/News/HIF/Ladies-Mile-HIF-Summary.PDF>

25 <http://www.qldc.govt.nz/assets/News/HIF/Quail-Rise-HIF-Summary.PDF>

26 <http://www.qldc.govt.nz/assets/News/HIF/Kingston-HIF-Summary.PDF>

short-medium term constraints with financing trunk infrastructure needed to promote residential development.

- 6.20** The area covered by the Quail Rise South HIF is similar to the area covered by the 'Ladies Mile' group of submissions evaluated in Ms Bank's evidence.
- 6.21** It needs to be stressed that the Government's announcement of potential future funding does not guarantee development in the specified areas, but opens up the possibility of a ten year interest free loan facility being available to provide infrastructure to enable housing development, which can be recouped through development contributions. The next step for the Council is to complete a detailed business case, which needs to be completed in the next few months. Should the detailed business case be accepted, the fund would give the Council the opportunity to obtain loans (for 10 years) and provided it can recoup the outlay through development contributions it can limit the potential impact of the spending on ratepayers. The loan does not remove the need to assess the impact of the borrowing, the feasibility of managing the spending and debt servicing over time. It also does not compel the council to borrow the money.
- 6.22** At this point in time, little weight should be placed on the HIF fund announcement in terms of the PDP mapping hearings. The Council still needs to undertake a considerable amount work to determine whether or not it will move forward with the HIF fund, and there are no guarantees that this opportunity will be taken up.
- 6.23** However, the HIF applications are consistent with the Council's strategic urban development approach in PDP Objective 3.2.2.1 of promoting a compact, well designed and integrated form, managing the cost of infrastructure, and protecting the District's rural landscapes from sporadic and sprawling development.

## **7. DEVELOPMENT CONTINGENT ON CERTAIN EVENT OCCURRING – COUNCIL'S POSITION ON SITE SPECIFIC RULES**

**7.1** In the Upper Clutha hearing, the Panel asked the Council to clarify its position in terms of whether it is appropriate for the likes of a site specific rule, or structure plan, or deferred zone, to be included in the PDP. This would mean that development under the zone type would be contingent on a certain event occurring.

**7.2** Council's position is that site specific rules, structure plans and deferred zones are not supported where there is no evidence that the relevant infrastructure required to service the enabled capacity (waters and transport) are to be either upgraded or constructed, or where there is no desire or likelihood to commit to funding within the LTP for that project. This is for the reasons set out in Section 5 above.

**7.3** However, a site specific rule of this nature, or use of a deferred zone, however phrased, which provides that no development can go ahead until a certain work had been completed, may be appropriate in circumstances where there is an anticipated upgrade required to the roading network. Ms Wendy Banks has provided a list of rezoning submissions in her Reply Evidence that she could support, if a mechanism ensuring such works will be completed prior to any development, and Mr Barr in his Reply Evidence has considered what planning mechanism could work.

## **8. APPLICATION OF DEFINITIONS CHAPTER**

**8.1** For any new specific zones that are being sought by submitters, such as the Queenstown Park Special Zone, or any new site specific rules, the PDP definitions in Chapter 2 will apply whenever a defined term is used in the PDP, unless the context otherwise requires.

**9. ANNOTATIONS ACROSS, AND REZONINGS RELATING TO STAGES 2 - 4 AND VOLUME B LAND**

**9.1** The Panel issued a Minute on this matter dated 12 June 2017,<sup>27</sup> with the Council providing a response via memorandum dated 30 June 2017.<sup>28</sup>

**9.2** In short and for the purposes of this hearing, the Council accepts that the Panel will not hear submissions or evidence from the Council or submitters in relation to notations on the maps notified over, or sought via submission to be included over, Stages 2-4 land, and/ or Volume B land. Logically the Panel's minute also applies to the component of QPL's (806) submission requesting a new subzone over the ODP Remarkables Park Zone, as well as a number of other submissions seeking, for example, overlays over Stages 2-4 and Volume B land. For QPL, a consequence of the Panel's minute is that the Panel has no jurisdiction over that part of the proposed sub zone (and Gondola Corridor and terminal) that was proposed to be located across the ODP Remarkables Park Zone. This would appear consistent with Mr Young's submissions about the Panel's jurisdiction, filed in the context of the ONL notified over the ODP Remarkables Park Zone. It follows that the lower portion of any gondola and the bottom terminal station would need to obtain consent under the ODP Remarkable Park Zone provisions.

**9.3** This approach also applies to rezonings of either Stages 2-4 and/ or Volume B land, which has been the Council's approach in any event. This approach appears to be challenged in the evidence of Mr Vivian for Arcadia Station (480) and Daryl Sampson and Louise Cooper (495), where Mr Vivian asserts that all of submission 480 and the part of submission 495 relating to the ODP Rural Visitor – Arthurs Point zone were within scope when they were made. The issue of some inconsistencies in the notified Legend, and the individual map legends has been traversed earlier in this hearings, and in any event this issue falls within the Panel's minute referred to above. In short, Council's position is that the Rural Visitor – Arthurs Point zone was

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27 <http://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/Hearings-Page/General/General-Map-Notations-and-Stage-1-12-6-17.pdf>

28 <http://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/Hearings-Page/General/S0001-QLDC-ScottS-Memorandum-regarding-Panels-Minute-concerning-annotations-on-maps.pdf>

not notified in Stage 1, no chapter/ zone provisions were notified, and the ODP zone was shown for information purposes only.

- 9.4** In response to the Panel's minute more generally to assist the Panel, the Council's witnesses, where relevant, have set out in their rebuttal evidence the parts of their EIC that relates to planning map annotations that were notified in Stage 1, over Stages 2-4 or Volume B land.

## **10. REQUESTS FOR OPERATIVE DISTRICT PLAN ZONES**

- 10.1** A number of submitters have sought that their land, which was notified in Stage 1 of the PDP process, be rezoned to an ODP zone, for example to an Industrial or Rural Visitor, or Visitor Accommodation sub zone, which are being reviewed through a later stage of the review. As the land in question has been notified with a proposed zone on the Stage 1 PDP planning maps, submissions are 'on' land notified in Stage 1, no matter what zone type they are pursuing, and are within this Panel's jurisdiction.

- 10.2** Of relevance, the Council accepts the view expressed by the Panel (in two minutes relating to the Queenstown Hearing Stream 13 dated 29 May 2017<sup>29</sup> and 8 June 2017<sup>30</sup>) that where a submitter has chosen to pursue an ODP zoning, such as the Rural Visitor Zone, the test of giving effect to and implementing the strategic directions chapters remains relevant. In addition, the two matters raised by the Panel in paragraph 5 of the 29 May 2017 minute are agreed with:

- (a) there is no evidence that those ODP zones will become part of the PDP; and
- (b) the Panel would need to understand the entire objective, policy and rule framework proposed, so the Panel can understand what actual and potential effects on the environment the rezoning would have and whether that was consistent with the overall objectives and policies of the PDP.

