QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on the Proposed District Plan

Report 16.2

Report and Recommendations of Independent Commissioners
Regarding Upper Clutha Planning Maps
Urban Wanaka and Lake Hawea

Commissioners
Trevor Robinson (Chair)
Jenny Hudson (Part)
Calum MacLeod
Ian Munro

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Attachments:
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PART A: PRELIMINARY MATTERS

1. INTRODUCTION

1. Throughout this report, and the accompanying reports relating to the Upper Clutha Planning Maps, we use the following abbreviations:

2. The urban area submissions and further submissions are centred on Wanaka and Hawea. Those in Hawea and some parts of Wanaka were in the Hearing Panel's view so strongly interrelated that the promotion of sustainable management, and the fairest means of disposing of the issues raised across the submissions, was achieved by considering them concurrently.

3. The exception is the submission of Varina Pty Ltd[1], and the related submission of Sneaky Curlew Ltd[2] which are the subject of a separate report[3], by reason of the personal conflict of Commissioner McLeod discussed in Report 16.

4. It is noted that Commissioner Hudson did not sit on the hearing of all of the submissions addressed in this report. In those cases[4], she did not participate in deliberations and has played no role in preparation of the relevant parts of this report.

5. Where the Hearing Panel has determined to group submissions and further submissions together, this will be stated in the discussion. Where submissions and further submissions have been addressed individually, this should not be taken as meaning that the Panel found that there was no interrelationship with any other submissions or further submissions, merely that an evaluation and conclusion could be arrived at without the need to concurrently do so with other submissions or further submissions.

6. Report 16 outlines a summary of the hearings, process, and deliberative approach followed by the Hearing Panel; there is no need to repeat that information in this report. In this report, individual submissions, or groups of submissions, will be addressed. Each will be identified including the land affected by the submission. A brief outline of the notified plan zone will be given along with a short summary of the relief sought. The key points given in evidence relevant to the Hearing Panel's conclusions will be traversed, as will any relevant evidence or opinion provided by the Council's advisors though the hearing process and including in the Council's right of reply. Finally, the conclusions reached by the Hearing Panel and key reasons will be outlined. As outlined in Report 16, we have not undertaken a separate section 32AA analysis – our reasoning in terms of the requirements of that section of the Act is set out in the body of this report.

7. In this report, extensive extracts from the evidence presented to the Hearing Panel will not be repeated, and reference is made to the Council's PDP website, where a full record of the hearings and information presented to the Panel is maintained.

8. Lastly, we note that we have generally referred to provisions of the PDP as notified so that submitters and further submitters are better-able to follow how we have concluded in regard

[1] Submission 591
[2] Submission 737
[3] Report 16.3
[4] These are submissions 142, 139, 790, 326, 110, 55, 729, 73, 287, 622, 619, 249, 91, 460, 709, 253, 776, 507, and 293.

to the relief they sought. However, in numerous instances, other recommendations made by the Hearing Panel in other hearings have resulted in changes being made to the notified provisions that we need to take account of. One example of how this occurred relates to the Large Lot Residential zone. As a result of Stream 6 recommendations to split the zone into Area A (minimum 2,000m2 sites) and Area B (4,000m2), we revised the construction of our recommendations to reflect that based on what outcomes we identified should apply to each parcel of LLRZ land.

9. In other cases, the recommendations of other Hearing Panels has resulted in a change of terminology. For example, where we have made reference to the notified "Low Density Residential zone", we note that as a result of the Stream 6 Hearing, this is recommended to be re-named to the "Lower Density Suburban Residential zone".

10. Therefore, where we have made a recommendation to zone land "Low Density Residential zone", it also means that should the Council accept the Stream 6 recommendations, then our recommendations would change accordingly to "Lower Density Suburban Residential zone".

11. We note that a number of submitters sought some form of visitor accommodation zone, overlay or other methods on specific areas of land. While the Council withdrew visitor accommodation provisions from the PDP, this did not prevent submitters in the Stage 1 PDP area submitting to replace or substitute them. As discussed in Report 16 more generally, for us to be able to agree that new provisions were appropriate, there was something of an onus on those submitters to provide reasonable substantiation of their requests, such as in terms of basic evaluations in terms of s32 of the Act or the identification of necessary objective-policy-method cascades, over and above simply requesting a specific outcome. Where those submitters attended the hearing and provided evidence to us, we have responded in this report. Where submitters did not attend the hearing or offer us any evidence, the requests have been rejected for the reasons outlined in Report 16.

2. RELEVANT SUBMISSIONS

12. The submissions addressed in this report are:

Wanaka

a. Beacon Point:
    i. Anzac Trust[5]
b. Kellys Flat:
    i. Iain Weir[6] and Queenstown Lakes District Council[7]
c. Kiromoko:
    i. Wanaka Central Developments Ltd[8]
d. Scurr Heights

[5] Submission 142
[6] Submission 139
[7] Submission 790, opposed by FS1019
[8] Submission 326, opposed by FS1018, FS1326, and FS1316

i. Alan Cutler[9], Willum Richards Consulting Ltd[10], Queenstown Lakes District Council[11], Infinity Investment Group Ltd[12], and Margaret Prescott[13]

e. Terranova Place:
   i. Christopher Jopson, Jacqueline Moreau, Shane Jopson[14]
f. Golf Course Road:
   i. Trustees of the Gordon Family Trust[15]
g. Cardrona Valley Road
   i. Willowridge Developments Ltd[16], JA Ledgerwood[17], Susan Meyer[18], Wanaka Lakes Health Centre[19], Aspiring Lifestyle Retirement Village[20], Stuart Ian & Melanie Kiri Agnes Pinfold & Satomi Enterprises Ltd[21]
   ii. JA Ledgerwood[22]
   iii. Satomi Enterprises Ltd[23]
h. Orchard Road/Riverbank Road:
   i. Orchard Road Holdings Ltd[24] and Jackie Redai & Others[25], and Ian Percy and Aitken Family Trust[26]
   ii. Willowridge Developments Ltd[27]
i. Anderson Road:
   i. Murray Fraser[28]
j. Studholme Rd area:
   i. Hawthenden Ltd[29], Calvin Grant & Joline Marie Scurr[30], Glenys & Barry Morgan[31], Don & Nicola Sargeson[32], AW and MK McHuchon[33], Robert & Rachel Todd[34], Joanne Young[35], and Murray Stewart Blennerhassett[36]
k. West Meadows Drive:

[9] Submission 110, opposed by FS1285
[10] Submission 55
[11] Submission 790
[12] Submission 729
[13] Submission 73
[14] Submission 287, supported by FS1008
[15] Submission 395, opposed by FS1101 and FS1212
[16] Submission 249, opposed by FS1193
[17] Submission 507, opposed by FS1193 and supported by FS1012
[18] Submission 274, supported by FS1101 and FS1212
[19] Submission 253, supported by FS1101
[20] Submission 709
[21] Submission 622, opposed by FS1193
[22] Submission562
[23] Submission 619
[24] Submission 249, opposed by FS1027 and FS1131
[25] Submission 152, opposed by FS1013 and opposed in part by FS1136
[26] Submission 725, opposed by FS1013
[27] Submission 249
[28] Submission 293
[29] Submission 776
[30] Submission 160
[31] Submission 161
[32] Submission 227
[33] Submission 253
[34] Submission 783
[35] Submission 784
[36] Submission 322, supported by FS1156 and FS 1135

i. Willowridge Developments Ltd[37], Nic Blennerhassett[38], Jon Blennerhassett[39]

l. State Highway 84:
   i. Ranch Royale Estate Ltd (ex Skeggs)[40], Winton Partners Funds Management No 2 Ltd[41]

m. UGB at Waterfall Park:
   i. Blennerhassett Family Trust[42], Murray Stewart Blennerhassett[43] , RN Macassey, M G Valentine, LD Mills & Rippon Vineyard and Winery Land Co Limited[44]

Hawea

13. Hawea Urban Area and UGB
    a. Jude Battson[45], Joel Van Riel[46], Streat Developments Ltd[47], Willowridge Developments Ltd[48], Jan Solback[49], Laura Solback[50], Hawea Community Association HCA[51], Robert Devine[52], and Gaye Robertson[53]

14. All further submissions made to the submissions listed above were also considered and will be referred to where relevant in our discussion.

PART B: WANAKA

3. BEACON POINT

ANZAC TRUST (142)

3.1 Overall Recommendation

15. Accept in part.

3.2 Summary of Reasons for Recommendation

16. Reconfiguring the Rural zone and Large Lot Residential zones on the site, and incorporating a separate recommendation from the Stream 6 Hearing Panel to provide for a 2,000m^2 minimum lot size in the Area A sub-zone of the Large Lot Residential zone, would be the most appropriate outcome for the land.

3.3 Subject of Submission

17. The submission relates to a single 1.89 hectare property at 361 Beacon Point Road, Wanaka, Lot 1 DP 325889.

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[37] Submission 249
[38] Submission 335; includes Anderson Family Trust as part successor
[39] Submission 65
[40] Submission 412: Supported by FS1012
[41] Submission 653: Supported by FS1166
[42] Submission 413
[43] Submission 322
[44] Submission 692
[45] Submission 460
[46] Submission 462, supported by FS1138 AND FS1141
[47] Submission 697, supported by FS1138 AND FS1141
[48] Submission 249
[49] Submission 816
[50] Submission 119
[51] Submission 771
[52] Submission 272
[53] Submission 188, opposed by FS1012

3.4 Outline of Relief Sought

18. The site can be seen on Planning Map 19 as being zoned a combination of Large Lot Residential zone and Rural zone within the PDP. The submitter requested that the zones be reconfigured on the site so as to facilitate a more logical shape of future lots than the PDP configuration would have enabled.

3.5 Description of site and environs

19. The site is currently occupied by a single dwelling and is otherwise vacant. It is located at a prominent point at the north-western edge of the Wanaka settlement, offering a high amenity lake-edge aspect.

3.6 The Case for Rezoning

20. The submission was premised on not increasing the net yield possible from the land. Mr Craig Barr evaluated the submission in paragraphs 4.68 – 4.76 of the "*Group 1A Wanaka Urban and Lake* Hawea" s.42A report. Mr Barr supported the relief requested on the basis that the reconfiguration proposed was more logical and would not result in a net increase in development compared with the PDP configuration. Mr Barr recommended retention of the Building Restriction Area as shown on Planning Map 19.

21. Mr Barr also recommended that the relief requested was sufficiently in accordance with the PDP s.32 analysis that no further analysis was required (although we note that his s.42A evaluation qualified as a satisfactory s.32AA analysis in any event and we have adopted it as such).

3.7 Issues

22. The sole issue we need to form a view on is the optimal distribution of land use zones on the subject site.

3.8 Discussion of Issue and Conclusions

23. Given the way in which the submission is framed, we find that our scope to consider the submission is limited to two configurations of the same zones (and Building Restriction Area), enabling the same net land use outcome to be achieved.

24. The nature of the issue the submission raises means that the higher – order provisions of the PDP are in our view of no great relevance. Certainly, Mr Barr did not refer us to any of relevance.

25. We also note that, whether we prefer the PDP configuration or that requested by the submitter, the changes recommended to the Large Lot Residential zone by the Stream 6 Hearings Panel (the Area A 2,000m^2 lot size and the Area B 4,000m^2 lot size sub-zones) would apply. In other words, an Area A 2,000m^2 minimum would apply to this site, not the 4,000m^2 that the PDP and submission, and Mr Barr's analysis, were premised on. As this would apply in either scenario, we do not consider it is material or determinative of what configuration we should prefer; given the relatively small size of the submitter's site the 2,000m^2 minimum site size requirement is not likely to result in more lots than would be the case in the equivalent PDP scenario.

26. Overall, we find that the relief sought is a pragmatic real-world refinement of the PDP that remains consistent with what the PDP enabled for the land. We support and recommend that

the submission be accepted. The recommended revised zone configuration is as shown on the revised Planning Maps.

27. Given that we agree with Mr Barr's s.42A analysis, we adopt his reasoning for the purposes of s.32AA of the Act.

4. KELLY'S FLAT

IAIN WEIR (139)
QUEENSTOWN LAKES DISTRICT COUNCIL (790)
Further Submitter: FS1019 NOEL WILLIAMS

4.1 Overall Recommendation

Accept the submissions from Iain Weir and Queenstown Lakes District Council, and reject the further submission from Noel Williams.

4.2 Summary of Reasons for Recommendation

28. The Medium Density Residential zone is a more efficient use of land that is well connected to Wanaka Town Centre and other amenities including Wanaka Primary School and Mt Aspiring College, and can be accommodated without resulting in substantially greater adverse visual or other effects than a Low Density Residential zone would. Overall, Medium Density Residential zone is the most appropriate.

4.3 Subject of submission

29. The submissions apply to Lot 2 DP 340530, a 1.8ha rear site accessed from Ironside Drive.

4.4 Outline of Relief Sought

The submissions sought that land shown on Planning Map 20 as zoned Low Density Residential be re-zoned to Medium Density Housing. A further submitter, Noel Williams, opposed the relief sought.

4.5 Description of site and environs

30. The site has an irregular shape and sits between established Low Density Residential-equivalent dwellings (east) and Wanaka Primary School (west). Kelly's Flat Recreation Reserve is located immediately to the north of the site. The site is vacant. The development of Wanaka has crept northwards around the lake edge, and has then been steadily infilling inland. In the area around Kellys Flat, Kings Drive established as a spine road between Totara Terrace / Plantation Road (west) and Anderson Road (east). The land referred to within the submission is part of a vacant 'pod' sitting between the various north-south development ribbons. Residential units on Kings Drive therefore back onto it. On the eastern side of Kings Drive, the land known as Scurr Heights has a similar context and is the subject of separate submissions.

4.6 The Case for Rezoning

31. Iain Weir and the Council have each submitted that the site is well-connected to many amenities and services, and that a higher density than notified in the PDP would be desirable. Mr Barr evaluated the submissions in paragraphs 4.77 - 4.85 of his "*Group 1A Urban Wanaka and Lake Hawea*" s.42A report. In that report, Mr Barr estimated that changing the zone from Low Density Residential to Medium Density Residential would increase the potential site yield from 27 to 49 units.

32. The Council's technical experts (landscape, infrastructure, transport and ecology) reviewed the submission and confirmed through Mr Barr's s.42A report that they had no reasons to not support the relief sought.

4.7 Discussion of Planning Framework

33. The relevant provisions of the PDP are chapters 7 and 8, and the strategic sections 3 and 4. Key themes from these chapters are summarised in Report 16 but in summary, the PDP establishes a framework to distribute, amongst others, residential-dominant land use zones of different densities from lower to higher. Lower density zones are favoured where there are environmental constraints (including existing amenity values) or the land lacks proximity to centres, employment areas or community facilities. Conversely, the higher density zones are favoured where they are close to and can support activity nodes based on using the land resource more efficiently, promoting choice, and enabling wellbeing through maximising the convenience benefits of proximity between households and the activities people need on a daily basis.

4.8 Issues

34. We have determined that the following issues must be addressed in order for us to formulate a recommendation on this submission:
    a. Is there a case for zoning the land Medium Density Residential zone?
    b. If so, would the Medium Density Residential zone be more appropriate than the Low Density Residential zone?

4.9 Discussion of Issues and Conclusions

35. The argument in favour of the re-zoning relates to the PDP's strategic policy direction for a compact, centres-based urban form that helps to relieve pressure on outward expansion. This is in turn premised on the principle that people can make more sustainable choices if they are able to connect to their daily needs and wants conveniently and directly. In this respect, the site has, in the view of the submitters, appropriate access to primary schools and a secondary school, the Kellys Flat Recreation Reserve, the Anderson Road commercial precinct, and Wanaka Town Centre.

36. The argument against the re-zoning centres on the established amenity values of the Low Density residential-equivalent densities that have developed along Kings Drive and Totara Terrace. Higher density development could, as we understand the further submission, potentially be visually disruptive and otherwise detract from what is a suburban neighbourhood defined by spaciously separated houses. Additional traffic and intensity could also create localised nuisances such as noise.

37. We find that subject to the management of adverse effects on the established residential area around the site, the Medium Density Residential zone would more appropriately implement the PDP's strategic urban form directions and is well justified.

38. Turning then to the matter of environmental effects, we find that the Medium Density Residential zone sought by the submitters would:
    a. Have its public address off Ironside Drive rather than the more prominent Kings Drive. Although Wanaka Primary School has a principal entrance from Ironside Drive, we find that the rezoned land would not prominently place a higher density development pocket where it could detract from an otherwise lower density vista. Users of Kings Drive would not be aware of the area of higher density unless they made a deliberate turn into

Ironside Drive. This results in a degree of effect avoidance by way of limited visual exposure.

b. Achieve a common-boundary building setback with the Kings Avenue properties comparable with what those existing dwellings achieve (i.e. a like-with-like situation) that is in our view inherently compatible.
c. Achieve a comparable character and grain of development, likely to involve detached dwellings or small-scale attached buildings. Were the relief requested for a High Density Residential zone, which has clear built form differences with the Low Density Residential zone, then a more obvious distinction between the 'old' and the 'new' might have been problematic in this respect. But as it stands, as find that as a fundamental matter of the PDP's structure, the Medium Density Housing zone is inherently compatible with and will not significantly detract from the character and amenity values of the Low Density Residential zone. This is why across the PDP maps, across the District, the Medium Density Residential zone directly abuts the Low Density Residential zone.
d. Not be of such a large scale that the additional density would give rise to a materially different or worsened magnitude of traffic, infrastructure noise or other adverse effects on the neighbourhood.

39. Our conclusions above have led us to agree with and accept the recommendations of the Council's advisors and to that end we adopt their analysis and conclusions, namely that or Mr Barr in his s.42A report, including for the purposes of s.32AA of the Act. We consider that no further s.32AA analysis is required.

40. Overall and on the basis that the Medium Density Residential zone would better implement the PDP's strategic policy section, will enable more people to be close to their daily-need activities, and will not result in problematic or inappropriate adverse effects, it is the most appropriate option. Because of this, we recommend that the submissions from Iain Weir and the Council be accepted and the further submission of Noel Williams be rejected.

5. KIRIMOKO

WANAKA CENTRAL DEVELOPMENTS LTD (326)

Further Submitter: FS1018 NOEL WILLIAMS
Further Submitter: FS1326 KIRIMOKO PARK RESIDENTS ASSOCIATION INC
Further Submitter: FS1316 CRESCENT INVESTMENTS LTD

5.1 Overall Recommendation

41. Accept the submission of Wanaka Central Developments Ltd in part, and accept the further submissions of Noel Williams, Crescent Investments Ltd, and Kirimoko Park Residents Association in part.

5.2 Summary of Reasons for Recommendation

42. Re-zoning Lots 9 and 10 DP 300734 from Low Density Residential zone to Medium Density Residential zone, while retaining the PDP's Building Restriction Area, will most appropriately enable efficient and high quality development outcomes while manging the potential visual and landscape effects of development.

5.3 Subject of submission

43. This submission relates to land at Lots 9 and 10 DP 300374. The site is 8.3ha in area, on the north side of the roughly horseshoe-shaped Kirimoko Drive.

5.4 Outline of Relief Sought

44. The submission sought to remove a Building Restriction Area identified in the PDP, and change the zone from Low Density Residential zone as shown on Planning Map 20 to Medium Density Residential zone. The submission was opposed by three further submitters: Noel Williams, Kirimoko Park Residents Association Inc, and Crescent Investments Ltd.

5.5 Description of site and environs:

45. The site is an elevated, undeveloped area of land with an outlook to the west over Roys Bay. The area enclosed by Kirimoko Drive has been previously intensified into Low Density Residential-equivalent density development. The outside of the horseshoe remains largely in 4ha blocks, although one (Barclay Place / Mills Rd) has also been developed to Low Density Residential-type density.