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29 <http://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/Hearings-Page/Memorandums/General/General-Submissions-Seeking-ODP-Zones-29-5-17.pdf>

30 <http://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/Hearings-Page/Memorandums/General/General-Further-Minute-re-ODP-zones-8-6-17.pdf>

- 10.3** Council's position is also generally aligned with the final comment in paragraph of the 29 May 2017 minute; which is that the Chair of the Panel can foresee difficulties in this regard, if a submitter seeks to rely on ODP provisions unaltered, as the entire structure of the PDP is different. For example, the PDP chapters all follow a different structure to the ODP zones, and any new chapters going into the PDP need to align and integrate with the PDP Chapters, including strategic and the district wide chapters. Such changes may generally non-substantive and structural, but the work and evaluation still needs to happen.
- 10.4** In this hearing stream on the Queenstown area, it is submitted that no submitter has satisfied this evidential threshold. One submitter, Loch Linnhe Station (447), has suggested inserting controls over maximum footprint and height as well as a requirement that no buildings at the Wye Creek site be visible from the State Highway. This new rules are suggested to slot into the ODP RV zone, and the evidence does not assess how the ODP RV zone will fit into the PDP as is needed.
- 10.5** Overall therefore it is submitted that the Panel cannot, based on the evidence before it, include in the PDP by way of rezoning submission, any of the ODP zones (see Table below), as there is not the evidential foundation before this Panel, nor does it have the necessary PDP provisions, to do so.
- 10.6** If a submitter had brought the necessary level of evidence and satisfied the Council that an ODP zone type, with the necessary amendments to the chapter allow it to 'fit' into the PDP structure and give effect to and implement the Strategic chapters, integrate with the Stage 1 district wide chapters, as well as satisfying the Council that the zone chapter itself met the statutory tests, then the Council would need to consider that evidence on its face. It would need to do this in the same way that other bespoke zones such as the proposed Queenstown Park Special Zone are being evaluated.
- 10.7** The unfortunate outcome of this staged process, is that there is a possibility that a site may end up with a bespoke zone in the PDP (if

the submitter meets the evidential threshold set out above), as the Council will still continue to review the ODP Rural Visitor, Township and Industrial zones, and the Visitor ODP Accommodation Sub Zone, in their entirety (for example), through Stages 2-4. If this was to be the outcome, a possible avenue is for the Council to consider notifying a variation or plan change in a later stage, to ensure consistency of provisions in Volume A of the land.

### **Council's recommendations on these particular submissions**

**10.8** Council's position can generally be summarised as:

- (a) neither the Council nor the Panel have jurisdiction to transfer a submission over to a later *stage* of the plan review.
- (b) there is insufficient evidence before the Panel at this time to insert any ODP zones into the PDP via a submission;
- (c) in a number of instances, Council's recommendations are that the rezoning submission has no merit and the notified zone is the most appropriate, and the submission should be rejected;
- (d) despite there being a lack of evidence to bring across those ODP zones at this time, Council experts have acknowledged that in *some* instances, there is merit in the general type of relief being pursued, and in those instances the Council planner has recommended that the land is revisited via a variation (or plan change depending on timing), when the relevant ODP zone is reviewed;
- (e) for those particular submissions, in the meantime the notified zone be confirmed. Council acknowledges that this creates some uncertainty. In the case of those submissions seeking a rezoning from Rural to either Visitor Accommodation Sub Zone or Rural Visitor Zone, there is some certainty provided to the submitter in the meantime, in that the Council's Rural zone includes a fully discretionary activity rule for visitor accommodation provisions. In addition, if the Panel includes a recommendation in its decision to revisit any of the land at issue, this will subsequently form part of the Council's decision. Although

the Panel and that decision cannot bind the Council to initiate such a variation, it is a strong message to the public that the Council will follow that process forward into subsequent stages of the review.

## **11. SCOPE**

**11.1** In the sections to come, these legal submissions address a number of submissions where legal issues of scope have arisen. It is anticipated that further matters relating to scope may arise during the course of the hearing, and Council reserves its right to address these through its legal right of reply, if necessary. The legal submissions as to scope are set out in **Appendix 4**.

## **12. MATTERS COMMON ACROSS GEOGRAPHIC AREAS**

### **QAC (433 / FS1340) opposition to ASAN inside Outer Control Boundary**

**12.1** QAC and Council are aligned in terms of opposing the intensification of Activities Sensitive to Aircraft Noise (**ASAN**) within the Outer Control Boundary.<sup>31</sup>

**12.2** However, it appears that there is a residual difference between the two parties on this point in that QAC is comfortable with any zoning for a site, provided that the zone includes site-specific rules prohibiting ASAN. In the Council's view, applying site-specific rules without regard to the purpose and objectives of the zone (for example, site-specific rules preventing residential activity within a mixed use zone) could result in rules that are inconsistent with the purpose of that zone. The Council's position is that the zone itself needs to be appropriate for the site, in addition to any site-specific rules.

### **QAC opposition to rezonings outside Outer Control Boundary (OCB)**

**12.3** Mr Kyle's evidence<sup>32</sup> for QAC is that a number of rezoning requests that seek to enable the intensification of ASAN within an area beyond

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31 Rebuttal Evidence of Kim Banks dated 7 July 2017 at paragraph 4.8.

the OCB as identified by Mr Day<sup>33</sup> should be rejected. The position of QAC is understood to be, generally, that the proposed rezonings would result in the intensification of ASAN establishing within close proximity to Queenstown Airport, this has the potential to give rise to an increased risk of reverse sensitivity which could result in the future curtailment of activities at the Airport, that such proposals would likely lead to residential development in locations where levels of amenity are compromised, and will increasingly become so as aircraft operations at the airport increase over time.<sup>34</sup>

**12.4** I refer you to Ms Banks' rebuttal evidence for the Council's position in opposition to QAC's view, as follows:<sup>35</sup>

- (a) the PDP reply chapters reflect, and should reflect, the outcomes of PC35;
- (b) the air noise boundaries were established through PC35 and QAC has not sought to revise them;
- (c) expert conferencing was undertaken during Stream 1B, before Council reached its reply position on Chapters 3 and 4;
- (d) the airport is not given primacy within Chapter 3; and
- (e) therefore, land outside the OCB is in principle appropriate for urban development.

**12.5** The PC35 hearings and appeals process has been extensive, and through that process QAC strongly supported the prohibition of ASAN within the OCB. Council's view is that PC35 has provided for the appropriate protection of the Airport, and it appears that QAC are essentially coming back for a second cut at the cherry. It is not considered appropriate or necessary for the PDP to go beyond PC35 as QAC now seeks, particularly where QAC are not pursuing an amendment to its OCB.

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32 Evidence of John Kyle dated 9 June 2017 at paragraph 11.3.

33 Evidence of Christopher Day dated 9 June 2017 at paragraphs 82-86 and Appendix D.

34 For example, Rebuttal Evidence of John Kyle regarding Middleton Family Trust, at paragraph 2.2.

35 Rebuttal Evidence of Kim Banks dated 7 July 2017 at paragraphs 4.8-4.15.

**13. 1A: QUEENSTOWN URBAN – BUSINESS AND INDUSTRIAL**

**Skyline Enterprises Limited (Skyline) (574)**

- 13.1** Skyline seek the establishment of a new Commercial Tourism and Recreation Sub-Zone (**CTRSZ**), which would encompass the facilities operated by Skyline on Bob's Peak, and in areas would extend further than those operations. The area is zoned Rural (and Queenstown Town Centre) in the PDP, is an ONL, is within two designated recreation reserves and is within the Ben Lomond and Queenstown Hill Reserve Management Plan 2005, which must be had regard to.
- 13.2** The Council's concerns as to the proposed CTRSZ are outlined in Ms Evans' evidence in full, and the concerns set out in Ziptrek's legal submissions of 14 July are adopted.
- 13.3** Of note, and in addition to two jurisdictional issues, Council remains of the view that Skyline have not provided sufficient information or assessment on the CTRSZ to support the relief it seeks. This means that the Council (and submitters) have not been able to examine the potential effects of the proposal as it is unclear what level and nature of further development Skyline proposes within the Ben Lomond Reserve, what level of increased patronage and built development the CTRSZ might deliver, what effects this future development is expected to have, and how these effects are proposed to be avoided, remedied or mitigated. For example, traffic effects have not been adequately addressed in order to properly assess effects on the transport network. The requirements of section 32 have not been met.
- 13.4** Mr Brown in his rebuttal evidence for Ziptrek also observes that the scale of the proposed CTRSZ is considerably larger than the gondola upgrade for which Skyline have sought resource consent.<sup>36</sup> In relation to Council's Ben Lomond and Queenstown Hill Reserve Management Plan 2005 (**RMP**),<sup>37</sup> Counsel for Ziptrek has confirmed that "shall have regard to" means that the RMP must be given material consideration but the plan does not necessary need to be

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<sup>36</sup> Currently before the Environment Court (ENV-2016-CHC-107).

<sup>37</sup> Prepared under the Reserves Act 1977.

followed, and submits that the RMP is highly relevant and should be given weight. Mr Brown's evidence is the RMP does not anticipate the scale of development in the proposed CTRSZ, and this has not been assessed by Skyline. This is submitted to be another gap in Mr Dent's evidence.

- 13.5** Mr Dent's evidence gives rise to two issues of jurisdiction. First, Mr Dent's evidence supports revised CTRSZ boundaries. He states<sup>38</sup> that the lower terminal and the top terminal areas have been extended, but that the proposed alterations are within scope because they are a clarification of boundaries rather than introducing significantly greater areas. Mr Dent considers that no parties are prejudiced by the changes.
- 13.6** The effect of the proposed amended boundaries would be to include all of an area sought to be leased by Skyline for a new car park; all of the AJ Hackett Bungy lease area; the Ziptrek top tree house platform; and all of the existing access track within the Ben Lomond Recreation Reserve used for access to the top luge chairlift terminal. It is unclear what proportion of those areas was included in the submission version of the CTRSZ, given the scale of the proposed CTRSZ, and without seeing the new proposed boundaries overlaid on the primary submission.<sup>39</sup> On the information and plans provided, it is not possible to determine whether the changes sought in Mr Dent's evidence are within scope, and Council invites Skyline to provide further information during the presentation of its case. I note also that Dr Read considers it would be necessary to either move the proposed boundary, or impose a no-build area, in an area adjacent to the lower reaches of the existing luge chairlift.<sup>40</sup>
- 13.7** Second, after the Council in its s42A identified a gap in the primary submission's relief as to how the proposed CTRSZ could sit over the Queenstown Town Centre zone, Mr Dent's evidence<sup>41</sup> is that the lower terminal site needs to be rezoned from Queenstown Town Centre to Rural, so that the CTRSZ provisions can apply to this site.

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38 At paragraphs 25-26.

39 Rebuttal Evidence, Ruth Evans, at paragraph 73.

40 Rebuttal evidence of Dr Read dated 7 July 2017 at paragraph 4.6. See also the plan in Attachment 1 to Dr Read's rebuttal.

41 At paragraphs 30-31.

Skyline's primary submission did not seek to change the underlying zone for the lower terminal and the Council maintains its position that there is no scope to seek rezoning of the lower terminal site to Rural; that is not a reasonably foreseeable consequence of the submission, as changing that underlying zoning is not mentioned at all in the submission. It is accepted however that the submission sought that the sub zone apply over that area of land, and there is likely scope to insert the sub zone into the Queenstown Town Centre zone, but there would need to be additional objectives and policies to meet the various statutory tests.

*Council's reliance on right of reply position*

- 13.8** Council has used its recommended right of reply position on the strategic chapters and other PDP chapters heard in previous hearing streams, as its "position" in order to make recommendations on the most appropriate zone for the areas under consideration.
- 13.9** In Mr Dent's planning evidence for Skyline, he states he has received legal advice that the Council's Rights of Reply are not binding, and he considers the most appropriate assessment is one that addresses the notified provisions.
- 13.10** As noted in legal submissions for Hearing Stream 11<sup>42</sup> in response to this same assertion by Mr Dent, the Council accepts that the Reply recommendations are not binding. However, the Council's position takes into account the evidence that has been filed by both the Council and submitters during previous hearing streams. The Reply recommendations represent Council's current position, and it is both logical, efficient and the best approach for Council's experts to refer to and rely on Council's most up to date position.

**Glenda Drive - Schist Holdings Limited and BNZL Properties Limited (488)**

- 13.11** Schist Holdings Limited and BNZL Properties Limited (488) made a single submission in relation to two sites at Glenda Drive. Part of the Schist Holdings site was notified part Rural in Stage 1 and the rest of

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42 Legal Submissions on behalf of QLDC (Hearing Stream 11) dated 4 May 2017, at paragraphs 6.1 - 6.5.

the site is ODP Industrial A. The BNZL site is all notified Rural. The submission opposed the industrial zoning (not notified in Stage 1) and sought Business Mixed Use Zone (**BMUZ**) over the whole of both sites.

**13.12** Ms Evans has recommended rejecting all of the rezoning sought. In making this recommendation, she did consider the ODP Industrial A portion of the Schist site. In her view BMUZ would result in a level of intensification that is inconsistent with the majority of the Glenda Drive industrial area. She also considers that applying BMUZ to a small portion of land that is part of a wider industrial area and contains industrial uses would be an inconsistent zoning approach.

#### **14. 1B: QUEENSTOWN URBAN – FRANKTON AND SOUTH**

##### **Land between Hansen Road and the Quail Rise Special Zone**

**14.1** Ms Banks has assessed the rezoning submissions in this area from a strategic point of view, considering the overall scope of relief (discussed further below), and the constraints on development in this area, including Dr Read's evidence on the ONL, OCB, and the national grid and substation. Ms Banks has also considered the potential traffic effects of the rezonings sought, and the possible economic risks of additional commercial zoning in this location.

**14.2** In Ms Banks' view, some urban development is appropriate and she has recommended that part of the land<sup>43</sup> be rezoned High Density Residential, and that part of the land<sup>44</sup> should remain Rural as notified.

##### *Approach to scope*

**14.3** A number of rezoning submissions were made on an area of land between Hansen Road and the Quail Rise Special Zone (referred to in Ms Kimberley Banks' evidence as "Hansen Road/Frankton-Ladies Mile" and including what is described in some evidence as the

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43 From Section 133 Frankton-Ladies Mile Highway (Sec 133 Blk 1 Shotover SD) to Ferry Hill Drive.

44 Between Hansen Road and the Hawthorne Drive roundabout.

Frankton MDR). Across the wider area, the notified zones range from Rural to MDR.

- 14.4** Some of these submissions sought residential zoning while others sought commercial/ industrial rezoning. A number of submissions also focus on lack of infrastructure and transport connections. The OCB covers part of the area and therefore QAC opposes any ASAN within this specific area. The overall scope ranges from Industrial to Rural, with all levels of residential and commercial zoning in between.<sup>45</sup> Because of the complexity of the area, Ms Banks has assessed the entire area at a strategic level, and then assessed each submission individually.

#### *Traffic issues*

- 14.5** Ms Wendy Banks has raised a number of concerns around traffic issues and was only prepared to accept a limited amount of mixed use development (or residential that fell within the same anticipated traffic generation). Mr Sizemore for the Transport Agency has subsequently provided evidence that the proposed upgrades on State Highway 6 are not designed to cater for large increases in traffic volumes that would be associated with significant areas of intensified commercial or industrial activity. Based on the Transport Agency's evidence, Ms W Banks agrees that a residential zoning from Hansen Road to Ferry Hill Drive would be more appropriate.<sup>46</sup> The Council and the Transport Agency are therefore aligned in terms of supporting a residential (rather than BMUZ or Industrial) zoning in this area.
- 14.6** The Council points the Panel towards Mr Sizemore's rebuttal evidence (for the Agency) of Mr Carr's transport evidence for five submitters.<sup>47</sup> Mr Carr has disagreed with Ms W Banks' concerns that development of the land as BMUZ would lead to adverse effects on the State Highway 6 / Hawthorne Drive roundabout. Mr Sizemore's rebuttal evidence for the Agency is that Mr Carr's analysis used a number of assumptions with regard to traffic generation and possible direction of travel from the proposed BMUZ, that there remains a significant uncertainty between those assumptions, and what may

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<sup>45</sup> At paragraph 4.3.