46. North of the site is the almost-completed Peninsula Bay development. North-east of the site is land known as Sticky Forest (that is the subject of Report 16.15), while to the east is a large development area enabled through Plan Change 45: Northlake. To the west are the back boundaries of Low Density Residential-equivalent sections fronting Rata Street. We note that the area has already been considerably urbanised through the number of historical 4ha lots that have been intensified into Low Density Residential-equivalent densities.

5.6 The Case for Rezoning

47. The submitter did not appear to provide evidence in support of its submission.

48. In his s.42A report "*Group 1A Urban Wanaka and Lake Hawea*", Mr Barr evaluated the submissions and further submissions. He considered input from Council technical staff, and in particular concerns from the Council's traffic engineer Ms Wendy Banks that any additional density should include high-quality pedestrian and cycle facilities. Mr Barr observed that the PDP subdivision provisions would be sufficient to ensure these were provided. However, Mr Barr concluded that on an overall balance, the argument in favour of Medium Density Residential zone (access to amenities and services) was weaker than that for retention of the Low Density Residential zone (maintaining an established built form pattern).

49. In his s.42A report, Mr Barr's initial opposition to medium density development was premised on a judgement that the modest justification for that additional intensity (based on convenient but less-than-ideal connectivity) was outweighed by the benefits of retaining a consistent built form and suburban character. He did not identify any concerns with the Medium Density Residential zone in terms of the PDP strategic policy approach.

50. In evidence provided on behalf of Crescent Investments Ltd and Kirimoko Park Residents Association Inc, Mr Scott Edgar (planner), set out his view why the Low Density Residential zone should be retained.

51. Summarising Mr Edgar's analysis, a number of PDP strategic objectives and policies relate to development density and urban form, including:

    Objective 3.2.2.1:
    Ensure urban development occurs in a logical manner:
    - *to promote a compact, well designed and integrated urban form;*
    - *to manage the cost of Council infrastructure; and*
    - *to protect the District's rural landscapes from sporadic and sprawling development.*

Objective 3.2.3.1:
Achieve a built environment that ensures our urban areas are desirable and safe places to live, work and play.

Objective 3.2.5.3:
Direct new subdivision, use or development to occur in those areas which have potential to absorb change without detracting from landscape and visual amenity values.

Objective 3.2.6.1:
Provide access to housing that is more affordable.

Objective 4.2.3:
Within Urban Growth Boundaries, provide for a compact and integrated urban form that limits the lateral spread of urban areas, and maximises the efficiency of infrastructure operation and provision.

52. However, Mr Edgar only identified one PDP objective, 8.2.1, as being imperilled by the relief requested. As notified, this objective stated:

> *"Medium density development will be realised close to town centres, local shopping zones, activity centres, public transport routes and non-vehicular trails in a manner that is responsive to housing demand pressures."*

53. We note our acceptance of Mr Edgar's analysis of the most relevant PDP strategic policy themes above, and refer to Report 16 for a broader summary of how these times have been translated into revised strategic objectives.

54. We asked questions of both Mr Edgar and Mr Barr regarding their opinions on how significant the established built form pattern was, and how different or incompatible the Medium Density Residential zone would in fact be. We were particularly interested in the extent to which that existing character may change over time in light of the additional density proposed in the Low Density Residential zone anyway (including family flats) compared to what has been developed to date. In summary, the PDP in Chapter 7 proposed that, subject to a land-use consent first and then subsequent subdivision, a density of 1:300m²[54] was contemplated per dwelling, which could in turn include an independently occupied family flat[55] as well as a principal house. This amounts to a net 'real-world' household density of up to 1:150m², effectively as a permitted land use outcome (with, we note, some location-based exceptions). The notified PDP chapter 8 provided for the same number of houses and family flats per site as Chapter 7[56], but proposed a minimum land use density of 1:250m²[57]. A difference of 50m² minimum land use densities between the two zones is not in our view likely to lead to markedly different amenity, visual impact, nuisance (noise etc.), or other adverse effects to the extent that viewers could always readily discern a difference. We note that the Stream 6 Panel, while recommending a variety of changes to the notified text, have recommended retention of the notified densities contemplated in each zone.

55. Both of the planners we heard from accepted that the existing 'real world' or net densities around Kirimoko could change in either of the two zone scenarios, and that on this basis it may

[54] Notified rule 7.5.6.
[55] Notified rule 7.4.9 and 7.4.10.
[56] Notified rules 8.4.10 and 8.4.11.
[57] Notified rule 8.5.5.

not be appropriate to use existing character as grounds to not support the Medium Density Residential zone.

56. Mr Barr reflected on our line of inquiry further and in the Council's right of reply confirmed that he had changed his opinion. He acknowledged that the greenfield nature of the site could lead to a superior outcome if planned for optimum density at the outset, rather than via Low Density Residential development that could fragment and intensify further in a more ad-hoc manner over time. He ultimately then finished in support of the Medium Density Residential zone, stating that[58]:

"I consider that the MDRZ provisions in the PDP will ensure the development of a greenfield area of land, such as this, will have appropriate urban design outcomes, and would not compromise the amenity values of surrounding residential areas."

5.7 Issues

57. We have determined that the following issues must be addressed in order for us to formulate a recommendation on this submission:
    a. Is there a case for zoning the land Medium Density Residential zone?
    b. If so, would the Medium Density Residential zone be more appropriate than the Low Density Residential zone?

5.8 Discussion of issues and conclusions

58. The submitter, while seeking a Medium Density Residential zone for the land, did not express a clear view on whether or not it also sought removal of the Building Restriction Area. Another part of the BRA was the subject of a submission by Alastair Munro[59] seeking its removal. Mr Barr recommended rejection of that submission in his s.42A report[60], largely based on the landscape values of the terminal moraine that it seeks to protect and which were addressed in the evidence of Ms Mellsop. Mr Munro's submission has subsequently been withdrawn and the further submitters who supported it did not call evidence that would provide a basis for its removal.

59. As above, Wanaka Central Developments Ltd did not provide evidence either on the BRA, or more generally, on its rezoning request.

60. We therefore have no basis to doubt the expert evidence for the Council and for the avoidance of doubt, were it intended by this submitter to have the BRA removed, we recommend this aspect of its submission be rejected for the same reasons as Mr Barr (and Ms Mellsop) provided in their evidence in relation to Mr Munro's submission.

61. This leaves, for that part of the land not affected by the BRA, the question of whether or not the Low Density Residential or Medium Density Residential zone is the most appropriate.

5.9 Is there a case for Medium Density Residential?

62. We consider that Mr Edgar's analysis, summarised above suffers from the following:
    a. There is no definition of the term "close" within the PDP notified Objective 8.2.1 and Mr Edgar offered none that we might consider. It may be that the submitter's land *is* "close" for the purposes of the objective.

[58] Reply of Craig Barr, 10 July 2017, paragraph 9.4.
[59] Submission 3: Supported by FS1285 and FS1307, opposed by FS1311, FS1326, FS1334 and FS1335
[60] Section 42A, Report 1A: Urban Wanaka at Lake Hawea at 4.50

b. Mr Edgar only referred to town centres, local shopping zones, and activity centres in his analysis of notified Objective 8.2.1. But that objective also refers to public transport routes (of which there are none at this time in Wanaka), but also non-vehicular trails. There are non-vehicular trails close (in our judgement) to the submitter's land.
c. We find that the words "*… in a manner that is responsive to housing demand pressures*" in notified Objective 8.2.1 must be read as a filter through which the remainder of the objective is interpreted, and this also includes how narrowly (perhaps literally) "close" might mean. Mr Edgar offered no commentary here.
d. Lastly, Objective 8.2.1 sits within the Medium Density Residential zone itself; the PDP's strategic framework sits within Chapters 3-6 and, with particular reference to those objectives noted above at section 5.6, we see no clear basis for reasonably excluding the Medium Density Residential zone as an appropriate outcome on the submitter's land (outside of the BRA area).

63. We note that having reviewed the recommended provisions for Chapters 3 and 4 in particular from the Stream 1B Panel summarised in Report 16, our conclusions above have not changed.

64. Overall and in light of the above, we have not been convinced that the Medium Density Residential zone would be inappropriate for the site or incompatible with the PDP's strategic policy framework for managing urban form and density. To the contrary, we find that the Medium Density Residential zone would be appropriate for the land, for the reasons outlined by Mr Barr in his right of reply report.

5.10 What is the most appropriate zone for the land?

65. Having satisfied ourselves that Medium Density Residential zone would be appropriate on the site, in terms of the PDP's strategic policy framework and also the practical characteristics of the site and the land around it, we are in position to determine which of that zone or the Low Density Residential zone would be the most appropriate.

66. We consider that between the Medium Density Residential zone and the Low Density Residential zone, the PDP's strategic policy framework for Wanaka, including considerations of affordable housing, a reduction of sprawl or unnecessary expansion, and the promotion of lifestyles that provide greater transport choice (such as being able to take advantage of non-vehicular trails) would be best implemented by the Medium Density Residential zone.

67. The only factor that would outweigh this preference would be if the adverse character and amenity values effects of Medium Density Residential housing undermined the qualities of existing Low Density Residential-equivalent development around the site. We find that the most fundamental effects are changes to character and amenity values, and these have fundamentally already occurred through the initial wave of urban development in the area to establish the residential suburban environment of today.

68. We find also that the PDP provisions for managing medium density residential development include considerations of character, visual quality, and effects on adjacent land. We find that the densities of development and scale of buildings enabled within the Medium Density Residential zone are not incompatible with the Low Density Residential zone, or the qualities of existing Low Density Residential-equivalent development in the Kirimoko Drive area. We also refer back to our consideration of the Ian Weir (139) and Queenstown Lakes District Council (790) submissions earlier in this respect.

69. In summary, we recommend that the submission should be accepted in part to the extent that the PDP BRA should be retained on the land, but that the balance of the site should be re-zoned to Medium Density Residential zone. In addition to our reasons above, we agree with and adopt Mr Barr's rationale in support of this outcome in the Council's Right of Reply and the s.32AA further analysis is provided alongside that. The further submissions should also be accepted in part, to the extent that Medium Density Residential zone would not be appropriate within that part of the site identified within the PDP as a BRA. We consider that no further s.32AA analysis is required.

6. SCURR HEIGHTS

ALAN CUTLER (110)
Further Submitter: FS1285: NIC BLENNERHASSETT
INFINITY INVESTMENT GROUP (729)
WILLUM RICHARDS CONSULTING LTD (55)
QUEENSTOWN LAKES DISTRICT COUNCIL (790)
MARGARET PRESCOTT (73)

6.1 Overall Recommendation

70. Accept the submission from Queenstown Lakes District Council, and the further submission of Nic Blennerhassett. Accept in part the submissions of Margaret Prescott, Willum Richards Consulting Ltd, and Infinity Investment Group Ltd. Reject the submission of Alan Cutler.

6.2 Summary of Reasons for Recommendation

71. The Medium Density Residential zone is the most appropriate enablement for the land given its proximity to schools and the Wanaka Town Centre. In terms of the interface between development and the Scurr Heights walkway, the provisions separately identified through the Stream 6 Hearing process are adequate and no additional measures such as a Building Restriction Area or other mapped limitations are appropriate.

6.3 Subject of submissions

72. These submissions relate to land at Lot 110 DP 347413. The land is located between Aubrey Road and McLeod Avenue and is known as Scurr Heights.

6.4 Outline of Relief Sought

73. The land the subject of submission is shown as Medium Density Residential on Planning Map 20. The submissions on it seek variously retention of the existing zoning or rezoning to preclude Medium Density Residential development in whole or in part.

6.5 Description of site and environs

74. The land at Lot 110 DP 347413 is 10.7ha and similar to land that has been identified in other submissions, the land the subject of these submissions is a largely 'rear' site sitting between north-south ribbons of development that have occurred in recent years. In this case, the 'ribbons' are Kings Drive (west) and Anderson Road (east). The site has been previously earthworked and slopes downwards from east to west. It offers views out across the Wanaka town and Lake Wanaka.

75. Immediately east of the site is the 20m-wide Scurr Heights walkway. This is a designated route that connects Anderson Road with Aubrey Road. It offers high quality views across the subject site to the east, and undulates in elevation along its length. A metalled pathway / trail

meanders through the space within the route's width. Immediately east of the walkway are a number of existing dwellings that in turn overlook the walkway.

76. East, south and west of the site, existing Low Density Residential-equivalent development backs onto the site, with access to Matariki Place (east) and McLeod Place / Farrant Place (west / south). North of the site is Aubrey Road. Overall, the site has options to logically and efficiently connect to existing roads.

6.6 The Case for Rezoning

77. In his s.42A report "*Group 1A Urban Wanaka and Lake Hawea*", at paragraphs 5.1 – 5.14, Mr Barr evaluated the submissions. He recommended, based on advice from the Council's technical specialists (landscape, traffic, infrastructure and ecology), that the Medium Density Residential zone was the most appropriate for the land. In terms of Scurr Heights walkway, Mr Barr acknowledged that the question of planning methods to manage the interface between development and the walkway had been traversed by the Stream 6 Hearing. He considered that that separate stream had adequately addressed the matter and that no further changes to the Plan maps should occur (such as a Building Restriction Area).

78. For the various submitters, we received no specific expert evidence at our hearing that addressed the matters. However, from the written submissions we are aware that:
    a. The Council submitted in support of the notified PDP Medium Density Residential zone for the land.
    b. Alan Cutler opposed the 'blanket' zoning proposed, and this was in turn opposed by the further submission from Nic Blennerhassett.
    c. Infinity Investment Group Ltd, Willum Richards Consulting Ltd, and Margaret Prescott submitted that the land should be subject to planning methods that managed the height and location of development relative to the Scurr Heights walkway, including, variously, a removal of some zoned areas (Infinity Investment Group, and also Alan Cutler), or addition of Building Restriction Areas (Willum Richards Consulting Ltd and Margaret Prescott).

79. The submissions address the question of what land use zone is most appropriate and, related to this, the matter of how to best manage the issue of public views and amenity values from the adjacent Scurr Heights walkway.

80. The key planning themes relevant to these submissions are found in PDP strategic chapters 3, 4 and 6. Chapters 3 and 4 relate to the locational framework for residential-dominant zones of lower or higher land use density. Chapter 6 relates to landscape values in the district and is relevant here because of the importance of public views from a public walkway that would look across the site taking in the town and Lake Wanaka. We refer to Report 16 for a more comprehensive summary.

6.7 Issues

81. We consider that following issues arising from the submissions and further submissions should be addressed:
    a. Is the Medium Density Residential zone appropriate?
    b. Should additional methods limiting development relative to the Scurr Heights walkway be imposed?

6.8 Discussion of Issues and Conclusions

6.9 Is Medium Density Residential zone appropriate?

82. We accept Mr Barr's analysis that the site is appropriately located relative to adjacent schools, the Anderson Bay Business Mixed Use zone, non-vehicular trails, and Wanaka town centre such that the Medium Density Residential zone is justified and the most appropriate zoning. It will allow the most efficient use of the land and not result in inappropriate adverse effects on adjacent land (excluding the Scurr Heights walkway, which will be addressed separately). This finding is also consistent with the conclusions we have reached for other green field land in North Wanaka, discussed previously and including in relation to Chapters 3 and 4 of the PDP.

83. We also note that of the submissions opposed to the PDP zoning, we find that the issue of concern was not the Medium Density Residential zone as much as it was the interface between the land use zone and the views available from the walkway. On this basis, we do not consider that we were actually presented with a clear or viable alternative to the Medium Density Residential zone by the submissions. We are satisfied that the outcomes identified in PDP Chapter 6 can be achieved appropriately with the land zoned Medium Density Residential as per the PDP.

84. We recommend that the submission of Queenstown Lakes District Council and the further submission by Nic Blennerhassett be accepted. As we have agreed with the PDP position on the land's zone, no further s.32AA analysis is required.

6.10 Should additional methods be imposed relative to Scurr Heights walkway?

85. We visited the Scurr Heights walkway and experienced the views available from it across Wanaka. We also observed existing dwellings that were in some cases close to the walkway and the undulating quality of the landform (and the walkway).

86. The Stream 6 Hearing Panel's report[61] indicates that it considered a variety of options to manage this matter. In light of this, we consider that our jurisdiction is limited to consideration of District Plan mapping-based methods. These, based on the submissions received, are limited to a Building Area Restriction overlay, or some other similar means of identifying on a map a 'no build' area (which could include some form of open space or rural land use zone).

87. The first challenge we encountered was that the submitters did not clearly identify to us what that exclusion area might look like or what extent it should take. The only expert evidence available to us from the Council's advisors did not support such methods.

88. The second challenge was that on consideration of how to define a 'no build' area (or areas) within the site, we found that the use of land use zones to form 'spot zones' of development restriction (i.e. such as a 'bubble' of Rural zoned land within an area of Medium Density Residential zone) was nothing more than a less-efficient and less-effective form of the PDP's Building Restriction Area method.

89. Accordingly, as we worked through the submissions, we concluded that only a Building Restriction Area overlay would be workable, but that we had no evidential basis to define the shape or location of such an overlay, and a lack of any expert agreement that it was a justified expedition to embark on.

[61] Recommendation Report 9A

90. North of Aubrey Road, the PDP has included a Building Restriction Area up to Sticky Forest, which effectively follows natural physical features and can be justified on that geomorphological basis. We asked the Council to address in reply whether the same logic might be applied to identification of a BRA on this land. On the Council's behalf, Ms Mellsop advised that earthworks to date and/or consented on the Scurr Heights land will substantially modify the moraine. We therefore conclude that a 'natural features / landform' basis to identifying a BRA is not a viable option.

91. Overall, we consider that there is no simple or obvious BRA that could apply to the site that could be defendable and justified, and effective at addressing the effects of concern to the submitters. Like Mr Barr in his s.42A report and Right of Reply, we find that non-mapping based methods (i.e. rules and consent requirements) within the Medium Density Residential zone are the most appropriate means of managing development proposals on the land. On this basis, we do not consider that there is a need for an additional BRA overlay affecting the site and we rely on the findings of the Stream 6 Hearings Panel.

92. In summary, therefore, we recommend the existing zoning be retained, unamended. The submissions from Willum Richards Consulting Ltd, Margaret Prescott and Infinity Investment Group should be accepted in part to the extent that the submitters agreed that the Medium Density Residential zone would be appropriate in at least some instances on the site.

93. Given that we have not recommended a change to the PDP position, no further s.32AA analysis is required.

7. TERRANOVA PLACE

CHRISTOPHER JOPSON, JACQUELINE MOREAU, SHANE JOPSON (287)
Further Submitter: FS1008 WAYNE HARRAY

7.1 Overall Recommendation

94. Accept both the submission and further submission.

7.2 Summary of Reasons for Recommendation

95. Re-zoning the sites in Terranova Place from Large Lot Residential zone to Low Density Residential zone will be compatible with local amenity values, enable a more efficient use of the land, and be overall the most appropriate outcome.

7.3 Subject of submission

96. The submission and further submission relate to nine lots accessed from Anderson Road by a private access way known as Terranova Place. The properties are titled as Lots 1-9 DP 304376.

7.4 Outline of Relief Sought

97. This submission sought rezoning of the properties on Terranova Place to Low Density Residential from Large Lot Residential, as shown on Planning Map 20. One Further Submission, from Wayne Harray[62], was in support of the requested relief.

7.5 Description of site and environs:

98. Terranova Place is an established large-lot residential development of nine sites served by a private access way / cul-de-sac that has been formed as a linear spine road giving access from

[62] Further submission 1008

Anderson Road. Seven of the lots have been built on. Of note, existing subdivisions to the immediate south, east and west have been developed to consistently higher densities than the Terranova lots.