<sup>46</sup> Rebuttal evidence of Ms Wendy Banks dated 7 July 2017 at paragraphs 4.16-4.17.

<sup>47</sup> 177, 399, 751, 847 and 717.

eventuate in practice, and that although Mr Carr had used the projected traffic volumes for 2025, it would be prudent to consider a longer timeframe of 30 years instead.

- 14.7** Further, with regard to Mr Carr's suggestion of adding a third lane to the State Highway 6 / Hawthorne Drive roundabout, Mr Sizemore confirms that the Agency has no plans to increase the capacity of the roundabout in this way and does not generally favour three-lane roundabouts. It is submitted to not be a valid measure for mitigating the Council and Agency's concerns.

### **Wakatipu Basin Land Use Planning Study (WBLUPS)**

- 14.8** The Wakatipu Basin area is subject to a specific land use planning study that was commissioned by Council in response to a Panel Minute dated 1 July 2016. As noted in Ms Banks' strategic s42, it is likely that the development of a planning framework for all or least some of the Wakatipu Basin will require a variation to the PDP.
- 14.9** A number of submissions made on land in the vicinity of the WBLUPS at Lake Johnson / Tucker Beach have been allocated to Hearing Stream 13. These submissions are partly located within, and partly located outside of the area covered by the Wakatipu Basin Land Use Planning Study, and are listed at paragraphs 2.12-2.13 of Ms Banks' strategic s42A.
- 14.10** The evaluation in this hearing stream has regard to the findings of this study. In particular, the landscape evidence of Dr Read refers to the WBLUPS findings on an area of 94.5 ha to the north of Lake Johnson, where submission 338 seeks rezoning from Rural to LDR and Rural Residential. Ms Banks has recommended rejecting this rezoning due to concerns about servicing and hazards. There is no certainty at this point in time as to whether this land will be included in the Wakatipu Basin variation, or not. No recommendations have been made by Council officers to Council at this time.

**15. 1C: QUEENSTOWN URBAN – CENTRAL, WEST AND ARTHURS POINT**

**Mount Crystal Limited (150)**

**15.1** The submitter sought rezoning from LDR to part MDR (over the northern half of site, being 1.24 ha) and part HDR (over the southern half of site, being 1.49 ha). Alternatively, the submitter sought that the whole site be rezoned MDR. Mr Dent's planning evidence now abandons the split zoning and seeks all HDR instead. Mr Dent asserts at his paragraphs 21-24 that there is scope because geotechnical constraints on the site mean that the potential buildable area for HDR is limited to 1.27ha.

**15.2** The Council accepts that it is a reasonably foreseeable outcome that 1.49 ha of HDR could be provided for within the relief sought, and the amended relief in essence spreads that higher density development over the wider site. However, if that logic is to be followed, the submitter would presumably accept a restriction of development in terms of the amount of overall HDR development on the overall site. In any event, Ms Devlin in her rebuttal has recommended rejecting the HDR and rezoning the entire site MDR. She considered that HDR would be out of character in this location and would not meet the objectives of Chapter 9 (in particular Objective 9.2.1) which support higher density zoning in close proximity to the town centre. She also relied on Ms W Banks' evidence that the distance between the site and the town centre makes it unsuitable for HDR.

**P J & G H Hensman and Southern Lakes Holdings (543)**

**15.3** The site on the northern side of the Frankton Arm was notified as LDR with a VA Sub Zone over the south west portion. The submitter supported the VA Sub Zone, albeit with concerns about the lack of any associated text provisions, and sought HDR over the remainder of the site outside the VA sub zone. The LDR under the VA Sub Zone was not challenged. In December 2016, proposed planning map 37 was amended to remove the VA Sub Zone, which was shown on the Plan Maps legend as an ODP annotation.

- 15.4** Mr Walsh's planning evidence asserts that because the VA Sub Zone (an ODP annotation) has been removed from the map, the rezoning request now extends over the entire site. Mr Walsh's evidence seeks HDR zoning for the entire site, or alternatively MDR.<sup>48</sup>
- 15.5** The Council's view is that there is no scope in the primary submission to seek HDR or MDR over the entire site. A potential further submitter would not have foreseen that the entire site might be rezoned as a result of the submission. Further, the primary submission raised a concern that there were no text provisions for the ODP VA Sub Zone, and therefore had no certainty as to what provisions, and rules that it anticipated were regulated by the sub zone.

#### **Allium Trustees Limited (718)**

- 15.6** Ms Devlin in her s42A report recommended rejecting the rezoning sought in the primary submission located at 11 Belfast Terrace at 2, 4 and 6 Manchester Place, from LDR to HDR. The planning evidence of Ms Leith then sought rezoning to the lower density MDR, and Ms Devlin in her rebuttal has recommended accepting this rezoning. There is clearly scope for the MDR zone, as it lies between the notified LDR and the requested HDR.
- 15.7** However, Ms Leith has also asserted that there is scope through submission 718 (and 391) to rezone the entire LDR portion of Queenstown Hill to MDR. Although not a material point, submission 391 provides such scope, but 718 does not, as it was specific to the sites owned by the submitter. Ms Devlin recommended rejection of the rezoning sought by submission 391, not due to any scope issues, but because she considers the land is generally well suited for Low Density Residential development, is not close enough to the town centre to be suitable for higher densities, and cannot be accommodated by existing infrastructure capacity.

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48 Evidence of Timothy Walsh dated 9 June 2017, at paragraphs 14-15, 56 and 64-65.

**16. 1D: QUEENSTOWN URBAN – JACKS POINT EXTENSION**

**Jardine Family Trust and Remarkables Station Limited (715)**

**16.1** In the absence of sufficient evidence from Jardine relating to wastewater disposal and the transportation effects of significantly increasing the development capacity of Homestead Bay (including new accesses to the State Highway), Ms Jones for the Council has only recommended a small re-zoning of Rural land to Jacks Point Zone (**JPZ**) and minor changes to the Structure Plan and provisions.

*Jacks Point Residents and Owners Association (JPROA) (765 / FS1277)*

**16.2** JPROA supported Jardine (715) in their further submission,<sup>49</sup> subject to "*refinements to the JPZ Structure Plan*" and provisions in the JPZ to provide for protection of landscape and amenity values "*including landscape protection areas, a sensitively designed marina village, additional water transport connections, sensitively designed and limited residential and other activities that complement and do not adversely affect or detract from the wider JPZ activity areas, staged development and overall integration of the Homestead Bay Activity Area with the JPZ.*"

**16.3** JPROA sought leave to present late evidence, and counsel for JPROA has asserted that the matters raised in that evidence were all raised in the wording of the further submission, and that the further submission addresses infrastructure and servicing, the road network, landscape and amenity, and the Skydive airstrip.<sup>50</sup> The Council accepts that the breadth of JPROA's further submission creates scope for JPROA to bring evidence (albeit late) of the nature filed.

**16.4** Mr Ferguson's evidence outlines the JPROA's four key concerns, as follows:

- (a) the potential increase in traffic from Homestead Bay through Jacks Point and integration with the JPZ roading network;

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<sup>49</sup> The further submission also supported or opposed a number of other submissions, the majority of which related to the JPZ (361, 632, 855, 789, 425, 383, 540, 547, 195, 762, and 856).

<sup>50</sup> Memorandum of Counsel for JPROA dated 7 July 2017 at paragraphs 20-22.

- (b) integration and capacity of new (private) infrastructure with the existing JPZ infrastructure, and the water quality, landscape and visual effects of new infrastructure, including a potential new water reservoir on Jacks Point;
- (c) visual effects from the State Highway along the Homestead Bay portion; and
- (d) the inclusion and integration of the Skydive Airstrip into the JPZ and more particularly within the OSL Activity Area on the Structure Plan, together with identification of vehicle access.

**16.5** Council's position is generally aligned with the concerns set out by Mr Ferguson. However, Ms Jones has been clear that if Jardine is able to demonstrate at the hearing that the expansion and intensification as sought can be serviced and traffic effects avoided or mitigated, then she will consider recommending the provisional recommendations outlined in her Evidence in Chief, with some modifications to address some concerns raised in submitter evidence.

## **17. 2: RURAL**

### **Queenstown Park Limited (806)**

**17.1** Queenstown Park Limited (**QPL**) have sought a new Queenstown Park Special Zone (**QPSZ**), including a gondola corridor which would extend from the ODP Remarkables Park Zone in Frankton along the Kawarau River and then up to the Remarkables ski field. Mr Buxton in his s42A report and rebuttal has recommended rejecting the submission, principally because he considers the proposed rezoning would have significant adverse landscape effects. Ms Mellisop's landscape evidence will be called by the Council on Monday 4 September.

#### *Use of further submission*

**17.2** The map provided with the primary submission showed the general location of the proposed gondola corridor, but was lacking in detail and had no scale. A further submission (FS1371) by Remarkables

Park Limited (**RPL**) and QPL then sought that consideration should be given to either rezoning the corridor or another mechanism such as an overlay. That further submission included a plan with an amendment to the gondola corridor alignment. This raises an issue around the use of a further submission to alter the original submission.

- 17.3** Further submissions may only be made in support of, or opposition to, submissions already made.<sup>51</sup> For this reason a further submission cannot extend the scope of the original submission and can only seek allowance or disallowance in whole or part of the original submissions.<sup>52</sup>
- 17.4** Counsel for RPL and QPL has acknowledged in submissions at paragraph 4.9 that a further submission is limited to opposing or supporting a proposal, however further submits that the only aspect of FS1371 that could be considered new was the "relatively minor increases in the width of the corridor near Lake Hayes and within QPL's land." Counsel for RPL and QPL submits that while this may be beyond the scope of a further submission, it is within the scope of decisions available to the Panel.
- 17.5** Simply, Council does not accept that a further submission can extend the scope of a primary submission. But, in this instance, Council accepts that the modifications proposed to the gondola corridor in the further submission are within the wider proposed QPSZ foreshadowed in the primary submissions, which was delineated in the primary submission. Council is not opposed to the minor amendment to the gondola corridor itself, and in fact this information could have been brought via evidence or provided to the Council in advance of the hearing, in any event. It is accepted to be refinement of relief and that no natural justice issues arise.

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51 RMA, Schedule 1, clause 8(2).

52 *Offenberger v Masterton District Council* W053/96, 16 May 1996; *Kitewaho Bush Reserve Company Ltd v Auckland Regional Council* [2003] NZRMA 544.

### *Comprehensive Development Plans*

- 17.6** Counsel for RPL and QPL has also addressed the use of Comprehensive Development Plans (**CDP**) within the proposed QPSZ, and those submissions are accepted.
- 17.7** In this instance Mr Buxton has recommended rejecting the submission on other grounds.

### *Location of base terminal in ODP Remarkables Park Zone*

- 17.8** One of the base terminals for the proposed gondola overlay is located over the ODP Remarkables Park Zone. As noted earlier in these submissions at paragraphs 8.1-8.4, the Panel has expressed its view that it considers that it does not have jurisdiction over this area of land, and therefore logically there is no scope for the Panel to make decisions on this part of the overlay. Counsel anticipates that QPL would have considered the ODP Remarkables Park Zone, and provision for the gondola under those provisions.

### **Loch Linnhe (447)**

- 17.9** Through Mr Ben Espie's evidence Loch Linnhe amended the area it has sought to be either rezoned to a Farm Base Area or a Rural Visitor zone. Mr Buxton has addressed the revised area on its merits in his rebuttal evidence. However, the revised area goes beyond the area of land identified in the maps attached to Loch Linnhe's original submission and therefore a jurisdictional issue is raised.
- 17.10** At the time of filing these submissions, no legal submissions supporting the scope of the revised relief have been provided. If such submissions are provided during the hearing, these will be considered in Council's right of reply.

### **Gibbston Valley Station Limited (827)**

- 17.11** Gibbston Valley Station Limited has requested that its properties be rezoned from Rural and Gibbston Character Zone, to a subzone providing for a range of uses including residential, viticulture,

commercial, visitor accommodation, and commercial recreation. Mr Buxton in his s42A report has recommended rejecting the rezoning, on the basis that it would allow a significant increase from the already consented development on the site, and would create urbanisation that would erode the distinctive character of the Gibbston Valley.

**17.12** Mr Buxton maintains that recommendation, noting that it was unclear what the proposed subzone would provide for, and how the proposed rules would fit with the PDP Gibbston Character Zone. Mr Buxton considered that the proposed subzone goes beyond being complementary to the Gibbston Character Zone and will create development where the rural landscape will become less dominant, and possibly the lesser element within the subzone.<sup>53</sup> Council's expert landscape witness, Dr Read, is also opposed to the rezoning, because the proposed provisions are too broad and uncertain to ensure that the development as portrayed in the submitter's evidence would be realised without adverse effects on the broader landscape or visual amenity.<sup>54</sup>

**17.13** In Mr Buxton's s42A report, he noted that the proposal includes an Outline Development Plan that would be a restricted discretionary activity, and that this could give rise to *vires* issues. The Council refers to Mr Young's submissions on authority for Comprehensive Development Plans. Provided they are appropriately drafted, and the consent is for a specific activity rather than for the Plan itself, the mechanism can be *vires*. In this instance the submission of Gibbston Valley Station is recommended to be rejected on other grounds.

*Additional material provided after evidence exchange*

**17.14** The submitter provided additional material (an amended Structure Plan, and amended proposed changes to Chapters 23 and 27) two days before the commencement of the hearing. I note that the submitter was granted an extension of time for filing legal submissions,<sup>55</sup> but as far as I am aware has not sought or received leave to file amended evidence, nor do the legal submissions address

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53 At paragraph 5.19.

54 Rebuttal Evidence of Marion Read dated 7 July 2017 at paragraph 8.49.

55 Panel Minute dated 15 July 2017.

whether there is scope to amend the primary submission in this way. The Council anticipates that counsel for the submitter will address this at the hearing.

- 17.15** In addition, the 19 July 2017 submissions address the 2008 consent. Council reserves its position as to whether the 2008 consent should be considered as part of the existing environment, given the legal submissions suggest (for example at 11 and 12 that the consent will not be implemented.

*Relevance of NPS-UDC*

- 17.16** A memorandum dated 30 June 2017 was filed on behalf of the submitter, seeking clarification from the Panel in relation to whether Ms Banks' supplementary evidence regarding dwelling capacity had any bearing on the Gibbston Valley Station submission. The legal submissions for the submitter assert that this is a point to be set aside and that Ms Banks' reference to the Gibbston Character Zone appears to be an oversight.

- 17.17** This matter has generally been addressed in Ms Banks' dwelling capacity evidence and also in her evidence summary, where she explains what the development capacity is, both within the 'urban environment' and within the Queenstown ward more generally. As set out earlier in these submissions, the NPS includes a general direction that the application of the policies is not limited to the boundaries of the urban environment only, but it is acknowledged that the Gibbston Character Zone, is not one that sits within the 'urban environment'.