7.6 The Case for Rezoning

99. This submission and the Council's s.42A response is set out in paragraphs 4.38 to 4.43 of the "*Group 1A Wanaka Urban and Lake Hawea*" report prepared by Mr Craig Barr. In summary Mr Barr recommended that the submission be rejected and that the PDP Large Lot Residential zone was the most appropriate for the site, although Mr Barr had understood at the time of writing his s.42A report that the submission applied to only Lots 1-4 (the southern side of Terranova Place), and this was material to the conclusions he reached.

100. Mr Barr's s.42A concerns related to how the south side of Terranova Place could accommodate a Low Density Residential outcome with the north side still zoned Large Lot Residential "Area B", a refinement of the notified Large Lot Residential zone recommended separately to Stream 6 by the Council (we note that this has been changed to Area A in the Stream 6 Hearing Panel's recommendation). The effect of the Council's own recommended zone refinement was to reduce the minimum site size that would apply to the submitters' land from 4,000m^2 to 2,000m^2. We consider that although recorded in the s.42A report as a recommended rejection of the relief sought, in our view it is in fact an 'accept in part' recommendation on the part of Mr Barr, to the extent that the notified 4,000m^2 site size applying to the site could and should be appropriately reduced to at least 2,000m^2.

101. For the submitters, Mr Duncan White (planner) confirmed that the submission applied to all sites within Terranova Place. He suggested therefore Mr Barr's concerns regarding the north-side / south-side amenity split would not be applicable. Mr White also provided a further s.32AA analysis and concluded that the Low Density Residential zone as requested by the submitters would be more appropriate than the PDP Large Lot Residential zone (either the 4,000m^2 minimum lot size as notified or the 2,000m^2 minimum lot size recommended subsequently by Council staff at the Stream 6 Hearing[63]).

102. By the close of the hearing, and in response to Mr White's evidence, Mr Barr advised through the Council's right of reply that his opinion on this matter had changed. He had come to support the Low Density Residential zone as requested by the submitters.

103. We do not consider that the submissions raise any issues relevant to the PDP's strategic planning framework, or any particular technical challenge to either PDP Chapters 7 (Low Density Residential zone) or 11 (Large Lot Residential zone). We do observe that due to the Council's recommended change to Chapter 11, that in either zone scenario the land will be enabled for further intensification than the PDP as notified accommodates.

7.7 Issues

104. We consider that the only issue arising from the submissions and further submissions that need to be addressed is whether the Low Density Residential zone or the Large Lot Residential Zone Area A (as per the Stream 6 Panel recommendation) is the most appropriate.

[63] We distinguish between the Stream 6 staff recommendation, which was to provide a standard 4,000m^2 lot size as 'Area A', and a 2,000m^2 smaller lot size as an exception on 'Area B' land that was suitable for that higher density. The Stream 6 Panel has recommended that based on the evidence received the vast majority of the Large Lot Residential zone was appropriate for the 2,000m^2 minimum lot size and that should be the zone norm as 'Area A'. The exception, sites where there are clear topographical or other environmental constraints justifying a larger 4,000m^2 minimum, have been recommended by the Panel as forming 'Area B'.

7.8 Discussion of Issues and Conclusions

105. We find that the relief requested would be a considerably more efficient use of land that is relatively close to central Wanaka than the Large Lot Residential zone, and that based on the intensity of existing subdivisions adjacent to Terranova Place, any adverse effects on character or amenity values that may arise from the higher density requested would be appropriately diminutive. This is because the density sought by the submitters and further submitter will be sufficiently consistent with the densities achieved around the site as to maintain the established qualities of the environment.

106. Overall and on the basis that two planning experts each recommended that the relief be accepted, that supporting technical analysis by the Council (infrastructure, ecology and traffic) also supported the relief sought, and that Mr White provided the Panel with appropriate s.32AA further analysis to justify the change, we agree with the re-zoning requested. We accept and have adopted the reasons and s.32AA analysis to support the change given to us by Mr White in his pre-circulated planning evidence, and Mr Barr through the Council's right of reply. No further s.32AA analysis is necessary.

107. In reaching this conclusion, we were also comforted by Mr White's confirmation via a question we put to him that, as Terranova Place is a private road with each property owner a part owner, all landowners would need to agree with any actual redevelopment proposal prior to any change occurring. This will ensure that the detailed subdivision design of any intensification of the nine existing lots will not create an inappropriate 'internal' nuisance within Terranova Place.

108. In summary, therefore, we recommend rezoning the nine lots the subject of submission Large Lot Residential Area A (as per the Stream 6 Panel recommendation).

8. GOLF COURSE ROAD

TRUSTEES OF THE GORDON FAMILY TRUST (395)
Further Submitter: FS1101 ASPIRING LIFESTYLE RETIREMENT VILLAGE
Further Submitter: FS1212 WANAKA LAKES HEALTH CENTRE

8.1 Overall Recommendation

109. Accept the submission and reject the further submissions.

8.2 Summary of Reasons for Recommendation

110. The site should be re-zoned to Medium Density Residential as this is more appropriate than the notified PDP Low Density Residential zone. The site is appropriately located to a (proposed) Local Shopping Centre zone and the Wanaka Town Centre and this proximity would be best taken advantage of with a higher density zone as requested.

8.3 Subject of submission

111. The land the subject of submission is Lot 2 DP 417191 is 1.93ha in area and is on the south side of Golf Course Road, at its intersection with Cardrona Valley Road

8.4 Outline of Relief Sought

112. The submission sought rezoning of the site from Low Density Residential, as shown on Planning Map 23, to Medium Density Residential. The further submitters[64] opposed the relief sought.

8.5 Description of site and environs

113. The site has frontage to both Golf Course Road and Cardrona Valley Road, and is of an approximately square shape. The site is vacant.

114. To the north-east wrapping down and around the south-east and south (i.e. all non-road frontage boundaries) is the Aspiring Lifestyle Retirement Village. Further south is the Wanaka Lakes Health Centre, a medical facility. Wanaka Golf Course is on the other side of Golf Course Road from the site.

8.6 The Case for Rezoning

115. Mr Craig Barr evaluated the submission and further submissions in paragraphs 6.5 – 6.13 of his "*Group 1 Wanaka Urban and Lake Hawea*" s.42A report. In Mr Barr's view, the site could be developed to approximately 29 units under the Low Density Residential zone as notified, or up to 52 units under the Medium Density zone requested. As we understand the matter, Mr Barr's analysis was limited to a purely theoretical division of the site area rather than on an actual concept plan.

116. Mr Barr concluded that the relief requested was justified and that the most appropriate outcome would be to grant the relief requested. In Mr Barr's view, the proximity of the site to amenities and services including open spaces, and a Local Shopping Centre on Cardrona Valley Road proposed through the PDP, meant that the overall balance of the PDP's 'centres-based' (our term) planning strategy would be better served by the Medium Density Residential zone.

[64] FS1101 and FS1212

117. The further submitters have interests in the land that immediately abuts the site to the south and east. We received no evidence of substance in support of the outcome preferred by the further submitters.

118. As has been the case with a number of submissions previously discussed relating to north Wanaka, the submission raises issues relating to the PDP's strategic land use planning framework intended to govern the location of higher and lower residential land use zones – notably in Chapters 3 and 4 of the PDP. These are summarised in Report 16 and this is referred to.

119. We have also considered, although have placed little weight on, the Wanaka Structure Plan 2007 (WSP). The WSP is relevant in at least this part of Wanaka because it formed the genesis of what has transpired through Plan Change 16 (Three Parks), and the PDP's proposed Local Shopping Centre zone slightly south of the land that is subject to this submission. In the WSP, the land that is subject to this submission was identified as being suitable for medium density residential activities.

8.7 Issues

120. We consider that the only issue arising from the submissions and further submissions that needs to be addressed is whether the Medium Density Residential zone or the Low Density Residential zone is the more appropriate zone for the site.

8.8 Discussion of Issues and Conclusions

121. We do not consider that there is a credible trade-competition aspect to the further submissions. However, in our consideration of what effects the Medium Density Residential zone could result in on that abutting land compared to the Low Density Residential zone, it was relevant to us that the existing hospital (south) is unlikely to be detrimentally affected by the higher, but broadly similar densities enabled within the Medium Density Residential Zones. It was also relevant to us that the retirement village to the south and east has been developed at a higher density than the Low Density Residential (subdivision) provisions would enable. On the basis that a Medium Density Residential zone would be compatible with the existing land use activities occurring on immediately neighbouring sites, and even the lower densities of the Low Density Residential zone, we find that the relief sought would be appropriate on the submitter's land from a purely environmental effects perspective. In this respect we refer back to our earlier analysis of the Iain Weir (139), Queenstown Lakes District Council (790), and Wanaka Central Developments Ltd (326) submissions, where our findings regarding the general compatibility between the Low Density and Medium Density Residential zones were set out[65].

122. Overall, we consider that the argument in support of Medium Density Residential zoning on the land is convincing and well substantiated. The superior efficiency that will be enabled by providing for higher residential densities will contribute to the compact, centres-based urban form sought in the PDP for Wanaka, in a manner whereby the additional adverse effects of that enablement will be manageable and otherwise appropriate. Specifically, medium density residential development will:
    a. Contribute to the vitality of the PDP's Cardrona Local Shopping Centre zone; and
    b. Provide for compact development within a plausible walking distance (1.6km) from Wanaka centre itself.

[65] See Sections 4-6 above

123. For the purposes of s.32AA of the Act, we accept and adopt Mr Barr's s.42A analysis as being appropriate and proportional to the degree of difference proposed between the PDP and the relief requested, and overall, recommend that the submission be accepted and that the further submissions be rejected. No further s.32AA analysis is required.

9. CARDRONA VALLEY ROAD

WILLOWRIDGE DEVELOPMENTS LTD (249)
Further Submitter: FS1193 TRUSTEES OF THE GORDON FAMILY TRUST
JA LEDGERWOOD (507)
Further Submitter: FS1012 WILLOWRIDGE DEVELOPMENTS LTD
Further Submitter: FS1193 TRUSTEES OF THE GORDON FAMILY TRUST
SUSAN MEYER (274)
Further Submitter: FS1101 ASPIRING LIFESTYLE RETIREMENT VILLAGE
Further submitter: FS1212 WANAKA LAKES HEALTH CENTRE
WANAKA LAKES HEALTH CENTRE (253)
Further Submitter FS 1101 ASPIRING LIFESTYLE RETIREMENT VILLAGE
ASPIRING LIFESTYLE RETIREMENT VILLAGE (709)
STUART IAN AND MELANIE KIRI AGNES PINFOLD AND SATOMI ENTERPRISES LTD (622)
Further Submitter: FS1193 TRUSTEES OF THE GORDON FAMILY TRUST

9.1 Overall Recommendation

124. The submissions from Willowridge Developments Ltd, JA Ledgerwood and Susan Meyer should be accepted in part. The submission of Stuart Ian and Melanie Kiri Agnes Pinfold and Satomi Enterprises Ltd, should be rejected. The submissions of Aspiring Lifestyle Retirement Village and Wanaka Lakes Health Centre should be rejected.

125. The further submission of Willowridge Developments Ltd should be accepted in part, and the other further submissions should be rejected.

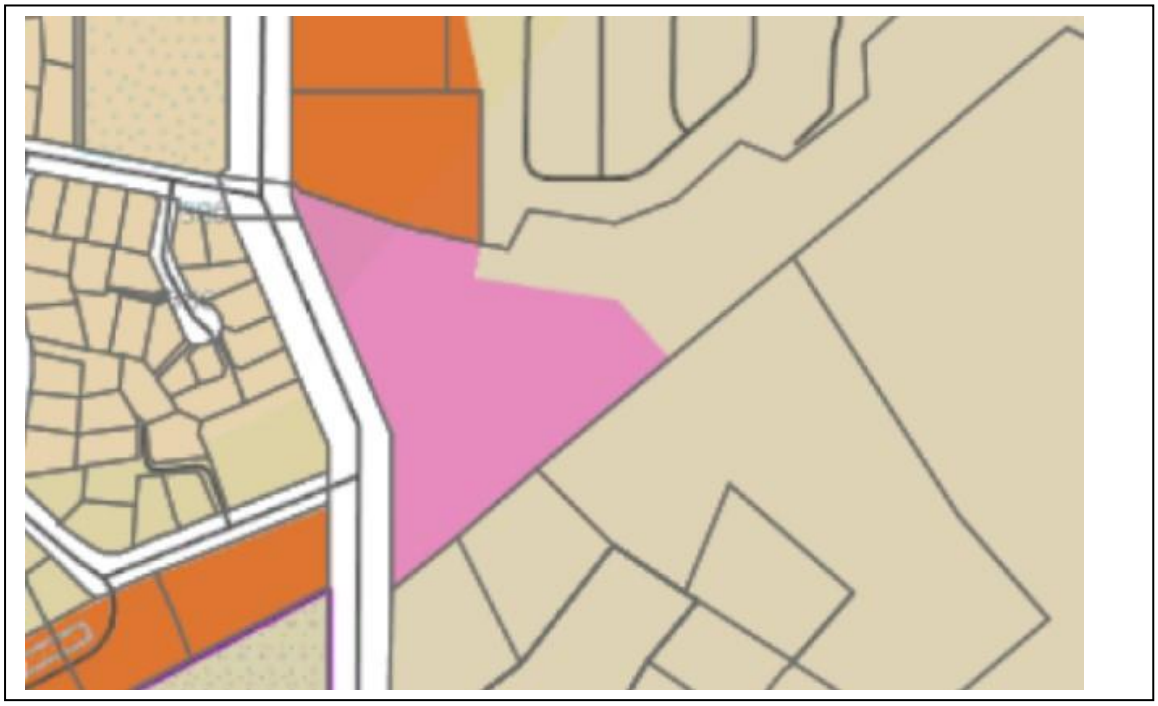
9.2 Summary of Reasons for Recommendation

126. The proposed Cardrona Valley Road Local Shopping Centre at Lot 1 DP 477622 should be reduced in size from the notified PDP. No additional zone methods (rules) are required to respond to submissions 274 and 622

9.3 Subject of submissions

127. The submissions relate to a proposed Local Shopping Centre zone on Cardrona Valley Road shown on Planning Map 23. The notified PDP provided for a 2.7 ha area within Lot DP477622 with the balance of the 22ha lot zoned Low Density Residential. Figure 1 following shows the area notified on Map 23.

Figure 1: Notified PDP LSCZ, Cardrona Valley (Map 23).

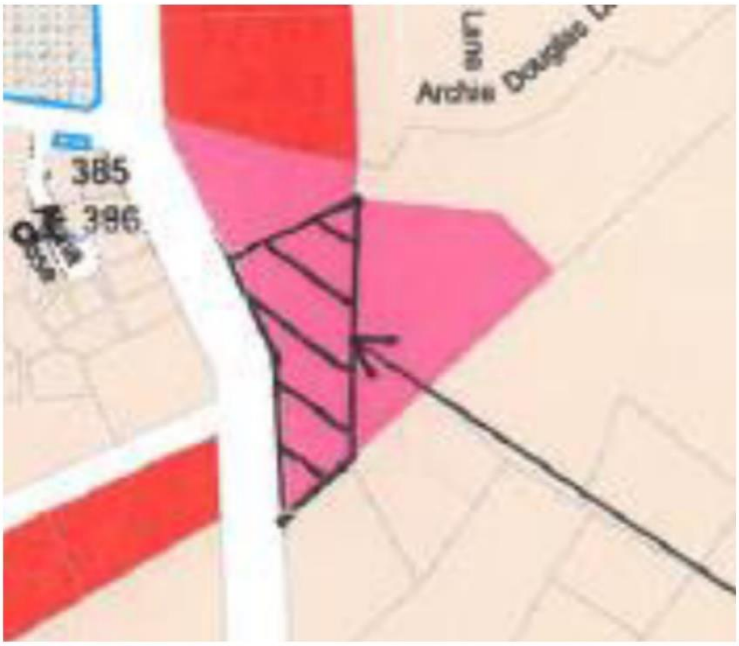


Outline of Relief Sought

128. A number of submissions made related requests. These are:

a. Willowridge Developments Ltd and JA Ledgerwood requested that the notified size of the Local Shopping Centre zone be reduced from approximately 2.7ha to approximately 1ha. Willowridge Developments Ltd included in its submission a revised spatial layout and extent for the Local Shopping Centre zone, a copy of which follows as Figure 2. This relief was opposed by the further submission of the Trustees of the Gordon Family Trust.

Figure 2: Willowridge recommended LSCZ (submission 249)



b. JA Ledgerwood and Stuart Ian and Melanie Kiri Agnes Pinfold and Satomi Enterprises Ltd sought the introduction of rules along the notified Local Shopping Centre zone's southern boundary. The submitters have interests in land immediately south of the notified Local Shopping Centre zone and sought that a 20m buffer strip be imposed along the edge of the Local Shopping Centre zone to mitigate perceived amenity and nuisance effects likely to arise from commercial activities on the adjoining residential zoned land. This was opposed by the Trustees of the Gordon Family Trust.
c. Susan Meyer requested that the zone rule for building coverage be changed from a 75% maximum to an 80% maximum based on perceived inefficiencies in the notified Local Shopping Centre zone's shape. This was supported in further submissions from Aspiring Lifestyle Retirement Village and Wanaka Lakes Health Centre.
d. Aspiring Lifestyle Retirement Village and Wanaka Lakes Health Centre requested the Local Shopping Centre zone be extended to apply to the sites immediately north of the notified Local Shopping Centre zone site, to the existing health centre site, Lot 1 DP 410739 (1ha), and the existing retirement village site, Lot 2 DP 492566 (1.1ha). If accepted, this would increase the Local Shopping Centre zone to 4.8ha in total.
e. The Trustees of the Gordon Family Trust sought that the zone as notified be retained, although the submitter did recommend a number of refinements to the proposed zone methods[66].

129. We note here that in respect of the proposed Cardrona Local Shopping Centre zone, our jurisdiction extends to some of the methods that should apply within that zone as well as the mapping matter, the entirety of Submissions 274 and 622 (and the related further submissions) on this zone having been transferred to us from the Stream 8 hearing stream (Business Zones)[67].

9.4 Description of site and environs

130. Lot 1 DP 477622 is a large (22ha) irregularly shaped site in central Wanaka. Its western end fronts Cardrona Valley Road slightly south of the intersection with Golf Course Road and generally opposite Stone Street and West Meadows Drive. The proposed Local Shopping Centre zone occupies the 2.7ha area of the site that fronts Cardrona Valley Road. It is strategically located to serve the community in west Wanaka where key roads come together at one of the main entrances / departure points for the town.

131. Development of the area has been occurring generally in accordance with the WSP and the more recent Plan Change 16, Three Parks. Of note, this includes planning for a new east-west road to intersect with Golf Course Road through the Local Shopping Centre zone along the site's northern boundary with Lot 1 DP 410739, occupied by the Wanaka Lakes Health Centre. That road, an arterial linking to Ballantyne Road, has recently been authorised by subdivision consent RM170094[68].