**Marc Scaife (811)**

- 17.18** Mr Scaife sought the removal of the proposed Stage 1 Visitor Accommodation Sub Zone over Matakauri Lodge, which was also notified as Rural Lifestyle zone. Mr Buxton rejected this submission in section 14 of his Evidence in Chief. In that evidence Mr Buxton

notes that in Hearing Stream 2 Mr Scaife made the following statement.<sup>56</sup>

*There are only two options that might alleviate the zoning problem at Matakauri. One is for the council to place a Consent Notice on the ML title to clarify to the current and any future owners that no further development on the site can be consented given the underlying RL zoning. The other, is to acknowledge that the character of Matakauri and its immediate surrounding area has been irredeemably altered by the development at Matakauri compared to what is anticipated in a RL zone, and to thus rezone this area in its entirety.*

**17.19** Mr Buxton considers the first option inappropriate as it would effectively make any further development on the site a prohibited activity.<sup>57</sup> The second option is assumed to result in rezoning the immediate surroundings of Matakauri Lodge to Visitor Accommodation Sub Zone. This is submitted to be beyond the scope of the original submission, which only opposed the Matakauri Lodge Visitor Accommodation Sub Zone.

## **18. WITNESSES**

**18.1** The Council will call the following evidence, the order of which is set out in a memorandum of counsel dated 20 July 2017:

- (a) Denis Mander (Transport – Group 2);
- (b) Wendy Banks (Transport – Groups 1A, 1B, 1C, 1D);
- (c) Dr Marion Read (Landscape);
- (d) Helen Mellisop (Landscape – Submissions 806 and 807);
- (e) Glenn Davis (Ecology);
- (f) Ulrich Glasner (Infrastructure);
- (g) Tim Heath (Commercial Land Requirements);
- (h) Phil Osborne (Commercial Office and Industrial Land, and Dwelling Capacity);
- (i) Kim Banks (Planning – Strategic, dwelling capacity and Group 1B);
- (j) Ruth Evans (Planning – Group 1A);
- (k) Rosalind Devlin (Planning – Group 1C);

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<sup>56</sup> Mr Scaife's statement is cited at paragraph 14.18 of Mr Buxton's s42A report for Group 2: Rural dated 24 May 2017.

<sup>57</sup> Section 42A Report / Statement of Evidence of Robert Buxton on behalf of Queenstown Lakes District Council, Group 2 Rural, dated 24 May 2017 at paragraph 14.19.

- (l) Vicki Jones (Planning – Group 1D); and
- (m) Robert Buxton (Planning – Group 2).

**18.2** Two of Council's experts will be called on Monday 4 September, being:

- (a) Timothy Heath, in relation to commercial land requirements; and
- (b) Helen Mellsop, in relation to the location of the Outstanding Natural Landscape (**ONL**) boundary on the north-west side of The Remarkables Range, and the landscape effects of a rezoning request on the northern side of The Remarkables/Ben Cruachan ranges.

**18.3** In addition, evidence has been filed by Stephen Chiles (Acoustics), Walter Clarke (Growth Projections), Kelvin Lloyd (Ecology - Submission 361), and Charlie Watts (Geotechnical Engineering). The Panel confirmed in a Minute dated 21 July 2017 that it has no questions for these witnesses, and so they will not be attending the hearing. Evidence summaries will be tabled.

**DATED** this 20<sup>th</sup> day of July 2017



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S J Scott / H L Baillie  
Counsel for the Queenstown Lakes  
District Council

## APPENDIX 1

### *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] (bolder emphasis original)

- A. General requirements
1. A district plan (change) should be designed to **accord with**<sup>18</sup> – and assist the territorial authority to **carry out** – its functions<sup>19</sup> so as to achieve the purpose of the Act<sup>20</sup>.
  2. The district plan (change) must also be prepared **in accordance with** any regulation<sup>21</sup> (there are none at present) and any direction given by the Minister for the Environment<sup>22</sup>.
  3. When preparing its district plan (change) the territorial authority **must give effect to**<sup>23</sup> any national policy statement or New Zealand Coastal Policy Statement<sup>24</sup>.
  4. When preparing its district plan (change) the territorial authority shall:
    - (a) have regard to any proposed regional policy statement<sup>25</sup>;
    - (b) give effect to any operative regional policy statement<sup>26</sup>.
  5. In relation to regional plans:
    - (a) a district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order<sup>27</sup>; and
    - (b) **must have regard to** any proposed regional plan on any matter of regional significance etc<sup>28</sup>.
  6. When preparing its district plan (change) the territorial authority must also:
    - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations<sup>29</sup> to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities<sup>30</sup>;
    - **take in account** any relevant planning document recognised by an iwi authority<sup>31</sup>; and
    - not have regard to trade competition<sup>32</sup> or the effects of trade competition;
  7. The formal requirement that a district plan (change) must<sup>33</sup> also state its objectives, policies and the rules (if any) and may<sup>34</sup> state other matters.

- B. Objectives [section 32 test for objectives]
8. Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act<sup>35</sup>.
- C. Policies and methods (including rules) [the section 32 test for policies and rules]
9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies<sup>36</sup>;
  10. Each proposed policy or method (including each rule) is to be examined, having **regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives<sup>37</sup> of the district plan **taking into account**:
    - (i) the benefits and costs of the proposed policies and methods (including rules); and
    - (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods<sup>38</sup>; and
    - (iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances<sup>39</sup>.
- D. Rules
11. In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment<sup>40</sup>.
  12. Rules have the force of regulations<sup>41</sup>.
  13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive<sup>42</sup> than those under the Building Act 2004.
  14. There are special provisions for rules about contaminated land<sup>43</sup>.
  15. There must be no blanket rules about felling trees<sup>44</sup> in any urban environment<sup>45</sup>.
- E. Other statutes [sic]:
16. Finally territorial authorities may be required to comply with other statutes.

F. (On Appeal)

17. On appeal<sup>46</sup> the Environment Court must have regard to one additional matter – the decision of the territorial authority<sup>47</sup>.

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- 18 Section 74(1) of the Act.  
19 As described in section 31 of the Act.  
20 Sections 72 and 74(1) of the Act.  
21 Section 74(1) of the Act.  
22 Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.  
23 Section 75(3) RMA.  
24 The reference to "any regional policy statement" in the *Rosehip* list here has been deleted since it is included in (3) below which is a more logical place for it.  
25 Section 74(2)(a)(i) of the RMA.  
26 Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].  
27 Section 75(4) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].  
28 Section 74(2)(a)(ii) of the Act.  
29 Section 74(2)(b) of the Act.  
30 Section 74(2)(c) of the Act.  
31 Section 74(2A) of the Act.  
32 Section 74(3) of the Act as amended by section 58 Resource Management (Simplifying and Streamlining) Act 2009.  
33 Section 75(1) of the Act.  
34 Section 75(2) of the Act.  
35 Section 74(1) and section 32(3)(a) of the Act.  
36 Section 75(1)(b) and (c) of the Act (also section 76(1)).  
37 Section 32(3)(b) of the Act.  
38 Section 32(4) of the RMA.  
39 Section 32(3A) of the Act added by section 13(3) Resource Management Amendment Act 2005.  
40 Section 76(3) of the Act.  
41 Section 76(2) RMA.  
42 Section 76(2A) RMA.  
43 Section 76(5) RMA as added by section 47 Resource Management Amendment Act 2005 and amended in 2009.  
44 Section 76(4A) RMA as added by section 47 Resource Management Amendment Act 2005 and amended in 2009.  
45 Section 76(4B) RMA – this "Remuera rule" was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.  
46 Under section 290 and Clause 14 of the First Schedule to the Act.  
47 Section 290A RMA as added by the Resource Management Amendment Act 2005.