132. Currently the site of the Local Shopping Centre zone is vacant.

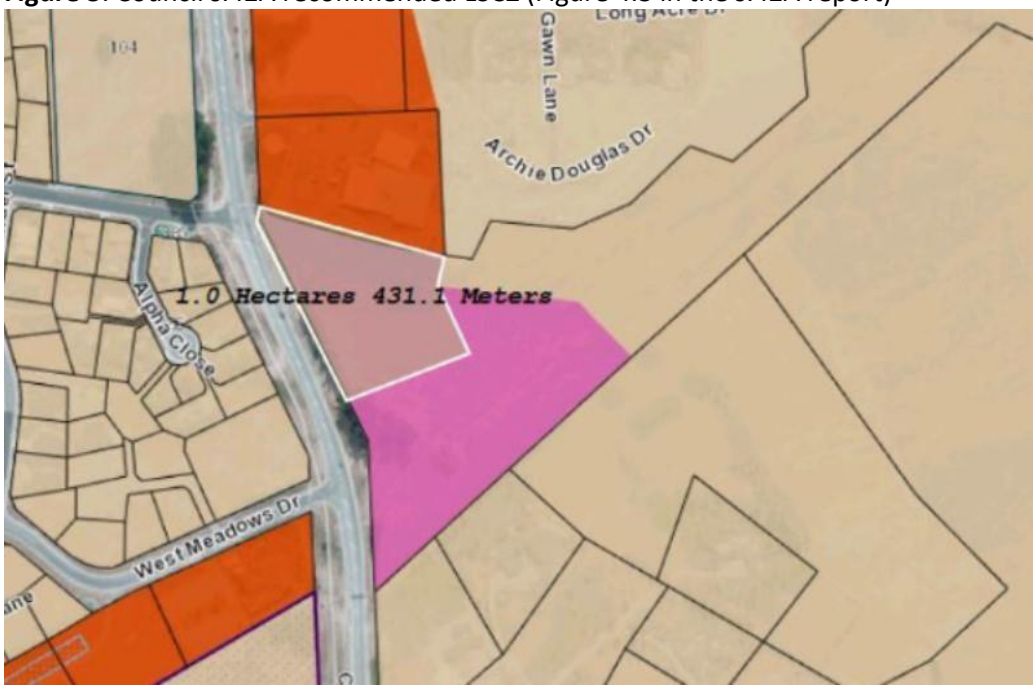
9.5 The Case for Rezoning

133. In her s.42A report, "*Group 1B Wanaka – Business*", Ms Amy Bowbyes evaluated the submissions in sections 4 and 5 of the report, with input from the Council's economics expert Mr Tim Heath as well as other technical specialists. Mr Heath's and Ms Bowbyes' conclusions were that the notified Local Shopping Centre zone was unjustifiably and inappropriately large.

[66] We discuss below whether these requests were within our jurisdiction
[67] Refer the Minute of the Chair of the Stream 8 Hearing Panel dated 2 December 2016
[68] Granted 5 July 2017.

They recommended supporting the submissions seeking to reduce the size of the zone to 1ha based on an appropriate need for 3,000m^2 of ground floor area, which could require a site of approximately 0.7ha net, which when added to land required for access and parking could support the 1ha area requested. However, they did not agree with the reconfigured shape proposed by Willowridge Developments Ltd. They instead preferred a squarer shape, shown as Figure 3 below. This positioned the zone to abut Cardrona Valley Road and the southern boundary of the health centre site to the immediate north. Associated with this were recommendations to add rules to the zone provisions specifying limits so as to ensure that the type of commercial activity that eventuated was appropriate.

Figure 3: Council s.42A recommended LSCZ (Figure 4.3 in the s.42A report)



134. Following on from this, the Council staff recommended refusal of the submissions seeking a buffer along the southern side of the zone (because the recommendation was to pull the Local Shopping Centre zone much further from the boundary than the 20m buffer area requested anyway). They also recommended refusal of the request to extend the zone across the health centre and retirement village land to the north, on the basis that it would not be appropriate to enable a local shopping centre of that combined size or extent. They also recommended refusal to the request from Susan Meyer to increase the site coverage limit within the zone.

135. For the submitters, the principal body of evidence came from the Trustees of the Gordon Family Trust. This included analyses from Mr Duncan White (planner) and Mr John Polkinghorne (economics). These experts considered that the notified zone was appropriate based on their interpretation of the purpose of the Local Shopping Centre zone and that the Council's advisors were being overly conservative. To that end, Mr Polkinghorne included in his evidence analysis of various growth and economic statistics, including tourism-related, to support his recommendations.

136. Stuart Ian and Melanie Kiri Agnes Pinfold and Satomi Enterprises Ltd also provided evidence from Mr Dan Curley (planner) and Ms Louise Wright (architect). These witnesses did not attend the hearing and so without the benefit of being able to ask questions and otherwise test the evidence we have given their evidence limited weight. This evidence examined the interface between the Local Shopping Centre zone and the Low Density Residential zone in

support of additional controls to manage cross-zone effects and nuisances. They supported the Council advisors' recommendations, but also provided their own preferred zone methods in the event that we did not agree with that Council advice. We note that our jurisdiction to consider these issues is limited purely to this specific Local Shopping Centre zone; the Stream 8 Hearing Panel considered more general zone methods.

137. Wanaka Lakes Health Centre and Aspiring Lifestyle Retirement Village also called planning evidence from Mr White. In his view, the most appropriate zone for the land the subject of those submissions recognising the commercial nature of the established activities on those sites, was Local Shopping Centre zone. He did, however, appear to concede in his responses to questions from us that the combined size for the zone that could eventuate from the submissions being accepted might struggle to meet the zone policy expectation that the zone be of a small scale. Mr White also accepted that the well- established existing activities on the two sites left little scope in practice for utilisation of zone provisions enabling retail development.

138. At the hearing, Ms Jones appeared on behalf of the Council in the absence of Ms Bowbyes. Ms Jones reached the same conclusions as Ms Bowbyes and also provided us with a reply on behalf of the Council. In her reply, having provided us with a number of alternative shapes the zone might take, Ms Jones confirmed her view that the squarer shape for the reduced zone proposed by the Council was preferable to the more elongated shape proposed by Willowridge Developments Ltd. However, in light of the material presented at the hearing including greater analysis of the intended arterial road through the site, she recommended increasing the size of the zone to 1.25ha. Although not stated, we consider that this, in recognition of the land that would be lost accommodating the east-west arterial road, amounts to a change to accept in part the submission of Susan Meyer. Ms Meyer sought a greater building coverage limit instead of a larger zone area, but the motivation for her request was a concern regarding how much of the land would be lost to roads and access ways.

139. In terms of the zone provisions that would apply within the LSCZ, the key contention between the submitters and the Council staff was the extent to which threshold limit rules on commercial activity were appropriate or desirable. As noted above, Ms Meyer sought a greater building coverage limit and Stuart Ian and Melanie Kiri Agnes Pinfold and Satomi Enterprises Ltd sought 'buffer' protections along the LSCZ edge adjoining their land.

140. The submissions took the strategic focus of PDP on protecting the role of the Wanaka Town Centre as a given. To the extent that that was an issue (or indeed the additional strategic Objective 3.2.1.5 recommended by the Stream 1B Hearing Panel related to Three Parks[69]) the dispute was one of fact - whether a Local Shopping Centre of the size notified would have adverse effects on either the Wanaka Town Centre or Three Parks.

141. It was common ground between the experts we spoke with that the methods of the Local Shopping Centre zone, including its mapped extent, should implement the zone's policy framework. This is found at Chapter 15 of the PDP.

142. The key notified objective relevant to this matter was, in our view:

> *15.2.1 Enable a range of activities to occur in the Local Shopping Centre Zone to meet the day to day needs of the community and ensure that they are of a limited scale that supplements the function of town centres.*

[69] See Report 16 for a summary of the key provisions of the recommended Chapter 3 in particular

Key notified policies, in our view, were:

15.2.1.1 *Provide for a diverse range of activities that meet the needs of the local community, enable local employment opportunities and assist with enabling the economic viability of local shopping centres.*

15.2.1.2 *Ensure that local shopping centres remain at a small scale that does not undermine the role and function of town centres.*

15.2.3.4 *Avoid the establishment of activities that are not consistent with established amenity values, cause inappropriate environmental effects, or are more appropriately located in other zones.*

143. At a higher level, notified Policy 3.2.1.2.2 sought to reinforce the role local shopping centres fulfil "*in serving local needs".*

144. We note that we have reviewed the recommended provisions for Chapter 15 identified by the Stream 8 Panel, and we find that they do not materially change the issues or assessment that follows. Likewise, the revised version of Policy 3.2.1.2.2 recommended by the Stream 1B Panel (as Policy 3.3.9) retains the reference to local shopping centres serving local needs, and links the size of such centres to that purpose.

9.6 Issues

145. After considering all of the evidence and visiting the area, we determined that the submissions should be considered concurrently. We find that the issues they raise they should be addressed as follows:

a. What is the intended purpose and role of the Local Shopping Centre zone?
b. What should the extent of the Cardrona Valley Road Local Shopping Centre zone be?
c. What additional methods (of the matters within our jurisdiction) should apply *within* the zone to ensure it achieves appropriate outcomes?

9.7 Discussion of Issues and Conclusions

9.8 Purpose and role of the Local Shopping Centre zone

146. Having regard to the notified provisions of Chapter 15 quoted above against the background of the higher order provisions in Chapter 3, and after considering the arguments put to us by the parties, we find that the words "*day to day*" and "*of a limited scale*" in the objective; "*meet the needs of the local community"* in policy 15.2.1.1; and "*remain at a small scale*" in policy 15.2.1.2 are unambiguous and together mean that the Local Shopping Centre zone:

a. Caters to the whole community including visitors, but predominantly those that reside close by in a more permanent fashion.
b. Emphasises daily-need conveniences rather than destination shopping or large-scale employment activities.
c. Is intended to be of a limited extent, in terms of both zone area and the typical size of commercial premises – reflecting that the activities are not envisaged as serving a large-scale customer catchment, but smaller and inherently more localised ones.

147. We find that the Local Shopping Centre zone is not intended to provide for large-scale commercial centres or large-format commercial activities. These are clearly the domain of Town Centre zones within the PDP's structure. The Local Shopping Centre zones are intended to provide 'local / corner shop' type outcomes that support local residential areas in a way that still relies on major town centres for weekly-shop functions, destination activities, and civic activities.

148. As such, the "local" in Local Shopping Centre zone" refers to the immediate neighbourhood around it. It does not mean the entire settlement within which the zone in question is located relative to the District as a whole (i.e. it relates a sub-part within Wanaka, not Wanaka as a whole).

149. We find that the approach taken by Ms Bowbyes, Ms Jones and Mr Heath, and also Willowridge Developments Ltd and JA Ledgerwood, is the most compatible with the envisaged role and purpose of the zone within the PDP. We remain unconvinced by Mr Polkinghorne's view that the Local Shopping Centre zone serves the entire community (in this case of Wanaka) including tourist and one-off shopping activities on a more or less equal footing with the local catchment; that is in our opinion better-reflective of the Town Centre zone, as envisaged by the strategic chapters of the PDP.

9.9 What is the appropriate extent of the Cardrona Valley Road centre?

150. On the basis of the above finding, we readily find that the approach recommended by Mr Bowbyes, Ms Jones and Mr Heath on behalf of the Council, and in support of the relief requested (in part) by WIllowridge Developments Ltd and JA Ledgerwood is the most appropriate. This is shown in Appendix 3, on "Map Option 3" of Ms Jones' reply on behalf of the Council, a copy of which we have included below as Figure 4. It will enable a centre that is subordinate to the Town Centre zones, and meet the needs of the local (close-by) community. We consider that as proposed, and especially as would result from the combined notified PDP + Wanaka Lakes Health Centre + Aspiring Lifestyle Retirement Village, a scale of commercial activity much closer to a town centre would be enabled.

151. Having established that the notified PDP Local Shopping Centre zone was not supportable, we also readily find that the submissions of Aspiring Lifestyle Retirement Village and Wanaka Lakes Health Centre are also not appropriate. These are established activities that have minimal practical opportunity to accommodate further complementary development, and the resultant zone area of almost 5ha would not in our view be compatible with the zone's policy framework.

152. Those submitters also left open alternative relief that could reflect and provide for community activities on these existing sites. However, in the absence of any recommended provisions that could reflect this outcome we are left with what is in our view a bridge too far from what we have been able to discern the submitters seek. Specifically, we remain unsatisfactorily uncertain as to whether the outcomes sought by the submitters could be accommodated in the Large Lot Residential zone through the addition of discrete methods, or methods and additional policies, or new methods policies and objectives.

Figure 4: Our recommended LSCZ / "Map Option 3" from the Council reply statement of Ms Vicki Jones

9.10 What additional methods should apply?

153. We found the analysis of Mr Heath convincing and the related planning analysis of Ms Bowbyes (s.42A report only) and Ms Jones useful in understanding the relationship between commercial unit sizes and the zone purpose. Having determined that the zone should predominantly serve the needs of those residing nearby, and be of a limited scale, we struggled with the position advanced on behalf of the Trustees of Gordon Family Trust that stores up to 1,500m^2 GFA should be enabled. We consider that to be a large store of a scale that is not in our view necessary or appropriate for a facility that predominantly serves the local population's day-to-day needs.

154. Counsel for the Trustees of the Gordon Family Trust, Mr Hardie, raised questions of scope and jurisdiction to support the recommended provisions of the Council. For the Council's part, it was satisfied that there was scope within the submissions and further submissions to support the proposed rules limiting the scale and extent of retail and commercial activity.

155. We do not find it necessary to enter into a detailed analysis of Mr Hardie's submissions (or the response of counsel for the Council) on this point. The Stream 8 Hearing Panel has already heard from the submitter on these points (the Chair's Minute dated 2 December 2016 recorded that the submitter had the option of having its submissions transferred to the Stream 12 hearing and elected not to do so). It would be inappropriate for us to second - guess the recommendations of the Stream 8 Hearing Panel on the basis of Mr Hardie's submissions in those circumstances.

156. What were before us were the submissions 274 and 622, together with any consequential changes to the text of Chapter 15 resulting from our recommendation that the size of the Cardrona Valley Local Shopping Centre Zone should be reduced.

157. Addressing those submissions, we consider that the additional methods proposed by Stuart Ian and Melanie Kiri Agnes Pinfold and Satomi Enterprises Ltd (and JA Ledgerwood) to be without practical necessity. The submissions are specific to the Cardrona Valley Local Shopping Centre Zone and, having repositioned the zone boundary away from their properties, there is no need for such a buffer to protect the amenity values of their properties. The submissions do not provide jurisdiction for a consideration of boundary issues in the case of other Local Shopping Centre Zones.

158. In terms of the submission of Susan Meyer, we have not been convinced that there is any defect in the zone methods that would be served by changing the site coverage limit from 75% to 80%, and find the break-down provided by Mr Heath comforting in assuring that the 1ha zone area we prefer will be able to accommodate its predicted GFA, including space for parking areas, roads and other services. However, we accept that our recommended outcome, at 1.25ha and as per Ms Jones' right of reply position, does accept in part Ms Meyer's concerns by recognising the need to allow for land likely to be lost within the zone for new roads.

159. Council staff recommended a rule restriction on the total Gross Floor Area (GFA) of retail and office space (of 3000m^2). We accept that this is both desirable and within jurisdiction. The inter-relationship between GFA and Gross Site Area was the subject of some contention on the evidence. The reasoning of Council staff for recommending a Gross Site Area of 1ha, excluding provision for the new road, as above, was premised on 3000m^{2-} GFA being consistent with the Zone purpose and provisions. Specifying a rule limiting GFA accordingly, locks in that relationship, and ensures that actual development on the ground remains consistent with those provisions.

160. Having accepted the appropriateness of a rule, the desirability of having a Cardrona Valley Local Shopping Centre Zone-specific policy supporting the rule follows in our view.

161. Accordingly, we recommend:

a. A new policy underneath notified Objective 15.2.1 (Local Shopping Centre zones) specific to the Cardrona Valley Road zone. This should state: *"Limit the total gross floor area of retail and office activities within the Local Shopping Centre Zone located on Cardrona Valley Road to ensure that the commercial function of Wanaka Town Centre and Three Parks is not adversely affected."*

b. A new rule in notified Chapter 15.5 specific to the Cardrona Valley Road zone. This should state:

*"**Retail and office activities in the Local Shopping Centre Zone located at Cardrona Valley Road, Wanaka***
The total combined area of retail and office activities shall occupy no more than 3,000m^2 gross floor area.
Note:
For the purposes of this rule the gross floor area calculation applies to the total combined area of retail and office activities within the entire Local Shopping Centre Zone at Cardrona Valley Road, and shall not be interpreted as applying to individual sites within the zone."

c. The contravention or "non compliance" status of the above rule described in (b) above should be Discretionary and this will allow for resourceconsent-based exemptions to the cap to be considered on merit, over time.

162. Overall and in light of the above, we recommend the following:
   a. The submission of Willowridge Developments Ltd seeking a reduced area of Local Shopping Centre zone in a specified location should be accepted in part and the further submissions of the Trustees of the Gordon Family Trust should be rejected.
   b. The submission of JA Ledgerwood seeking a reduced area of Local Shopping Centre zone should be accepted; the further submission of the Trustees of the Gordon Family Trust should be rejected, and the further submission of Willowridge Developments Ltd should be accepted.
   c. The submission of Susan Meyer should be accepted in part. The further submissions of Aspiring Lifestyle Retirement Village and Wanaka Lakes Health Centre should be rejected.
   d. The submissions of Aspiring Lifestyle Retirement Village and Wanaka Lakes Health Centre should be rejected. The further submission of Aspiring Lifestyle Retirement Village should be rejected.
   e. The submission of JA Ledgerwood and Stuart Ian and Melanie Kiri Agnes Pinfold and Satomi Enterprises Ltd relating to additional zone controls (buffer setbacks) should be rejected. The further submissions of the Trustees of the Gordon Family Trust should also be rejected.
   f. The Local Shopping Centre zone provisions recommended by the Council and set out in the previous paragraph be accepted.

163. In respect of the above findings, we note that in addition to the preceding analysis and reasons, and those within the Council's reply statements which we agree with and adopt, in terms of s.32AA RMA:
   a. There are no other reasonably practical alternatives;
   b. Enabling a larger than appropriate Local Shopping Centre zone would be inefficient in terms of the role and function of other centres, particularly the Town Centre and Three Parks, within Wanaka.
   c. Enabling a larger than appropriate Local Shopping Centre zone would be ineffective in terms of not implementing the zone's policy purpose.
   d. We find that limiting the size of the zone will not materially affect economic development or employment in Wanaka, as our decision to limit the size of this zone will support the same employment and development outcomes occurring in the Town Centre and at Three Parks as envisaged by the PDP.

JA LEDGERWOOD (562)

9.11 Overall Recommendation

164. The submission should be rejected.

9.12 Summary of Reasons for Recommendation

165. The notified PDP Low Density Residential zone is more appropriate for the land and its current built form characteristics than the requested Local Shopping Centre zone. A second Local Shopping Centre zone along Cardrona Valley Road is not appropriate and would undermine the better-located PDP zone north of and close to Golf Course Road.

9.13 Subject of submission

166. The land the subject of submission is at Lots 10, 11 and 14 DP 309977 and Lot 15 DP 491094. It is located on Cardrona Valley Road and totals 2.4ha.

9.14 Outline of Relief Sought

167. The submission sought to change the notified Low Density Residential zone, as shown on Planning Map 23, to Local Shopping Centre zone (or a Business Mixed Use zone) on the basis that the land has been used as a boutique commercial facility for many years and will not be put to Low Density Residential activities.

9.15 Description of site and environs:

168. The site is used to accommodate a variety of commercial activities (Florences Café and The Venue function facility) in a spread-out, garden-type arrangement. The site sits at the corner of Cardrona Valley Road and Orchard Road.

169. A Local Shopping Centre zone proposed in the PDP sits approximately 330m north of the subject site near Golf Course Road. At this time, the activities adjacent to the submitter's site have not been urbanised and in the PDP it is not proposed that this will occur. Land to the north-east is proposed to be zoned Low Density Residential and over the life of the Plan develop into an expansion of Wanaka. However the needs of this land have been catered to in the PDP by the Cardrona Valley Road Local Shopping Centre Zone to the north.

9.16 The Case for Rezoning

170. The submitter outlined his vision for the land to us, including retention of the existing park-like setting, open spaces, small-scale buildings and a variety of small-scale commercial activities. A concern for Mr Ledgerwood was that he felt he was being charged annual Council rates on the basis of a commercial activity, but was only able to undertake residential-style development. It was not lost on us that this was the type and scale of commercial development he stated he wished to develop.