**APPENDIX 2**  
**FURTHER SUBMISSIONS ON PART 2 AND LEGAL TEST**

1. Prior to *King Salmon*, the 'overall judgement' approach was widely used in the context of changes to lower-order plans. Decision-makers closely considered how a plan change gave effect to Part 2. This approach required specifically assessing proposed plans or changes against the various *Colonial Vineyards* factors and the different values expressed in sections 5, including assessing the proposed plan or change against sections 6-8 of the RMA.
  
2. Subsequent decisions have considered the relevance of the *King Salmon* principle, to plan changes. The following decisions are explored in this Appendix:
  - 2.1 *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139;
  - 2.2 *Thumb Point Station Ltd v Auckland Council* [2015] NZHC 1035; and
  - 2.3 *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81.
  
3. In *Appealing Wanaka*, the Environment Court applied the *King Salmon* principle, confirming that there is a rebuttable presumption that higher order documents give effect to Part 2. The Court held that there was no need to refer to any higher order document, provided the plan (in this instance, the Queenstown Lakes Operative District Plan) was certain and not complete or invalid. The Environment Court followed a three-step process:
  - 3.1 the starting point, is *settled* higher order objectives and policies of the plan;
  - 3.2 if there is any uncertainty, illegality or incompleteness, then consider higher order document immediately above plan, and so on until the issue is cured; and
  - 3.3 also consider any new relevant higher order documents since the higher order objectives and policies of the plan became settled.
  
4. The *Thumb Point* decision is consistent with the *Appealing Wanaka* process, with the High Court concluding that there was no deficiency in the plan in that

instance, so no need to consider Part 2 and other higher order documents. Importantly however, both cases involved settled objectives and policies.

5. In relation to *Davidson*, it is submitted that this has little bearing on the Panel's decision-making in the present instance. It is a decision relating specifically to section 104 of the RMA. The substance of the High Court's decision on the application of *King Salmon* in the context of resource consent applications is outlined at paragraphs [76] – [78] of the judgment, where in summary the Court held that, notwithstanding section 104 being expressly "subject to Part 2", the *King Salmon* principle applies to section 104(1) because the relevant provisions of the planning documents have already given substance to Part 2. Leave to appeal the High Court's decision has been granted. The appeal means that the application of *King Salmon* to resource consent applications has been called into question and could potentially be overturned.<sup>58</sup> In the interim its application to the plan change context means that there is a heightened importance on settled objectives and policies given their potential impact on resource consent decision-making.

## RPS and PRPS

6. Because the PDP strategic objectives are neither established nor certain, the Panel must then consider the next higher order document immediately above the PDP, being the RPS. It remains the Council's position that the RPS, although established, is of little assistance in this regard as although the relevant objectives must be given effect, they are neither highly specific nor directive (in the *King Salmon* sense), and in any event are subject to change through its review and the PRPS decisions version. Which provisions of the RPS / PRPS need to be given effect to will be a timing issue depending upon when recommendations are made and whether PRPS provisions become operative in the meantime.

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<sup>58</sup> Some days after the *Davidson* decision was released, the Environment Court sidestepped the High Court's decision, stating in *Envirofume Ltd v Bay of Plenty Regional Council* [2017] NZEnvC 12 at [143] that "*Part 2 is still relevant ... as an overview or check that the purpose of the Act and that Part 2 issues are properly covered and clear*".

### APPENDIX 3

#### COUNCIL'S STRATEGIC APPROACH

1. Council's approach is embedded within the objectives and policies of the Strategic chapters 3-6, and the statutory framework under the Resource Management Act 1991 (**RMA**). Council's objective is to ensure urban development occurs in a logical manner that promotes a compact, well designed and integrated form, manages the cost of infrastructure, and protects the District's rural landscapes from sporadic and sprawling development.<sup>59</sup>
  
2. The strategic and integrated management of urban growth in Queenstown involves the use of an Urban Growth Boundary (**UGB**).<sup>60</sup> The intention is to enable and intensify development within those boundaries, co-ordinate and integrate development, and discourage urban development outside of them.<sup>61</sup> The Council is seeking to move towards a greater level of certainty in its growth management approach, and the use of UGBs, along with a variety of zones including housing choice within them, assists the Council in achieving the RMA's overall purpose of sustainable management. On the other hand, the finite capacity of rural areas to absorb residential development must be considered so as to protect the qualities of the District's landscapes.<sup>62</sup>
  
3. This approach is also central to the objectives and policies of the Urban Development Chapter 4, this chapter also being located within the strategic section of the PDP. That chapter addresses key urban growth management issues and sets out the tools for managing the spatial location and layout of urban development. This chapter addresses the need for integrated development, provides that urban development be integrated with infrastructure and services, and is undertaken in a manner that protects the environment, rural amenity and outstanding natural landscapes and features.
  
4. In light of this, one of the elements of the Council's assessment of the rezoning submissions has been the impact on infrastructure networks and ensuring that there is a coordinated and integrated provision of infrastructure within these locations. Mr Glasner's evidence for the Council is that it is much more efficient to service new developments where capacity already exists. It is not in the Council's best interest for its water and wastewater networks to extend

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59 Objective 3.2.2.1.

60 Policy 3.2.2.1.1

61 Policy 3.2.5.3.1 and Objective 4.2.3.

62 Objective 3.2.5.4

further into currently zoned rural land outside the urban limits, as this will result in increased operational, maintenance and renewal costs for QLDC over the long term.

5. Important themes in Chapter 4 are the avoidance of sporadic urban development that would adversely affect the natural environment, rural amenity or landscape values, the efficiency and functionality of infrastructure or compromise the viability of a nearby township,<sup>63</sup> a compact and integrated urban form, maximising efficiency of infrastructure operation and provision,<sup>64</sup> and specifically to Wanaka.<sup>65</sup>
  - 5.1 a distinction between urban and rural areas is maintained to protect the quality and character of the environment and visual amenity;
  - 5.2 ad hoc development of rural land is avoided;
  - 5.3 ONLs and ONFs are protected from encroachment by urban development;
  - 5.4 development supports increased density through greenfield and infill development, in appropriate locations, to avoid sprawling into surrounding rural areas; and
  - 5.5 rural land outside of the UGB is not developed until further investigations indicate that more land is needed to meet demand.
  
6. In addition, Chapter 6 Landscapes balances Chapter 4 Urban Development in order to ensure that the qualities of our landscapes are protected. The Landscape chapter expands Strategic Objective 3.2.5.1, which seeks to protect the ONLs and ONFs from inappropriate subdivision, use and development. The Chapter provides a more detailed policy framework to recognise the significant conservation, economic and intrinsic value the landscape has to the District.
  
7. In order to provide certainty as to the importance of the landscapes to the District, they are categorised as ONLs or ONFs, which are matters of national importance. The rest of the Rural Zone, which is not classified as an ONL or ONF, is classified as Rural Landscape (**RLC**), which has varying types of landscape character and amenity values. Specific policy and assessment

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63 Policy 4.2.1.6.

64 Objective 4.2.3.

65 Policies 4.2.8.1 and 4.2.8.2.

matters are provided to manage the potential effects of subdivision and development in these locations.

- 8.** Rural Chapter 21 develops detailed policies that relate to the relevant Goals and Strategic Direction objectives outlined in Chapter 3 of the PDP. The policies seek to ensure that growth can be accommodated in a sustainable way that does not have significant impacts on the natural values that draw people to the area, and drive the local economy.
- 9.** The Rural chapter also expands on Strategic Objective 3.2.5.1 and the Landscape chapter, by providing detailed landscape assessment matters for the three landscape classifications.