171. Ms Bowbyes recommended rejection of the submission on a range of grounds in her s.42A report *"Group B Wanaka – Business"*. She drew our attention to the intensity of development enabled within the LSCZ which, in her view, was not consistent with the submitter's vision for the land, and raised questions regarding possible effects on the notified Local Shopping Centre Zone further up Cardrona Valley Road. Rezoning was also opposed on technical grounds (traffic and infrastructure capacity). Ms Bowbyes also opposed the alternate relief sought. She was of the view that the proposed development would not be consistent with the purposes of the Business Mixed Use Zone.

172. The submission raises a number of strategic planning questions relating primarily to PDP Chapter 4: specifically, questions regarding the nature and purpose of the Local Shopping Centre zones, how frequently they should occur (the PDP proposes one approximately 330m north at Cardrona Valley Road near the intersection with Stone Street), and where they should locate relative to the communities they serve. Of note is that the submitter's site is located at the southern edge of the proposed Wanaka Urban Growth Boundary with rural-zoned land from that point. Some of those matters have already been discussed in the preceding section of our report.

9.17 Issues

173. After considering all of the evidence and visiting the area, we determined that this submission should be considered concurrently with the submissions discussed above, related to the

Cardrona Valley Road Local Shopping Centre. We find that the additional issue this submission raises is as follows:

a. Is the submitter's site appropriate for the Local Shopping Centre Zone given its location at the edge of the Urban Growth Boundary, its rural land context and that another Local Shopping Centre Zone approximately 330m north has been provided for in the PDP to meet the needs of locals in this western part of Wanaka?

9.18 Discussion of Issues and Conclusions

174. Overall, we consider that the submitter has not provided a compelling argument or adequate analysis demonstrating that two Local Shopping Centre zones along Cardrona Valley Road would be appropriate; we consider it would not be. The existing activities on the site are furthermore of a scale and have characteristics that make them very compatible with the adjacent Low Density residential zoned land; we consider that a change to the scale and bulk of activities provided for in the Local Shopping Centre zone would be problematic and inappropriate in this respect. We are particularly concerned with the appropriateness of a Local Shopping Centre Zone adjoining rural-zoned land that is very unlikely to provide a sufficient local catchment to support the zone as intended by the PDP and the purpose of the Local Shopping Centre Zone as set out in Chapter 15 of the Plan.

175. The alternative relief sought, of a mixed use commercial zone, would not in our view be appropriate and could result in a moderately large-scale employment outcome eventuating on the site. The rural adjacency and peripheral location of the site in Wanaka's urban area are insurmountable difficulties in terms of the compact, convenient settlement pattern promoted by the PDP's strategic chapters and summarised in Report 16.

176. The key issue is that both the existing environment and the future ambition of the submitter, as we understand it, are considerably more in line with the built form expectations of the Low Density Residential zone. Both the Local Shopping Centre and Business Mixed Use zones provide for much greater height, development scale generally, and a much more 'urban' building arrangement including buildings built at or very close to front boundaries. We find that neither of those would be desirable on this land or reflect the outcomes sought by the submitter.

177. For these reasons, the submission should be rejected. We agree with and adopt Ms Bowbyes' s.42A recommendation and reasons. No further s.32AA analysis is required.

SATOMI ENTERPRISES LTD (619)

9.19 Overall Recommendation

178. The submission should be rejected, without prejudice to reconsideration of the suitability of the site for visitor accommodation activity as part of the Stage 2 Variations notified by the Council on 23 November 2017.

9.20 Summary of Reasons for Recommendation

179. The request for a 'visitor accommodation overlay' on top of the Low Density Residential zone was accompanied by no details as to what the overlay would contain or how that would or would not be appropriate for the Low Density Residential zone.

9.21 Subject of submission

180. The site at Lot 1 DP 356941 is 2.5ha in area and fronts Cardrona Valley Road just south of West Meadows Drive.

9.22 Outline of Relief Sought

181. The submission accepted the Low Density Residential zone shown on Planning Map 23 for the land the subject of submission, but sought the addition of a 'visitor accommodation overlay' allowing visitor accommodation activities to occur.

182. Given that the Council withdrew all visitor accommodation provisions from the PDP[70], the default activity status for any proposal for visitor accommodation on the site would otherwise be Non-Complying.

9.23 Description of site and environs

183. The site is close to the Wanaka UGB on Cardrona Valley Road, immediately north of a site that has been developed into a visitor accommodation activity (and zoned Large Lot Residential). The site is the subject of an approved subdivision consent (RM140525) for 21 lots ranging from 700m^2 to 1000m^2, served via a single central cul-de-sac road. Further north and west, detached residential housing has been recently developed. On the other side of Cardrona Valley Road, a Local Shopping Centre zone has been proposed in the PDP.

9.24 The Case for Rezoning

184. In his s42A report "*Group 1A Urban Wanaka and Lake Hawea*", at paragraphs 6.26 – 6.31, Mr Barr evaluated the submission and concluded that it should be refused. A key issue for him was that the submitter had provided no detail of what the requested overlay would provide for, or how.

185. At one end of a spectrum, the overlay could simply provide an activity status enabling visitor accommodation as a land use category, as either a Permitted, Controlled, Restricted Discretionary or Discretionary activity (as above, the PDP default is non complying). At the other end of that spectrum, a change of activity status as well as alternative bulk and location (and other) controls may have been sought.

186. The submitter did not appear before us to clarify these points.

187. The PDP lacks a planning framework that explicitly enables visitor accommodation activities due to these being withdrawn by the Council on 25 November 2015. The Council indicated to us that it intends revisiting visitor accommodation as part of its Stage 2 PDP process (and this has since occurred via the variations notified on 23 November 2017). However, this does not prevent submitters to the Stage 1 process seeking relief at this time, or us from considering those submissions. However, it is fair to state that in the absence of a clear framework within the PDP to rely on, the burden falls on submitters to make a compelling resource management case in terms of any necessary policies across the Plan that may be required in addition to detailed rules or other methods. Report 16 discusses the point in greater detail.

9.25 Issues

188. After considering all of the evidence and visiting the area, we determined that the submission requires us to reach a view only on the appropriateness of a visitor accommodation overlay applying to the site that would retain the PDP's underlying Low Density Residential zone. The request is of itself unremarkable save for the complete withdrawal of visitor accommodation provisions from the PDP by the Council.

[70] Council resolution, 25 November 2015.

9.26 Discussion of Issues and Conclusions

189. We find that the uncertainty regarding what the overlay sought by the submitter may or may not include, and the extent of any assumptions we may have made regarding what was requested, remains insurmountable. The submitter also did not identify any necessary zone or Plan objectives or policies that may be required to enable the requested overlay.

190. We are also concerned that the provision of visitor accommodation in Wanaka at least should be determined from the point of view of a more coordinated strategy taking into account the PDP strategic policy framework as a whole. This is not something that we are able to do on the basis of this single request (and others like it).

191. We were told by Ms Scott in response to our questions that the Council, in Stage 2 of the PDP, intends to propose a visitor accommodation strategy for the district, including specific objectives and policies as appropriate, and plan methods to enable visitor accommodation. That has now occurred in the variations notified on 23 November 2017 and as discussed in Report 16, the Council has confirmed that it will receive submissions as part of those variations seeking to rezone land that is before us as Visitor Accommodation. This is in our view the more reliable approach, and in the absence of a clear pathway for us to take the current submission any further, it remains the most appropriate solution.

192. We recommend that the submission be rejected, without prejudice to any reconsideration of the visitor accommodation activities on the submitter's site as part of the Stage 2 Variation process. No further s.32AA analysis is required.

10. ORCHARD ROAD /RIVERBANK ROAD

ORCHARD ROAD HOLDINGS LTD (249)
- Further Submission: FS1027 DENISE AND JOHN PRINCE
- Further Submission: FS1131 JACKIE AND SIMON REDAI

JACKIE REDAI AND OTHERS (152)
- Further Submission: FS1013 ORCHARD ROAD HOLDINGS
- Further Submission: FS1136 IAN PERCY

IAN PERCY AND FIONA AITKEN FAMILY TRUST (725)
- Further Submission: FS1013 ORCHARD ROAD HOLDINGS LTD

10.1 Overall Recommendation

193. Reject the submissions and accept the further submissions.

194. In addition, the Council is recommended to consider preparing a strategic structure plan for the land bound by Riverbank Road, Cardrona Valley Road and Ballantyne Roads, including the land at Lot 3 DP 17123, setting out a long-term zone staging plan, indicative road network and land use distribution. That should be the basis of future plan changes at an appropriate rate.

10.2 Summary of Reasons for Recommendation

195. The requests for re-zoning raise a number of concerns relating to infrastructure servicing and availability, a coordinated and suitably connected network between and across different submitter properties, and the appropriateness of enabling land for activities that within a short time frame may prove unsuitable for the land. While the land is very likely to be appropriate for urban development, the most appropriate densities, distributions, and new transport networks have not been adequately resolved to the extent that we could have confidence in

re-zoning now. The Percy/Aitken submission was not supported by evidence so as to satisfy us that the suggested rural character zone might be the most appropriate zoning.

10.3 Subject of Submissions

196. The submissions address the area of land south of the PDP Urban Growth Boundary for Wanaka, and bound by Orchard Road (southwest), Riverbank Road (south east) and Ballantyne Road (northeast). The land subject to the Orchard Road Holdings Ltd submission is Lot 3 DP 374697. It is approximately 24ha in area and has road frontage to Orchard Road.

197. South-east of the Orchard Road Holdings and PC46 land is the land of interest to the Redai et al submission. This submission covers approximately 39ha across multiple landowners of land that fronts Riverbank Road.

198. The Percy/ Aitken property is one of the properties the subject of the Redai et al submission and is located at 246 Riverbank Road.

10.4 Outline of Relief Sought

199. The submissions of Orchard Road Holdings and Ms Redai and others address the extent to which the land should be zoned for a greater density of residential housing than would be possible under the notified PDP Rural zone which currently applies to the land, as shown on Planning Map 23. The Percy/ Aitken Family Trust's submission seeks a rural character zone rather than the existing rural zoning and relocation of the UGB.

200. The further submissions oppose the re-zoning sought by the primary submitters. The essence of the opposition relates to a loss of the rural amenities of this part of Wanaka and that, as and when change happens, it should be carefully planned for as to maintain existing amenity values.

201. It was not clear whether or not Mr Percy and Ms Aitken opposed the proposed re-zoning. This was clarified through the hearing to the effect that Mr Percy sought protections for his existing activity, but did not fundamentally oppose the re-zoning.

10.5 Description of site and environs:

202. The Orchard Road Holdings property sits immediately south of the PDP's Urban Growth Boundary for Wanaka. It is vacant. Immediately northeast of the site is land that is subject to ODP Plan Change 46, also controlled by Orchard Road Holdings Ltd.

203. The land the subject of submission by Redai and others has been subdivided historically into approximately 4ha lots, each containing a dwelling. As is characteristic of rural lifestyle type living, the properties include a number of shelterbelt type hedges demarcating individual lots. Ian Percy operates a vineyard activity on his property, but to the best of our knowledge his is the only commercial use of one of the submitters' sites.

204. Across Riverbank Road is Rural Lifestyle zoned land in the PDP. However, this land is atypical inasmuch as while the density of development is in accordance with the Rural Lifestyle zone proposed, the actual built form makes this appear much denser from Riverbank Road. This is because the land forms a shallow terrace at the upper Riverbank Road level, before dropping sharply down to the Cardrona River. This makes each site much less developable than the lot site areas might suggest, and dwellings have crowded at the upper level close to the road.

10.6 The Case for Rezoning

205. The argument for the submitters was that development has been and is occurring across Wanaka and that ultimately the flat land between the rivers would form the natural boundary for the Wanaka settlement. This is loosely in line with the Wanaka Structure Plan's approach.

206. For Willowridge Development Ltd, Mr Dippie explained how Three Parks came about and suggested that planning for its outward growth should be undertaken now, and in a structure-planned manner. This was to ensure that development was co-ordinated and delivered on market expectations for quality and affordability.

207. For the Redai et al group, Mr Edgar gave planning evidence suggesting that the Rural Zoning was anomalous given the extent of existing development and suggested that a Rural Residential zoning would be consistent with the relevant higher order provisions, including the National Policy Statement on Urban Development Capacity.

208. The PDP has zoned the land Rural, expecting low-density dwellings and small-scale rural-compatible outdoor activities or commercial activities. The relevant planning matters raised by the submissions relate to the strategic provision of urban zoned land to accommodate growth, and also (as above) the implementation of the National Policy Statement on Urban Development Capacity. As such, the strategic provisions in Chapter 4 of the PDP summarised in Report 16 are of relevance.

10.7 Issues

209. After considering all of the evidence and visiting the area, we determined that the submissions should be considered concurrently. We find that the issues they raise they should be addressed as follows:
    a. What is the most appropriate land use outcome for land zoned rural in the PDP?
    b. What is the most appropriate means of enabling this large area of land to be developed in a coordinated and efficient manner?

10.8 Discussion of Issues and Conclusions

210. The key context of this land is that it is plainly the most important 'next' growth area for Wanaka. Eventually, the settlement will likely encompass the entire river terrace between Lake Wanaka and Riverbank Road. If it is to retain its intimacy and village character, more successful planning than has previously occurred will be necessary. We consider that examples of recent strategic planning initiatives that demonstrate this principle include the Three Parks Plan Change (PC16), and to an extent the Northlake Plan Change (PC45). These included comprehensive analysis, and detailed structure plans that include a variety of information relating to land use type and density, transport networks and road hierarchies, open spaces and staging.

211. In terms of the Orchard Road Holdings Ltd submission, we find that it lacks sufficient evidence for us to consider rezoning to be supportable at this time. Mr Barr estimated in his s.42A report that it could potentially accommodate 600+ residential units. Mr Alan Dippie, director of Orchard Road Holdings Ltd, did not disagree with Mr Barr's estimation. In discussion with us, Mr Dippie agreed that some form of structure plan would be ideal to manage development of the land.

212. In his reply on behalf of the Council, Mr Barr proposed a possible structure plan, were we of a mind to support the relief requested. We consider that Mr Barr's efforts are commendable, but that more detail and technical analysis than has been undertaken to date is required.

213. We are concerned that zoning for 600+ units, which is significant in terms of Wanaka, when there has been no confirmation of how the necessary infrastructure would or even could be accommodated does not reflect sound resource management practice.

214. In terms of the Redai et al submission, we have greater concerns. There is already a degree of land fragmentation. However, for almost 40ha of land, an agreed plan relating to future road linkages, open spaces, and other land use outcomes is in our view essential. Although these submitters only sought a Rural Residential zone, we consider that the land is already at the highest possible density that can be justified before more strategic planning is warranted.

215. We are concerned that providing for greater fragmentation now without the benefit of such a plan could plausibly enable long-term inefficiencies and adverse effects arising from not 'locking in' a vision for how to manage what is, in our view, the very probable scenario that higher density such as Low Density Residential zone (or higher) will in the (reasonably foreseeable) medium term be desirable on the land. Short term intensification that precludes what will be the most appropriate medium to long term outcome on the land is not in our view likely to promote sustainable management in this part of Wanaka. We note the Environment Court's comments in the context of the Northlake Plan Change appeal where it observed that planning density from the outset will likely deliver superior urban form outcomes compared to progressive intensification[71].

216. Mr Percy and Ms Aitken seek a rural character zone akin to the Gibbston-Character Zone. While they provided suggested permitted activities with their submission, they provided no supporting evidence that would have enabled us to assess the relief they sought in terms of s32AA and Mr Barr did not support it. Accordingly, we have no basis on which to consider it further. Likewise the alteration to the UGB also sought.

217. The obvious difference in objectives between Mr Percy and Ms Aitken (given the relief sought in their submission) and their neighbours, however, supports a need for strategic planning to optimise the outcome.

218. Ultimately, we find that the land that is the subject of these submissions is strategically very significant for Wanaka and that it is very likely it will be most appropriately utilised for urban density residential and commercial activities in the reasonably foreseeable future. There remains a significant information gap relating to infrastructure serviceability and cost, staging and urban form opportunities. Given that Wanaka is subject to firm and fixed long-term growth boundaries the promotion of sustainable management would be best served by subjecting the land to a more strategic and long-term development planning exercise. Based on the information before us, neither the Council nor the submitters have undertaken this satisfactorily.

219. Overall, we recommend the submissions be rejected, but that the Council, working with the landowners, consider developing a structure plan for the land and also including Lot 3 DP 17123 (subject to a submission from Willowridge Developments Ltd and addressed separately in the next section of this report). That should include land staging, transport networks and connectivity, infrastructure supply and timing, land use mix and densities. That structure plan would form in our view the most suitable framework for zoning the land for urban development. We therefore recommend that the further submissions that opposed the relief sought should be accepted.

[71] *Appealing Wanaka Inc v QLDC* [2015] NZEnvC 139 at [192]

220. We consider that no further s.32AA RMA analysis is required given that we have concluded in support of the notified PDP zoning for this land.

WILLOWRIDGE DEVELOPMENTS LTD (249)

10.9 Overall Recommendation

221. Reject the submission.

10.10 Summary of Reasons for Recommendation

222. Zoning the 12.3ha site at Lot 3 DP 17123 to Rural zone as per the notified PDP will most appropriately give effect to the PDP's objectives and policies, however, an eventual re-zoning of the land as part of a broader structure planning exercise could be appropriate.

10.11 Subject of submission

223. The submission relates to Lot 3 DP17123, a 12.3ha site at the north-eastern corner of Riverbank Road and Ballantyne Road, Wanaka.

10.12 Outline of Relief Sought

224. The submission sought to re-zone the subject site Industrial B (an ODP zone) rather than the Rural zone shown on Planning Map 18 and 23.

10.13 Description of site and environs

225. The site sits immediately south of the former Wanaka Oxidation Ponds that have been re-zoned under the ODP into a Mixed Use zone. The eastern boundary of the site also adjoins the Three Parks zone, with Low Density Residential development approved to the common boundary. The boundary of the site with the adjacent Mixed Use and Three Parks zoned land also serves as the UGB.

226. West of the site, across Ballantyne Road, is a combination of Industrial A and B zoned land within the UGB, and also Rural zoned land outside the UGB that is used as a public dog park. To the south, is a combination of Rural and Rural Lifestyle zoned land, which includes a former landfill and transfer station.

227. Riverbank Road is the outermost road within Wanaka, and it links State Highways 6 and 84 (north east) with Cardrona Valley Road (south-west) running along the upper terrace of the Cardrona River. Ballantyne Road intersects with Riverbank Road and forms a spine road running through the centre of the Wanaka flat through to SH84 very close to Lake Wanaka and the town centre. In terms of urban structure, this is a key part of the road network and the site will likely remain commercially relevant on that basis.

228. The site is currently vacant, but may soon be used for a (consented) yard-based activity comprising a 50m long x 8m high service / administration building and a 36m long and 5m high parking structure for trucks.

10.14 The Case for Rezoning

229. This submission and the Council's s.42A response is set out in section 11 of the "*Group 2 Wanaka Urban Fringe*" report prepared by Mr Craig Barr. In summary, Mr Barr recommended that the submission be rejected and that the PDP Rural zone was the most appropriate for the site. By the close of the hearing, Mr Barr confirmed that his opinion on this matter had not changed.

230. For the submitter, the principal argument in support of an Industrial B zone was that the site is currently consented to be used as a contractors' yard and truck depot. On this basis, the industrial activities enabled within the Industrial B zone would be compatible with the established visual amenity and character values of the area. At the hearing, no expert evidence was called but Mr Alan Dippie, Director of Willowridge Developments Ltd, and Ms Alison Devlin, In-house planning adviser, addressed us on a number of different sites the company submitted on.