## APPENDIX 4

### CASE LAW SUPPORTING THE COUNCIL'S POSITION RELATING TO THE INFRASTRUCTURE AND TRANSPORT EVIDENCE

1. In *Foreworld Developments Ltd v Napier City Council*<sup>66</sup> the Environment Court held that it is contrary to the purpose of the Act to zone land for an activity, when the necessary infrastructure to allow that activity to occur without adverse environmental effects does not exist and there is no commitment to provide it. In coming to that conclusion, the Court noted that under the operative plan, parts of the subject land were zoned 'deferred residential', which meant that residential use was deferred pending the availability of adequate infrastructure, and in the Court's view, the deferred zoning "*appears to have given rise to expectations that were not fulfilled and probably will not be for some time, if at all*".<sup>67</sup>
2. Also of note in that decision is paragraph [20], which is quoted below for convenience:

*It does not answer the point to say, as Mr Peterson does, that if there is some form of deferred zoning, issues about the provision of infrastructure for more intensive levels of development can be considered as part of any necessary resource consent application. If there is a deferred zoning, by whatever name, and no intention on the part of the Council to provide infrastructure within the life of the Plan, the problems identified in McIntyre v Tasman District Council immediately emerge. Unmeetable expectations are raised and the Council is put under pressure to spend money it has decided, as a matter of managing the City in an integrated fashion, to commit elsewhere. That is the antithesis of the function of integrated management of resources imposed on territorial authorities by the RMA. Mr Peterson wants, in essence, a return to the contents of the existing Plan and its provisions for the deferred zoning of parts of the settlement. The short answer to that wish is that time has moved on, and the lessons of giving land deferred zoning where there can be no commitment to providing the necessary infrastructure to be considered before more intensive zoning might be appropriate.*

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66 *Foreworld Developments Ltd v Napier City Council* EnvC Wellington W8/2005, 2 February 2005.

67 At paragraph [3].

3. The *McIntyre v Tasman District Council*<sup>68</sup> 'problems' referred to in this extract from *Foreworld* are summarised in the following extract from the *McIntyre* Case (Mr Robinson being the council's engineer):<sup>69</sup>

*We agree with Mr Robinson that in this case the extension of services such as the sewage system and roading should be carried out in a co-ordinated progression. We hold that if developments proceed on an ad hoc basis they cannot be sustainably managed by the Council – an aspect which is not commensurate with section 5 of the Act.*

4. In *McIntyre* the submitter was seeking to, through a plan change, intensify an area of land that had slope stability issues and that was not connected to the Council's sewage system. The provisions of the zone being pursued included a policy that all new residential development was to be connected to a reticulated water and sewage system.<sup>70</sup>
5. In coming to its conclusion to not accept the intensified zone, the Court held that the expense of connecting the land to the sewage system was *a very expensive exercise to expect the community to bear*.<sup>71</sup>
6. In *Prospectus Nominees v QLDC*<sup>72</sup> the Court was faced with a section 116(1) application where the appellant was seeking a determination that a resource consent could commence immediately, despite an appeal on whether the assessed monetary contribution to the sewerage system was fair and reasonable. This was all in the context of a subdivision consent objection rather than a plan change or plan review. Of relevance is that Judge Jackson accepted that there are at least two stages where a council may refuse to promote a private person's wishes on grounds of expense to the public purpose and the ratepayers. The first is was explicitly, that it was open to QLDC to have refused the plan change<sup>73</sup> promoted by the applicant on the grounds that it would cause unnecessary expense to the ratepayers. However unfortunately QLDC did not oppose the plan change at that time, instead

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68 *McIntyre v Tasman District Council* Planning Tribunal Nelson W083/94, 2 September 1994.

69 At page 17.

70 The Council notes that only a reticulated water supply was required for land with a proposed Sub-Area A Restricted notation. While the submitter's land was notified with this notation, the Court held that the Sub-Area A Restricted notation could not stand on the subject site (page 17). Therefore, the key issue discussed by the Court was *if we allow the appeal, any new residential subdivision on the McIntyre property should be connected to a sewerage system before the subdivision takes place* (page 13).

71 At page 17.

72 *Prospectus Nominees v Queenstown Lakes District Council* EnvC Christchurch C074/97, 17 July 1997.

73 The zoning of the land was considered and confirmed through *Bell v Central Otago District Council* EnvC Christchurch C04/97, 24 January 1997.

allowing the plan change whereby residential development became a non-notifiable controlled activity, creating the issues that were being addressed in the Court's judgment.

7. Another example within the District, again a subdivision consent appeal (also directly relevant to water infrastructure), is *Willowridge Developments Limited v Queenstown Lakes District Council* [1996] NZRMA 488, where the Planning Tribunal stated at 496:

*It is plain that the sewerage and water services at Wanaka need upgrading and that they have been in this state for some time. It is unfortunate that the appellant's land was zoned residential ... The reality is that without the upgrading, future development such as those proposed by the appellants will not be adequately serviced.*

8. Based on the case law outlined above it is respectfully submitted that the question of capacity or even existence of any infrastructure is entirely relevant to the question of whether an urban zone is appropriate, and can and should be a decisive factor in Panel's recommendations. Whether relevant infrastructure or upgrades to existing infrastructure is planned by the Council in its LTP, which is of course reviewed every three years through a public process, is relevant, and can also be determinative, of whether the Panel should recommend approving or declining rezonings where that infrastructure is not planned. The Environment Court has clearly stated that rezoning land for urban purposes, where there is insufficient capacity, creates unmeetable expectations and is the antithesis of the function of integrated management of resources imposed on territorial authorities by the RMA. This approach is also encapsulated in the Council's 'Strategic' chapters, in particular in Chapter 4.

**APPENDIX 5**  
**LEGAL PRINCIPLES ON SCOPE**

1. The legal principles regarding scope and the Panel's powers to recommend (and subsequently the Council's power to decide) are:
  - 1.1 a submission must first, be *on* the proposed plan;<sup>74</sup> and
  - 1.2 a decision maker is limited to making changes within the scope of *the submissions made on the proposed plan*.<sup>75</sup>
  
2. The two limb approach endorsed in the case of *Palmerston North City Council v Motor Machinists Ltd*,<sup>76</sup> subject to some limitations, is relevant to the Panel's consideration of whether a submission is *on* the plan change.<sup>77</sup> The two limbs to be considered are:
  - 2.1 whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and
  - 2.2 whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.
  
3. The principles that pertain to whether certain relief is within the scope of a submitter's submission can be summarised as follows:
  - 3.1 the paramount test is whether or not amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP. This will usually be a question of degree to be judged by the terms of the PDP and the content of submissions;<sup>78</sup>
  - 3.2 another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought in a

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74 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7.

75 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

76 [2014] NZRMA 519.

77 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at paragraph 7.3-7.12.

78 *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 166.

submission; the scope to change a plan is not limited by the words of the submission;<sup>79</sup>

**3.3** ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter;<sup>80</sup>

**3.4** scope is an issue to be considered by the Panel both individually and collectively. There is no doubt that the Panel is able to rely on "collective scope". As to whether submitters are also able to avail themselves of the concept is less clear. However, to the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief. there is no legal constraint on them producing evidence that goes beyond the relief they have addressed in their submissions or further submissions. The Panel is entitled to receive that evidence and give it weight at its discretion, provided it is within the bounds provided by "collective scope";<sup>81</sup> and

**3.5** that submitter could not gain standing to appeal a decision through collective scope, in relation to a matter that goes beyond relief sought in either their submission or a further submission.

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79 *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556, and 574-575.

80 *Ibid*, at 574.

81 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at Part 2.