231. For the Council staff, Mr Barr's key concerns related to the lack of s.32 or related analysis provided by the submitter. In Mr Barr's view, as the Council was deferring consideration of industrial zones to Stage 2 of the PDP process, the submitter was not able to rely on an alternative Council analysis and this left the submission somewhat stranded. Mr Barr did however note that it could be possible to accommodate industrial activities on the site in a way that was appropriate. However, Mr Barr qualified that by noting a number of site-specific considerations that would be relevant, such as yard setbacks, buffers or bunds, and visual amenity screens with adjacent sites to the north (Mixed Use) and in particular east (Low Density Residential).

232. The Council has excluded industrial zones from Stage 1 PDP and as such, there is no proposed policy guidance to assist consideration of those submitters seeking an industrial land use zone on land that had otherwise been identified for the Stage 1 process, other than high level guidance from the policies of Chapter 4 summarised in Report 16 – see in particular, Policy 4.2.2.2. In the PDP, the land is zoned Rural. The policy framework does allow for commercial use of Rural zoned land, restricted to those associated with rural activities and which are more characteristic of rural activities. Outdoor components of some industrial uses are in our view compatible with this where they retain much vegetation and only a very small part of a site accommodates buildings.

10.15 Issues

233. The proposal raises a strategic resource management issue relating to the appropriateness of importing a zone framework from the Operative District Plan into the PDP over and above the question of whether an industrial land use zone is the most appropriate for the land.

10.16 Discussion of Issues and Conclusions

234. While Mr Barr noted additional avenues we might consider, such consideration needs to be against a background where the submitter was clear in its request for the ODP Industrial B zone. In any event, Mr Barr's analysis was intended to signal a defect with the submitter's request, not to establish a framework of specific methods and analysis on behalf of the submitter. This leaves us uncertain as to what additional restrictions or controls, if any, would actually be appropriate. This of itself reiterates the lack of necessary substantiating analysis to justify the request.

235. While we accept that the submitter is entitled to propose any land use they wish on any area of land, the onus is also on the submitter to provide necessary statutory justification. For the purpose of this mapping stream, and as we have set out in Report 16, we approached the matter of alternative zonings as if they represented methods that could give effect to the higher strategic and district-wide sections of the PDP. The promotion of an ODP zone without any analysis demonstrating how it may (or may not) fit with the objectives and policies of the PDP remains a significant barrier in front of us.

236. We find that it would be possible to accommodate some form of intensive industrial activity on the site. But we have not been satisfied that the ODP Industrial B zone is appropriate. We find that the most appropriate resource management outcome at this time is for the land to be zoned Rural as per the notified PDP. For this reason, we recommend the submission be rejected. Our key reasons are:
    a. The only available s.32 analysis and evaluation of alternatives against the PDP objectives and policies supports a Rural zone, and we have adopted that (and Mr Barr's further s.42A report evaluations).
    b. We are not satisfied that the ODP Industrial B zone provisions are compatible with the PDP objectives and policies, since no evaluation has occurred, and we have had no means to undertake such an evidential, rather than deliberative, task ourselves.
    c. We disagree that a resource consent for a contractors' yard is of itself sufficiently determinative that potentially higher intensity general industrial activity would also be appropriate. We note that the approved resource consent RM160218 includes extensive open space areas and a dense landscape screen around the site's boundary. This is in our view broadly compatible with the amenity sought within the Rural zone and as such the resource consent can sit adequately within the Rural zone framework. It is in summary not compelling evidence that the Rural zone is misplaced.
    d. The former oxidation pond land and southern edge of the Three Parks structure plan area could result in land use outcomes at the property boundary with this submitter's site that are not compatible with industrial activities. While this does not lead to the conclusion that industrial activity would be inappropriate on the submitter's land, it does highlight the lack of any evaluation of likely effects or management methods (i.e. site-specific conditions or requirements) that could address these.

237. We recommend that the zoning of this site and whether the Wanaka Urban Growth Boundary should be expanded to include it should be revisited as part of the broader Structure Plan process we have separately recommended in the previous section of this report. That exercise, presuming the Council proceeds with it, should also include a program or staging for future plan changes and would include all Rural land north of Riverbank Road southwest to Cardrona Valley Road.

11. ANDERSON ROAD

MURRAY FRASER (293)

11.1 Overall Recommendation

238. Accept the submission in part.

11.2 Summary of Reasons for Recommendation

239. The most appropriate minimum lot size (method) to implement the PDP objectives and policies within the Large Lot Residential zone at 115 Anderson Road is 2,000m^2 rather than the 4,000m^2 set out in the notified PDP.

11.3 Subject of submission

240. This submission relates to Lot 2 DP12562, a 4.3 ha site at 115 Anderson Road.

11.4 Outline of Relief Sought

241. The submission stated that the notified Large Lot Residential zone minimum lot size of 4,000m^2 was excessive, and sought that a 2,000m^2 minimum apply. While the matter of general planning provisions for this residential zone was a matter for the Stream 6 Hearing, the Council

officers' recommendations arising out of that was to split the zone into two sub-zones, one requiring a 4,000m^2 minimum and one requiring a 2,000m^2 minimum. Although subject to some changes from the officer recommendation, the Stream 6 Panel has also recommended acceptance of that Area A / Area B sub-zone approach.

242. But any spatial queries relating to what areas of land each sub-zone should or should not apply to do sit, to some extent, within our jurisdiction. For the purposes of the submission, the relief sought amounts to a request that the submitter's site be within the 2,000m^2 minimum lot size (Area A in terms of the Stream 6 recommendations).

11.5 Description of site and environs

243. 115 Anderson Road is a long site on the eastern side of Anderson Road and some 4.3ha in area. It is surrounded by lifestyle-type residential developments, typically of 4ha. However, of note is that the land to the south forms part of Terranova Place that we have found elsewhere within this report[72] to be appropriate for Low Density Residential outcomes. Land north of that, and including the submitter's site, is proposed to sit within the 2,000m^2 minimum lot size Area A sub-zone of the Large Lot Residential zone on the basis of the Stream 6 Hearing process.

11.6 The Case for Rezoning

244. In the PDP this site was proposed to be zoned Large Lot Residential. The submitter supports this, but not the 4,000m^2 minimum site size that was notified. Evidence was provided on behalf of the submitter by Mr Scott Edgar, planner. Mr Edgar confirmed that the submitter sought a minimum site size of 2,000m^2 and that the recommendations made to the Stream 6 Panel by Ms Amanda Leith on behalf of the Council addressed the relief sought by Mr Fraser.

245. As above, in the Stream 6 process, the Large Lot Residential zone has been proposed to be split into sub-zones, one allowing 2,000m^2 minimum site sizes and one requiring 4,000m^2 site sizes. In Ms Leith's advice to the Stream 6 Panel, she recommended that 4,000m^2 be the 'norm' for the zone, with 2,000m^2 being available for those parts of the zone where additional intensity would be appropriate.

246. The Stream 6 Panel has taken Ms Leith's advice further, primarily on the basis of the evidence received including from the Council's urban design consultant Mr Garth Falconer, that 2,000m^2 should be the 'norm', with 4,000m^2 used where environmental constraints justify it, such as on the lower slopes of Mt Iron.

247. Although the submitter has not sought a change of zone, we accept that the matter of which Large Lot Residential sub-zone should apply to the land falls within our jurisdiction.

11.7 Issues

248. The submission raises no strategic planning matters, and requires us to consider only whether the Area A or Area B Large Lot Residential sub-zones is the more appropriate.

11.8 Discussion of Issues and Conclusions

249. As a consequence of Ms Leith's Stream 6 recommendations, the submitter's land would fall into the 2,000m^2 sub zone (Area A in the Stream 6 Panel's recommendations). On the basis of Mr Edgar's planning evidence, which confirmed that this would meet the relief sought by the submitter, we recommend that the submission be accepted in part, to the extent that the Large Lot Residential zone still includes provisions and requirements for 4,000m^2 minimum lot

[72] In response to the submission of Christopher Jopson, Jacqueline Moreau and Shane Jopson (submission 287)

sizes in some locations, but 2,000m^2 more generally (and including specifically Lot 2 DP12562). We adopt the reasoning of the Stream 6 Panel for this purpose, and in respect of Mr Fraser's land specifically, confirm our view that the site exhibits no sensitive features that would trigger the 4,000m^2 sub-zone (Area B in the Stream 6 Panel's recommendations) becoming the more appropriate.

250. As noted by Mr Edgar, the submission strictly speaking applied to the entirety of the Large Lot Residential zone. We record that we are only able to recommend accepting his submission in part given the Stream 6 Panel's retention of a 4,000m^2 minimum lot size in the Area B sub-zone.

251. We are in effect agreeing with the Council's and the Stream 6 Panel's recommendations, and to that end we consider no further s.32AA analysis is required.

12. STUDHOLME ROAD AREA

HAWTHENDEN LTD (776)
CALVIN GRANT & JOLINE MARIE SCURR (160)
GLENYS & BARRY MORGAN (161)
DON & NICOLA SARGESON (227)
AW & MK MCHUTCHON (253)
ROBERT & RACHEL TODD (783)
JOANNE YOUNG (784)
MURRAY STEWART BLENNERHASSETT (322)
Further Submission: FS 1156 PATTERSON PITTS PARTNERS (WANAKA) LTD
Further Submission: FS 1135 GLENYS AND BARRY MORGAN

12.1 Overall Recommendation

252. Accept the submissions in part and accept the further submissions in part.

12.2 Summary of Reasons for Recommendation

253. Area A within the Hawthenden Ltd land should remain Rural zone as per the notified PDP. Areas B and C within the Hawthenden Ltd land are most appropriate for Rural Lifestyle development. The land of interest to the remaining submitters, the "Studholme Road" group, should also be zoned Rural Lifestyle. Together, these submissions will provide for an appropriate development opportunity that will maintain character, landscape and amenity values and not create inappropriate pressure for urban infrastructure services to be provided by the Council outside of the Wanaka Urban Growth Boundary.

Subject of submission

254. The Hawthenden land is part of a 229ha farm comprising the following titles: Part Section 10 Block III Lower Wanaka Survey District held on Computer Freehold Register OT16A/341; Lot 1 Deposited Plan 300235 and Lot 3 Deposited Plan 20199 held on Computer Freehold Register 1839; Section 27 Block III Lower Wanaka Survey District held on Computer Freehold Register OT9C/622; and Part Section 30 and Section 44 Block III Lower Wanaka Survey District held on Computer Freehold Register OT16A/342. The farm is shown as Rural on PDP planning maps 18, 22 and 23.

255. The balance of the above-named submitters make up the "Studholme Road group". Their submissions relate to 18 separate properties comprising 55ha in total (ranging from 1.1ha to

6.1ha) also zoned Rural that are located either side of the corner of Cardona Valley Road and Studholme Road immediately to the east of the Hawthenden property.

12.3 Outline of Relief Sought

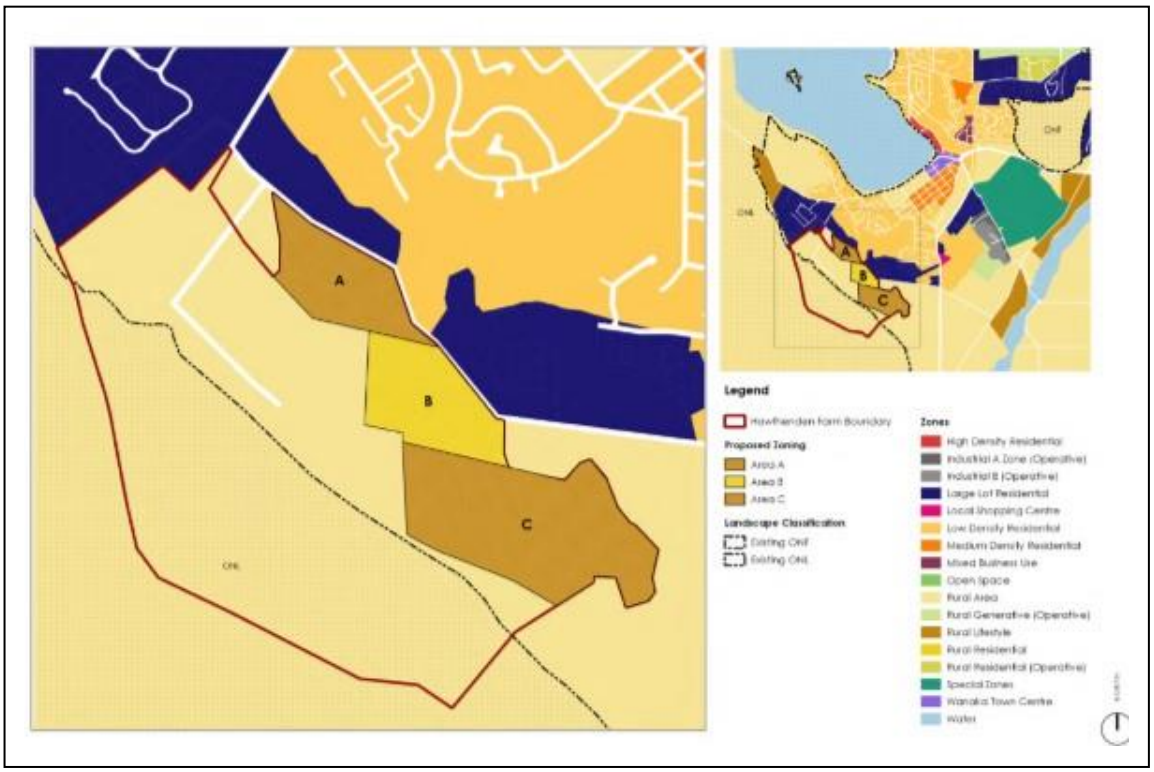
256. The submissions sought that land currently proposed to be zoned Rural, be zoned for greater, but still rural-density, residential activities, variously as Rural Lifestyle or Rural Residential. The separate question raised in the Hawthenden Ltd submission of where a proposed Outstanding Natural Landscape boundary should be located is addressed in Report 16.1. The further submissions relate to the Studholme Road group of submitters, and support of the relief requested.

12.4 Description of site and environs:

257. The Studholme Road group properties are existing rural lifestyle sections, with established dwellings, that wrap around Cardrona Valley Road and Studholme Road. Studholme Road marks the UGB and there is a mix of Large Lot Residential and Low Density Residential zoned land on the north side of Studholme Road in the process of being developed.

258. The Hawthenden Ltd land is an elevated series of historically farmed terraces that include the lower slopes of Mount Alpha. The part of the site that is the subject of the submission seeking rezoning is part of a substantial alluvial fan system, the Alpha Fan. We refer to the detailed geological evidence or Mr Stephen Leary provided on behalf of Hawthenden Ltd for more information in that respect. Together the property is 229ha in area. It includes the south-western extent of developable land in Wanaka, and parts of it are prominently exposed to public view, including from Mt Iron. The site affords some superb elevated views across Wanaka town to Lake Wanaka. The land the subject of submission sits between the UGB (immediately to the north) and the ONL line, further up the hill and is made up of three adjoining areas – Area A of 14.2 ha, Area B of 15.8 ha and Area C of 35 ha. These three areas are identified in **Figure 5**, taken from the landscape assessment prepared on behalf of the submitter by Ms Hannah Ayres (sheet 7)

Figure 5 – Areas A, B and C to the Hawthenden submission, from Sheet 7, landscape assessment of Ms Hannah Ayres, 22 October 2015.



259. Due to the landform, Area A is the most prominent from the Wanaka urban area and Lake Wanaka, with its slope also presenting much of its depth, as well as just width, to viewers. As one moves east, Areas B and C become increasingly screened from public view and are closer to flat terraces that do not present a visible or obvious slope to the Wanaka urban area. Area C is effectively invisible from the Wanaka urban area. All three areas offer elevated and very high-quality north-facing views over the town and to Lake Wanaka.

12.5 The Case for Rezoning

260. Mr Barr addressed the Studholme Road submissions in section 10 of his s42A report "*Group 2 Wanaka Urban Fringe*", recommending that they be accepted subject to the introduction of a 60m deep Building Restriction Area along Cardrona Valley Road. Mr White, giving planning evidence for the submitters concurred with Mr Barr's recommendations.

261. In terms of the Hawthenden Ltd submission, the applicant's evidence came from Mr Stephen Leary (geology), Ms Hannah Ayres (landscape), and Mr Scott Edgar (planning). These experts supported the relief requested, including a repositioning of the notified ONL boundary further upslope that is discussed in Report 16.1.

262. The Council's s.42A recommendations from Mr Barr (planning), Ms Mellsop (landscape) and Mr Glasner (infrastructure) identified a variety of concerns but overall took an accept-in-part position for 2 of the 3 areas proposed to be re-zoned through the submission.

263. Through the Council's right of reply, Mr Barr confirmed his opposition to the relief requested for Areas A and B of the site. He considered that were we to prefer a Rural Residential outcome for the latter, it would be more desirable to shift the Wanaka Urban Growth Boundary to include the land, and use the Large Lot Residential Area B zone to manage what was in his view

a potential for urban-type density outside of the Urban Growth Boundary. Mr Barr indicated that Rural Lifestyle zone for the Area B land could be appropriate. For Area C of the site, Mr Barr confirmed his agreement with the requested Rural Lifestyle zone.

264. Excluding the ONL request made by Hawthenden (discussed in Report 16.1), the submissions raised modest strategic planning issues. In the PDP the land was proposed to be zoned Rural and the submissions sought rural-based land use zones. The key planning issues come down to which of the rural zone frameworks is the most appropriate for the different sites based on their characteristics, and adverse environmental effects. The key zones are the Rural Residential and Rural Lifestyle zones, and we refer to our Report 16 for a summary of these two zones.

265. Related to the above, one factor relevant in our minds relates to how the zones requested would impact (or not) on the integrity of the Wanaka Urban Growth Boundary, established under Chapter 4 of the PDP. The UGB runs along the north-eastern edge of the Hawthenden Farm and urban-character development close to it could potentially undermine its integrity as a planning tool.

12.6 Issues

266. We need to form a view on the most appropriate zoning for each area of land. We find that we can consider the Studholme Road properties as a group, acknowledging Mr Blennerhassett has different relief that we need to consider, but each of the Hawthenden Ltd development areas (Areas A, B and C respectively) need to be considered separately.

12.7 Discussion of issues and conclusions

12.8 Studholme Road Group

267. We find that the relief sought by the Studholme Road group of submitters, augmented by the additional recommendations made by Mr Barr in his s.42A report and accepted by the submitters at the Hearing, will be an appropriate and efficient use of the land, that will also not undermine the built form outcomes identified for the urban part of Wanaka. Although one member of the group (Murray Blennerhassett) sought a Rural Residential Zone, Mr Blennerhassett did not present evidence supporting that position. We consider that the Rural Residential zone he sought would be unjustifiably anomalous relative to neighbouring sites and that including that land in the Rural Lifestyle zone is the more appropriate solution.

268. In the absence of any evidential contention or opposing argument, we accept what became an effectively agreed position between the Council staff and submitters for the reasons outlined by Mr Barr. We therefore recommend that these submissions and the further submissions in support be accepted in part, to the extent that we agree with a partial relief for the Murray Stewart Blennerhassett submission. The addition of a Building Restriction Area Mr Barr recommended (and Mr White for the submitters agreed with) along Cardrona Valley Road also amounts to a partial rather than full acceptance of the other submissions.

269. We adopt Mr Barr's s.42A recommendations and reasons, including his s.32AA analysis. No further analysis in this respect is required.

12.9 Hawthenden Area A

270. The 14.2ha Area A is a sloping face that will in our view be widely visible across Wanaka. It is in our view visually very sensitive and the submitter has not adequately demonstrated how the relief requested would acceptably manage those effects. Mr Barr preferred to retain the Rural zone, including on the basis that the zone contains a detailed rural landscape assessment

framework for considering subdivision and development applications and that this would be the most appropriate assessment framework given the sensitivity of the site.

271. We did not find the submitter's arguments in respect of Area A persuasive; we consider that the elevation and prominence of this part of the site has the potential for problematic and permanent adverse effects (including light-spill at night). We find that the relief sought is likely to result in the upper slope having a built character that is inappropriately closer to an urban environment than a rural one and which would be out of place. We find that the elevated table of the Hawthenden farm that includes the slope of Area A should continue to form part of the natural bowl that encloses the settlement and from which substantial character and amenity values are derived and contribute to Wanaka's social and economic wellbeing. While development that can be significantly or entirely screened from view could be appropriate (such as by being set back from the edge of the terrace in a way that would still allow occupants to enjoy views out and above any screening vegetation), our observations from our site visits looking to the site from numerous parks and roads, and Mt Iron, have left us with considerable concerns regarding how, in the absence of the rural character framework within the Rural zone that Mr Barr identified, a suitable balance might be struck.

272. In that light, we prefer Mr Barr's analysis. He focused on a number of Ms Ayres' conclusions regarding how to ensure development in Area A will be appropriate[73]. These include care in the location of building platforms, importance of other development occurring around the site to soften new development, and the careful management of driveways, amongst others. We consider that his analysis of this issue is balanced and logically justifies why the discretionary activity, design-led consent framework of the Rural zone is the more appropriate.

273. We acknowledge the evidence of Mr Edgar for the submitter, who outlined reasons why in his view the concerns of Mr Barr were appropriately addressed within the Rural Lifestyle zone framework (with reference to numerous policies). We were very interested in the provisions Mr Edgar raised with us, including the (notified) zone purpose (our emphasis added):

"The Rural Lifestyle zone provides for rural living opportunities, having a development density of one residential unit per hectare with an overall density of one residential unit per two hectares across a subdivision. Building platforms are identified at the time of subdivision to manage the sprawl of buildings, manage adverse effects on landscape values and to manage other identified constraints such as natural hazards and servicing. ***The potential adverse effects of buildings are controlled by height, colour and lighting standards****."*

274. In light of the significance of subdivision to ensure subsequent (and often permitted) development of dwellings in the Rural Lifestyle zone, Mr Edgar might have taken us to Chapter 27 of the PDP to outline those relevant provisions referred to in Chapter 22. He did not, and as will be discussed presently, this was detrimental to our ability to agree with his conclusions. When we considered Chapter 27 for ourselves, we noted the following material facts:
    a. The notified rule 27.4.1 required all subdivision activities to be fully discretionary activities unless otherwise stated. No exemption or alternative status was provided for the Rural Lifestyle zone, and the submitter did not identify to us any objection or request to change that; this means that there is little practical difference between the consents that would be required in either zone scenario that was put to us.
    b. At Chapter 27.7 we identified a series of location-specific objectives and policies for Rural Lifestyle zoned areas. We surmised that this may be how the zone could be appropriate on more visually or otherwise environmentally sensitive areas of land. The

[73] S.42A report of Craig Barr, paragraph 9.13

submitter proposed no such provisions for Chapter 27 that could have helped manage the effects of concern to Mr Barr (and ourselves) in a way that retained the Rural Lifestyle zoning.

c. The subdivision chapter contained no guidance at all relating to the general Rural Lifestyle zone in terms of the matters described in Chapter 22. In essence, notified PDP Chapter 22 uses a policy framework to state that subdivision will be managed to ensure certain outcomes are achieved for the zone, including in some instances site-specific controls on development. This was implemented by a blanket Discretionary activity, but there were no policies, criteria, guidelines or other methods in Chapter 27 to guide the exercise of that discretion.

275. On reading both Chapters 22 and 27, we did not take the same degree of comfort that Mr Edgar did in terms of how the Rural Lifestyle zone would be superior to the Rural zone in a planning sense or in terms of how Area A's visual sensitivity, would be managed.

276. Considering Chapter 27 as the Stream, 4 Hearing Panel has recommended it be amended, suggested Rule 27.5.8 would make the subdivision of Rural Lifestyle Zoned land a Restricted Discretionary Activity, with discretion reserved over the location and design of building platforms and in respect of any buildings, among other things, visibility from public places and landscape character. The ambit of that discretion means, we believe, that point (a) above is still relevant. In addition, point (c) remains valid – the absence of policies in Chapter 27 to guide the exercise of the discretion along with the implied development right occasioned by a Rural Lifestyle Zone, as discussed in Report 16, gives rise to legitimate concerns in our view as to whether the sensitivity of this site would be appropriately managed under that zoning.

277. Overall, we came to prefer Mr Barr's preference for the Rural zone, not because the Rural Lifestyle zone did not provide for recognition of landscape and character values in the design of at least subdivision (as pointed out by Mr Edgar), but because the Rural zone framework preferred by Mr Barr possessed the superior, and ultimately more appropriate, one - including the ability to provide more proactive design management of actual building designs as well as subdivisions rather than subdivision-based predictions or broad brush design restrictions on future building designs that were then subject to little further oversight.

278. Overall, we prefer the Council staff recommendation that the Rural zone should remain. Any development proposal in this part of the Hawthenden Ltd land should be assessed in light of the Rural zone policy and landscape framework, and if very sensitively designed could enjoy the granting of consent. In reaching this conclusion, we note that we are not suggesting that no development should occur on the Area A site; our finding at this level of District Plan provisions is more nuanced than this and relates to the most appropriate consent framework and design checks and balances that will manage the future design and layout of subdivision and dwellings.

12.10 Hawthenden Area B

279. We disagree with Mr Barr's reply recommendation that, instead of Rural Residential zone (were we to agree with the submitter), we should in preference shift the Wanaka UGB and zone the land Large Lot Residential. We do not consider that the Rural Residential zone being placed close to a UGB is inherently problematic. Ultimately the Council has proposed and satisfied itself (at least to the Plan notification stage) that its policy framework can be implemented by having an urban residential zone and a rural residential zone on either side of an Urban Growth Boundary; this is after all what it has done and argued in support of before

different compositions of the Hearings Panel and what is contemplated in the notified zone purpose for Chapter 22 of the PDP[74].

280. However, we do note that the Council's officers' and then subsequently the Stream 6 Hearing Panel's recommendations to make 2,000m^2 the 'default' lot size in the Large Lot Residential zone will ensure that there is a clear and easily distinguishable difference between the intensity of development within a UGB, and that outside of one, assisting maintenance of the integrity of the UGB line.

281. Similar to our consideration of Area A above, we find that the issue is not whether or not development should be enabled within Area B, but through what policy and procedural framework it should be managed. This should in our view be guided by the potential environmental effects that could result. By agreeing with a Rural Residential zone, we would be confirming that, subject to satisfactory realisation and detail – which is not a given – the landscape, amenity and built form outcomes enabled within that zone would be appropriate for the land. As discussed in Report 16, an implied development right accompanies rezoning. By preferring the Rural zone, we would not be foreclosing on the option of land development, but we would be making no initial presumption of what scale or density of development is appropriate.

282. In light of this, we find that the 15.8ha of Area B land will be visible from some viewpoints around Wanaka and has sufficient potential for adverse visual and landscape effects that the Rural Residential zone would not be appropriate. However, we also consider that defaulting back to the Rural zone would be unjustified in light of the technical work that the submitter has provided, that has addressed many practical development questions and satisfied us that the Rural Zone may not be the most appropriate zoning of the land. By contrast with Area A, Area B is less conspicuous and will present less development to the wider area. As such, we consider there is much less sensitivity attached to the management of environmental effect risks for Area B.

283. We consider that we have scope to consider an alternative outcome, provided it sits between what was notified in the PDP (Rural) and what was requested (Rural Residential). The obvious candidate is Rural Lifestyle, which is what has been proposed for Area C by the submitter.

284. We find that the Area B land could be developed to the Rural Lifestyle zone outcomes in a manner that we have much greater certainty would not give rise to inappropriate environmental effects. This would still leave open to the submitter the option of a higher intensity subdivision by way of a resource consent application and, with reference to the evidence of Mr Edgar on behalf of the submitter where he described the landscape-based provisions of the Rural Lifestyle zone[75], we note that the Rural Lifestyle zone provisions for subdivision and development will be appropriate in light of the lesser visibility of Area B in and around Wanaka. We therefore recommend that Area B of the Hawthenden Ltd land be zoned Rural Lifestyle.

285. This recommendation sits outside either of the submitter's experts or the Council's advisors. We have therefore undertaken a s.32AA analysis to support our conclusion. In summary:
    a. There are three alternatives (Rural Residential, Rural Lifestyle or Rural), and in our view these represent the realistic range of options before us;

[74] See notified zone purpose, chapter 22.1 of the PDP.
[75] Evidence of Scott Edgar, 4 April 2017, paragraphs 56-62.

b. Retaining the Rural zone would be inefficient in light of the generally accepted position that some form of rural-compatible residential development would be appropriate for the land and that the subject land is not highly visible within and around Wanaka.
c. Supporting the Rural Residential zone would be inconsistent in terms of the PDP's framework for managing rural landscapes and character and amenity values in and around Wanaka.
d. The Rural Lifestyle zone offers greater certainty as to likely environmental effects and rural-related policy considerations, and provides greater development opportunity to the landowner than the Rural zone.
e. The Rural Lifestyle zone will be a considerably more efficient use of the land than the Rural zone.
f. The site will provide a unique lifestyle choice allowing north-east facing, sunny and elevated views across the town to Lake Wanaka. This will provide for new amenity values to be created and derived from future residents.
g. Overall, the Rural Lifestyle zone will better promote economic development and employment (construction, land development, and subsequent maintenance such as private wastewater system maintenance) than the Rural zone.

12.11 Hawthenden Area C

286. We find that the 35ha Area C land is compatible with and appropriate for the Rural Lifestyle zone. This would enable a more efficient use of the land than the Rural zone in a way that would present almost no discernible effects to the remainder of Wanaka, and also reinforce the Urban Growth Boundary. The experts for the submitter and the Council agreed on this point, and as such, there was no disagreement before us.

287. The Area C terrace is elevated and set back such that it would be largely invisible from Wanaka town. We find that the use of this flat land with a superior, sunny aspect for Rural Lifestyle purposes will be a most suitable outcome.

288. In this respect, we accept and adopt the evidence of Mr Barr on behalf of the Council and Mr Edgar on behalf of the submitter, and also the further s.32AA analyses prepared by each. No further s.32AA evaluation is necessary.

12.12 Cumulative Overall Assessment

289. Overall, we find that Hawthenden Ltd's 'Area A' would be visually prominent and not appropriate for the Rural Lifestyle consent framework sought, although we consider that an optimum solution can be identified through a Rural-zone resource consent process that can more comprehensively consider subdivision and built form outcomes from a landscape values and character perspective. We recommend that area of land remain zoned Rural. Areas B and C are however in our view appropriate for low-density rural living, and to that end we have identified that the Rural Lifestyle zone is the most appropriate for each. In these respects, we recommend the Hawthenden Ltd submission be accepted in part. Where our recommendation aligns with the Council officers', we accept and adopt their reasons and s.32AA analyses as set out within the s.42A report and reply statement, with the exception of our additional analysis supporting our recommendation for Area B.

290. In terms of the Studholme Road group of submitters, we find that with the addition of a Building Restriction Area as proposed by Mr Barr, this would be an efficient and appropriate outcome for the land, it would also integrate logically with the Area B and C land in the Hawthenden Ltd submission and contribute to a logical and coherent western edge to Wanaka and its Urban Growth Boundary. For these reasons, we recommend these submissions be

accepted in part. We agree with and adopt the reasons outlined in Mr Barr's s.42A report and reply statement. No further s.32AA analysis is required.

13. WEST MEADOWS DRIVE

WILLOWRIDGE DEVELOPMENTS LTD (249)
NIC BLENNERHASSETT (INCLUDING ANDERSON FAMILY TRUST AS SUCCESSOR IN PART (335)
JOHN BLENNERHASSETT (65)

13.1 Overall Recommendation

291. The submissions should be accepted in part.

13.2 Summary of Reasons for Recommendation

292. The submitters seek a relatively modest adjustment of the boundary between Low Density Residential zone and Rural Residential zone west of West Meadows Drive. This will facilitate a road connection being achieved from West Meadows Drive to Studholme Road and is overall the most appropriate and efficient means of delineating the boundary between the two zones, provided development is undertaken in conjunction with that road connection.

13.3 Subject of Submissions

293. The Blennerhassett submission related to part of Lot 1 DP 499252 and part of Lot 2 DP 99250. The Willowridge Developments Ltd submission related to the land in multiple titles immediately east of the Blennerhassett land, adjoining West Meadows Drive. Mr Barr quantified the area of land affected by the two submissions, excluding roads and sections to the north of West Meadows Road that are already developed as 4.7935 hectares.

13.4 Outline of Relief Sought

294. The submissions sought to shift the proposed boundary between the Low Density Residential zone and the Rural Residential zone shown on Planning Map 23 south, so as to expand the area zoned Low Density Residential. The submitters provided maps showing their preferred boundary that overlapped in part.

295. In the notified PDP, the zone boundary between the Low Density Residential Zone and the Large Lot Residential Zone south and west of West Meadows Drive did not follow a cadastral title boundary and based on our site visit, it did not entirely follow a natural environmental edge or feature either.

13.5 Description of site and environs

296. The environment of the area the subject to the submissions is transitioning and has been in recent times becoming increasingly characterised by suburban residential character and amenity values. These parties have been collaborating on land subdivision within the Low Density Residential zone north and west of the end of the West Meadows Drive. At the hearing, they showed us more detailed plans than we had hitherto seen illustrating their shared vision.

13.6 The Case for Rezoning

297. In his s.42A report Mr Barr evaluated the submissions and recommended that they be rejected. Reliance was placed on the traffic analysis of Ms Banks and her concerns regarding traffic capacity at the intersection of West Meadows Drive and Cardrona Valley Road.

298. We were concerned with the potentially selective way that Ms Banks had been allocating available road network capacity; she had presumed that up-zoning proposed by the Council in

the notified PDP would occur and be acceptable, which would in turn consume capacity and place the submitters seeking 'additional' rezoning in the position where they would inherit the network capacity problem and be tasked with funding the solution. Although we accept that Ms Banks did not intentionally hold such a view, it was nonetheless apparent that her analysis had had that effect. The difficulty is that we did not regard a zone outcome proposed by the Council as having any inherent superiority to an outcome proposed by a submitter[76]. On that basis, there is no justification for an analytical filter that presumes Council-proposed changes will be accepted and that submitter requests must be considered overlaid on that position.

299. Ms Banks' approach was therefore problematic to us, and we asked the Council staff numerous questions relating to the apparent problem of the West Meadows Drive / Cardrona Valley Road intersection and why these particular submitters, and not any other party enjoying an up-zoning in the vicinity through the PDP, should be responsible for addressing it. Both Mr Barr and counsel for the Council (Ms Scott) accepted that there was no presumed superiority in the zones sought by the Council compared to the zones sought by submitters.

300. At the hearing, it also became apparent that the submitters were working together to facilitate a subdivision pattern that included linking West Meadows Drive to Studholme Road. The location of the link road was tabled to us by Mr Alan Dippie, Director of Willowridge Developments Ltd, at the hearing, and also spoken to by Nic Blennerhassett.

301. This was not apparent to the Council's officers when they had undertaken their s.42A report and was of particular interest to Ms Banks, since it ameliorated the traffic issues she had identified as being of concern.

302. By the time of the Council's reply, Mr Barr had come to agree with the submitters, and in his mind the new road link connecting to Studholme Road was a key aspect of this. To that end, he recommended accepting the submissions, subject to including a structure plan that included the link road.

303. We consider that the proposal does not raise any strategic policy issues relating to the PDP. We accept that this is a rapidly-changing part of Wanaka and that the PDP may not have entirely kept up with this change. The Structure Plan method identified by Mr Barr in his reply statement is also not in our view problematic from the point of view of Plan structure or administration, provided it is incorporated into Chapter 27.

13.7 Issues

304. Given Mr Barr's recommendation that a structure plan might greater detail about the project's road connection back to Studholme Road, the sole issue in our mind is whether with that addition to the PDP, the alteration to the Zone boundary sought by the submitters would be appropriate.

13.8 Discussion of Issues and Conclusions

305. The effect of the combination of submissions before us, if accepted, is shown on the Figure 6 below, taken from Mr Barr's reply evidence for the Council**.**

306. Given how discrete this area is, and that in this instance, the purpose of the structure plan method Mr Barr recommended (also shown in Figure 6) is confined to a single road link, it is appropriate that the Structure Plan be rather skeletal. It would not be appropriate if the subject land area was larger or included additional resource management considerations.

[76] Refer our discussion of this point in Report 16 at section 2.2.

Accordingly, we recommend to the Stream 4 Hearing Panel (hearing submissions on Chapter 27 (subdivision) that a Structure Plan as attached to this report as Appendix 2 be inserted into Chapter 27 together with a supporting policy, rules, and assessment criteria. Mr Barr recommended text for a suggested policy and rules, designed to fit into the revised structure of Chapter 27 recommended by the reporting officer in the Stream 4 hearing. While we agree with the substance of Mr Barr's recommendations, we think that his draft policy and rules require amendment to be more precise about the area to which they relate. Consequential changes will also be required by way of renumbering and expression to fit into the revised structure of Chapter 27 recommended by the Stream 4 Hearing Panel. Our recommended provisions are set out at Appendix 2.

307. We note also that Mr Barr did not provide the wording of suggested assessment criteria to us and so Appendix 2 includes criteria that we have drafted for the consideration of the Stream 4 Hearing Panel.

Figure 6 – Recommended area to be re-zoned to Low Density Residential between West Meadows Drive and Studholme Road, from reply statement of Craig Barr. Top: area to be re-zoned. Bottom: recommended structure plan for the rezoned area, showing indicative road alignment.

308. In summary, we find that in this instance the submitters and the Council have reached a practical understanding and we agree with it. We recommend that the submissions be accepted in part for the reasons and as outlined by Mr Barr in his reply on behalf of the Council, including the proposed "West Meadows Drive Structure Plan" Mr Barr attached as Appendix 6 to that reply statement. Subject to amendment in the manner identified above, we agree with and adopt Mr Barr's recommendations and supporting s.32AA analysis. No further s.32AA analysis is necessary.

309. We note that position necessarily addresses also (and recommends acceptance) of the submissions we heard from Mr Richard Anderson on behalf of the Anderson Family Trust as successor in part to Ms Blennerhassett.

14. STATE HIGHWAY 84

RANCH ROYALE ESTATE LIMITED (EX SKEGGS) (412);
Further Submission FS1012 Willowridge Developments Limited
WINTON PARTNERS FUNDS MANAGEMENT NO 2 LIMITED (653)
Further Submission FS1166.1 Sir Clifford and Lady Marie Skeggs;

14.1 Overall Recommendation

310. The submission of Ranch Royale Estate Ltd should be accepted in part along with the further submission of Willowridge Developments Ltd. That for Winton Partners Funds Management No 2 Ltd rejected along with the Skeggs further submission.

14.2 Summary of Reasons for Recommendation

311. The topography of the Ranch Royale site is such that part can accommodate a low density (Large Lot Residential A) residential zoning. Retaining the balance of the site as Rural and subject to a Building Restriction Area notation will protect the amenity of the entrance to Wanaka. The UGB line should move correspondingly to include the rezoned land, but we heard no evidence supporting extension of the UGB line over the neighbouring Rural zoned land.

14.3 Subject of Submissions

312. These submissions relate to Lot 1 DP 303207 and Lot 1 DP 15227. Both sites are located on State Highway 84, opposite Mount Iron. Submission 412 (and FS 1166) was made by the previous owners of the land in question, Sir Clifford and Lady Marie Skeggs. Ranch Royale Estates Ltd is their successor, having purchased the site and taken over the submission (and Further Submission).

14.4 Outline of Relief Sought

313. Submission 412 sought the rezoning of Lot 1 DP 303207 from Rural, as shown on Planning Maps 8 and 18, to Three Parks Special Zone, with inclusion in the Three Parks Structure Plan for Tourism and Community Facilities and/or Commercial activities, along with the realignment of the UGB to include the site.

314. Willowridge Developments Ltd supported that submission.

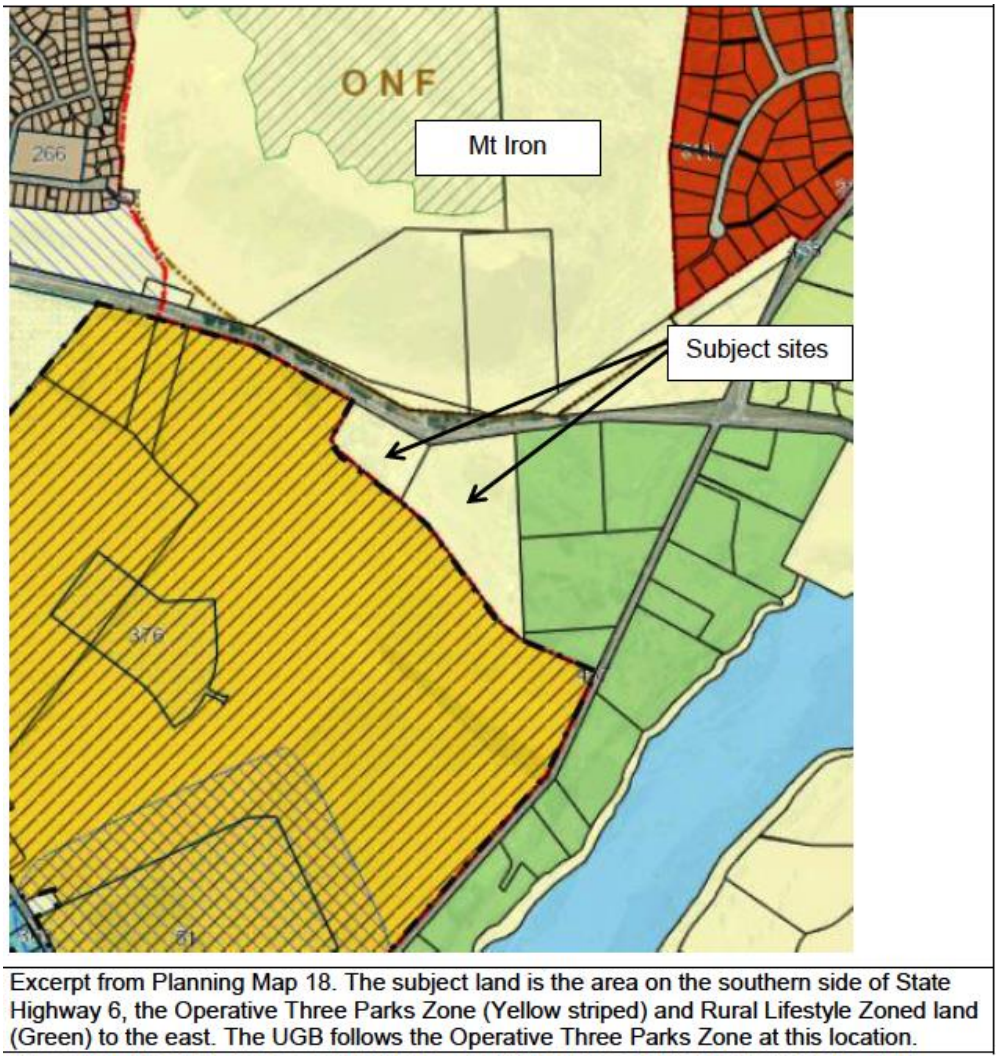
315. As will be discussed further below, the submitter revised the relief sought, initially to seek imposition of the Three Parks Low Density Residential Sub Zone and ultimately, the Large Lot Residential B zone.

316. Submission 653 sought that the UGB, shown on Planning Maps 8 and 18 as excluding both properties, be drawn to include them both. It did not seek any rezoning.

317. Sir Clifford and Lady Marie Skeggs supported that relief.

14.5 Description of the Site and Environs

318. The land which is the subject of the submissions is shown on Planning Maps 8 and 18, and is located as illustrated in Figure 7 below.



Excerpt from Planning Map 18. The subject land is the area on the southern side of State Highway 6, the Operative Three Parks Zone (Yellow striped) and Rural Lifestyle Zoned land (Green) to the east. The UGB follows the Operative Three Parks Zone at this location.

Figure 7 NB the site fronts the Wanaka-Luggate Highway which is State Highway 84. The Highway becomes State Highway 6 at the intersection of the Albert Town - Lake Hawea Road

319. The Ranch Royale land is aptly described as follows in the evidence presented at the hearing by Mr Duncan White on behalf of the submitter:

> *"Lot 1 DP 303207 is a 7.3 hectare site situated east of Puzzling World and adjacent to the Wanaka – Luggate Highway SH84 as shown on the plan in Appendix A. The site contains a central ridge that runs in a north-west to southeast direction. This ridge blocks views into the site from the highway and means that only the northern face of the ridge and a narrow vista through the existing gate can be seen only briefly when travelling along the highway. The site contains a private short length golf course, a large house, a second house, swimming pool, tennis court and clubhouse. Access to the houses comes from the entrance on the western boundary, along a tree and shrub lined paved driveway which follows a low ridge. To the north-east of the driveway is a low flat bottomed gully. To the south of the driveway the land slopes to the south and west to Three Parks. Land to the east of the site is zoned Rural Lifestyle under both the Operative and Proposed District Plans. Land immediately to the south of the site is zoned Three Parks Special Zone with the Deferred Commercial Core sub-*

zone which provides for a future plan change for an alternative use. The site to the west is zoned Rural General but houses the popular visitor attraction Puzzling World which has existed on the site for approximately 40 years".[77]

320. The second property the subject of submission 653 is the property located immediately to the west, occupied by Puzzling World.

14.6 The Case for Rezoning

321. Mr Barr undertook an assessment of the merits of the Ranch Royale submission in his section 42A analysis/evidence based on the original relief sought by the submitter, recommending its rejection, along with the related Winton Partners submission. However, the submitter changed its position as outlined in Mr White's evidence, in which the revised relief was rezoning to Low Density Residential subzone (of the Three Parks Special Zone) with lot sizes of 1500 - 2000m^2 and retention of the visually prominent terrace adjacent to SH 84 as Rural. An infrastructure assessment prepared by Patterson Pitts was appended to Mr White's evidence. That report concluded that water and waste water services would be possible once Three Parks was developed and that stormwater could be provided within each lot. Mr Glasner agreed with that assessment in his rebuttal evidence, noting that modelling would be required to confirm that there is sufficient capacity for both water and wastewater. In regard to stormwater, Mr Glasner advised that geotechnical investigations would be necessary to determine permeability of the ground[78]. On that basis he did not oppose the revised rezoning proposal.

322. Mr Barr responded in some detail in his rebuttal evidence and concluded, having regard to the opinions of Ms Mellsop, Ms Banks and Mr Glasner on landscape, traffic and infrastructure respectively, that Large Lot Residential B zoning allowing for lot sizes of 2000m^2 would be appropriate, subject to a BRA to ensure that the roofs of dwellings were below the upper moraine terrace and not visible from SH 84. Mr Barr had also considered whether or not a higher density of Low Density Residential could be supported given the potential benefits of a more efficient housing product in terms of servicing and spreading the subdivision and development costs over a larger number of allotments. His estimate was that there could be approximately 81 lots over the 5.4 ha not excluded by the BRA, compared with approximately 33 x 2000m^2 lots if zoned LLRB, but he concluded that the higher density could not be supported, largely based on the landscape assessment of Ms Mellsop.

323. Mr White concurred with Mr Barr's recommendation.

324. Winton Partners did not appear in support of its submission and accordingly Mr Barr did not address it further. Mr Barr did, however, recommend that the UGB be redrawn around the Ranch Royale site, as part of his revised rezoning recommendation.

14.7 Discussion of Planning Framework

325. Mr Barr provided us with input on the planning background to the issues as above. Of necessity, he had to work off the latest version of the PDP available (that recommended in the staff reply on each chapter). In our Report 16, we summarised the key background provisions in the PDP, as recommended by the Hearing Panel, that is to say, a further iteration along from that considered in the planning evidence.

[77] Evidence of Duncan White dated 4 April 2017 at paragraph 3.1
[78] Rebuttal evidence of Ulrich Glasner dated 5 May 2017 at paragraphs 4.3 - 4.5

326. Focussing on the most relevant provisions, there are specific policies applicable to the Urban Growth Boundaries ('UGBs'), being the application of UGBs around the urban areas of the Wakatipu Basin (including Jacks Point), Wanaka, and Lake Hawea Township (Policy 3.3.13) and the application of provisions that enable urban development within the UGBs and avoid urban development outside the UGBs (Policy 3.3.14).

327. Chapter 4 provides further direction on urban development. Recommended Objective 4.2.1 relates to use of UGBs: *"Urban Growth Boundaries used as a tool to manage the growth of larger urban areas within distinct and defendable urban edges."* This is supported by Policy 4.2.2.2 - to *"allocate land within Urban Growth Boundaries into zones which are reflective of the appropriate land use."* Land allocation for particular purposes is to be undertaken with regard to a wide range of factors including topography, connectivity and integration with existing urban development, and the need to provide a mix of housing densities and forms within a compact and integrated urban environment.

328. Recommended policy 4.2.2.12 should also be noted: *Ensure that any transition to rural* areas *is contained within the relevant Urban Growth Boundary."*

329. The stated purpose of the Rural zone in Chapter 21.1 encapsulates in summary form a number of objectives and policies as referred to in Report 16. As recommended by the Stream 2 Hearing Panel, the statement of the zone's purpose in Chapter 21.1 reads:
"The purpose of the Rural zone is to enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity."

330. Read in the context of the Plan as a whole, the Rural zone is not intended to provide for residential activities that have an urban character, and the Plan does not (with some limited exceptions) generally include Rural zoned land within the UGB.

331. The purpose of the Large Lot Residential zones is stated in Chapter 11.1 as being the provision of low density living opportunities within defined Urban Growth Boundaries, with the zone also serving as a buffer between higher density residential areas and rural areas that are located outside Urban Growth Boundaries. As discussed earlier in this report, the zone density recommended by the Stream 6 Hearing Panel of one residence every 2000m² (except in areas where environmental constraints dictate a lower density of urban development) is to provide for a more efficient development pattern to utilise the Council's water and wastewater services (Policy 11.2.1.1) while residential character and amenity are to be controlled through various methods as outlined in Policies 11.2.1.2 - 11.2.1.3.

14.8 Issues

a. Whether a low density residential zoning is appropriate;
b. Whether there is scope to apply that zoning;
c. Access;
d. Consequential implications for the UGB boundary.

14.9 Discussion of Issues and Conclusions

332. We agree with Mr Barr's conclusion that rezoning part of the site to enable low density residential development can be supported and, having regard to the landscape sensitivity of the upper moraine terrace as discussed by Ms Mellsop and accepted by the submitter, a Large Lot Residential (A) zone is appropriate (we note once again that consequent on the

recommendations of the Stream 6 Hearing Panel, the nomenclature of the Large Lot Residential Zones has been reversed from that recommended by Council Officers so A = 2000m^2 and B= 4000m^2). This zoning would provide for a greater degree of rigour in assessing adverse effects than a Three Parks Low Density Residential subzone proffered by the submitter and would fit into the hummocky landform. Another potential option, Low Density Residential zoning, would be more likely to result in extensive earthworks and greater modification of the landscape than the recommended zoning of Large Lot Residential(A).

333. We find further that the landscape values of the sensitive area on the State Highway side of the property can be addressed, as recommended by Mr Barr, by retaining that area as Rural zoned land subject to a BRA.

334. Options for access into the site cannot be fully resolved as part of the PDP process. Whilst we agree with Council officers that access from Three Parks rather than SH 84 is to be preferred, in order to avoid visual and amenity effects of development from the state highway[79], the submitter does not own the Three Parks land, there is no access shown between the sites in the Three Parks Structure Plan and the Ranch Royale site already has a formed access to SH 84. We anticipate that, should access to SH 84 be proposed in the absence of a viable alternative, its location and detailed design would form part of the assessment undertaken at subdivision stage. As SH 84 is a limited access road, NZTA approval will also be required. Accordingly, we are satisfied that as part of the subdivision and development process, access matters can be appropriately considered.

335. The more difficult issue is whether the relief the submitter ultimately supported, Large Lot Residential, is within the scope of the original submission that sought ODP Three Parks Special Zone and a Tourism and Community Facilities and/or Commercial subzone.

336. The evidence of Mr White was in support of a Three Parks Low Density Residential subzone that would allow 1500m^2 - 2000m^2 lots. Instead, Council staff recommended Large Lot Residential(B) - ie minimum 2000m^2 lots. Ms Scott in her opening submissions for Council made the point that the recommended relief is a less intensive activity than that originally sought, which she submitted was in scope.

337. The amended relief recommended by Council staffalso had the benefit of avoiding the issues discussed in our Report 16[80] around submissions seeking imposition of ODP zones, particularly in this case given that the Three Parks Special Zone is framed around a Structure Plan that we have no jurisdiction to change. Mr White did not explain how the residential subzone he was supporting could be integrated into the balance of the Three Parks zone, or how the Three Parks Special Zone, with the proposed additional Low Density Residential Subzone component fitted into the PDP as a whole.

338. Ms Scott's reply helpfully set out in table form a comparison between listed activities in the Three Parks Tourism and Community Facilities (TCF) and Low Density Residential subzones[81], and submitted that:

[79] As stated in Ms Mellsop's rebuttal evidence at paragraph 3.7 and referred to in Mr Barr's rebuttal evidence
[80] At Section 3.10
[81] She did not examine the characteristics of the alternative Commercial Sub-zone sought, presumably because residential development is only permitted in that sub-zone if it is located on the first floor of any building or above- refer Rule 12.26.7.3 of the ODP

"Both zones have activities that are less restrictive than the same activity in the other and vice versa. Consequently, there is no clear answer on scope and the submitter has not given any legal submissions justifying this amended relief. Given the uncertainty, the Council continues to recommend the land be rezoned to Large Lot Residential B zone".[82]

339. Ms Scott did not explicitly say so, but we inferred that she continued to consider the Council's recommended relief to be in scope.

340. Given that the submitter supported the Council's recommendation, we will focus on the scope for the latter. However, we find the case for the Council's recommended relief being in scope as equivocal as the Three Parks Low Density subzone discussed in Ms Scott's submission.

341. On the one hand, both the TCF sub-zone and the Large Lot Residential B zone anticipate and provide for residential activities. However, the TCF sub-zone does not provide for the type of low density activity that the Large Lot Residential(B) (now A) zone would provide for. Rule 12.26.5.2(13) of the ODP makes it clear that within the TCF sub-zone, a minimum density of 25 residential units per ha must be achieved. It goes further, stating that "For the avoidance of doubt, this rule is to make low density housing non complying."

342. Although not directed at this specific point, both Ms Scott and Mr Todd (for Ranch Royale) submitted that the varied relief they supported was in scope, because it permitted less intensive development than the zone originally sought.

343. Read literally, we consider that is correct, but the TCF sub-zone clearly categorises less intensive residential development as less desirable or acceptable in the context of the Three Parks Special Zone, hence the non-complying status.

344. Reverting to general principle, the relief sought in the submission provides the outer limit of our discretion - that outer limit provides in this case for residential development of greater than 25 residential units per ha as a permitted activity. Between that outer limit and the notified Rural zone (which as recommended by the Stream 2 Hearing Panel, would make residential development on the site a discretionary activity), there is a continuum of zoning options that are within scope[83].

345. We have determined that the submission is in scope on the basis that residential activity in various forms is anticipated within the Three Parks TCF sub-zone requested within the original submission. The requirements for minimum density/above ground floor location are to achieve outcomes specific to the main purpose of each sub-zone primarily being mitigation of reverse sensitivity effects, as stated in Chapter 12, Policy 9.3 of the ODP.[84] Those issues do not arise on the Ranch Royale site. Accordingly, we can say with confidence that residential development of this site at the density provided by the Large Lot Residential(A) zone (i.e. 2000m^2) will result in a lower level of adverse effects than would development at the density permitted within the TCF sub-zone. We find that it is within the permitted continuum, and therefore within scope.

346. We find that the zoning of the lower land as Large Lot Residential(A) with the imposition of a BRA is the most appropriate method, and is an efficient and effective way of enabling this

[82] Right of reply legal submissions of Sarah Scott dated 10 July 2017 at paragraph 20.1
[83] See e.g. *Guthrie v Dunedin City Council* C 174/2001 at 17-18
[84] This reads "To minimise reverse sensitivity issues by avoiding low density residential development from locating in the TCF subzone."

urban fringe land to be developed at an appropriate density. We adopt Mr Barr's s.32AA analysis in this regard.

347. Having reached this conclusion, we find that the options for relocating the UGB, as sought by the submitter and its neighbour, Winton and Partners, are:
   a. The status quo, with both properties outside the UGB;
   b. Shifting the UGB, so it aligns with the edge of the Large Lot Residential(A) Zone we are recommending (as recommended by Mr Barr);
   c. Shifting the UGB so it includes the entire Ranch Royale property;
   d. Shifting the UGB so it includes both properties.

348. The first option would be inconsistent with recommended Policy 4.2.1.3 because it would leave urban zoned land sitting outside the UGB. We discount that option on that basis.

349. By the same token, having an area of Rural zoned land within the UGB is also anomalous- Mr Barr advised that the only examples of that in the PDP as notified arose in the case of land the subject of zoning or other mechanisms effectively precluding development. The submission by Winton and Partners sought to relocate the UGB, but did not seek any zoning change. We had no evidence in relation to the requested inclusion of the Puzzling World site in the UGB and its present, longstanding use for an outdoor recreation activity within land zoned Rural is supported by the objectives and policies for that zone (for example Objective 21.2.10 ,which states *"Commercial Recreation in the Rural Zone is of a nature and scale that is commensurate to the amenity values of the location"* and related policies). Accordingly, we do not find the fourth option appropriate.

350. One of the examples of Rural zoned land within the UGB Mr Barr gave us is where land is subject to a BRA - the Allenby Farms land diagonally opposite the site and the subject of our Report 16.14 is an obvious example. In this case though, the inclusion of the Ranch Royale BRA we have recommended within the UGB might signal that at some future point in time, the BRA could justifiably be removed to enable the land to be developed for an urban use. On the evidence before us, that is not supportable on landscape grounds and would be inconsistent with the view we have taken in regard to the Allenby submission seeking removal of the BRA on the opposite side of SH 84. We find the BRA will assist in maintaining the sense of arrival into Wanaka from Luggate and Albert Town.

351. Accordingly, we have formed the view that the UGB line should follow the boundary between the recommended Large Lot Residential(A) zone and Rural zoned areas, even though it appears to zigzag around the submitters' properties in a haphazard manner. We recognise that this results in the Ranch Royale site being divided by both the UGB and the new zoning; however, the submitter did not oppose Mr Barr's recommendation which we consider represents the most appropriate outcome in terms of the section 32 tests as well as being more consistent with the PDP overall than including Rural zoned land within the UGB.

352. In summary, we recommend:
   a. That the area of land identified below be rezoned Large Lot Residential(A), with a BRA over a portion of the upper terrace (to remain in the Rural zone) to ensure buildings are inconspicuous from SH84 as shown in Figure 8 below;
   b. That the UGB be amended to include the rezoned area, also as shown in Figure 8 below;
   c. That the submission by Winton and Partners relating to the Puzzling World site, seeking that the UGB be extended to include the site, be rejected.

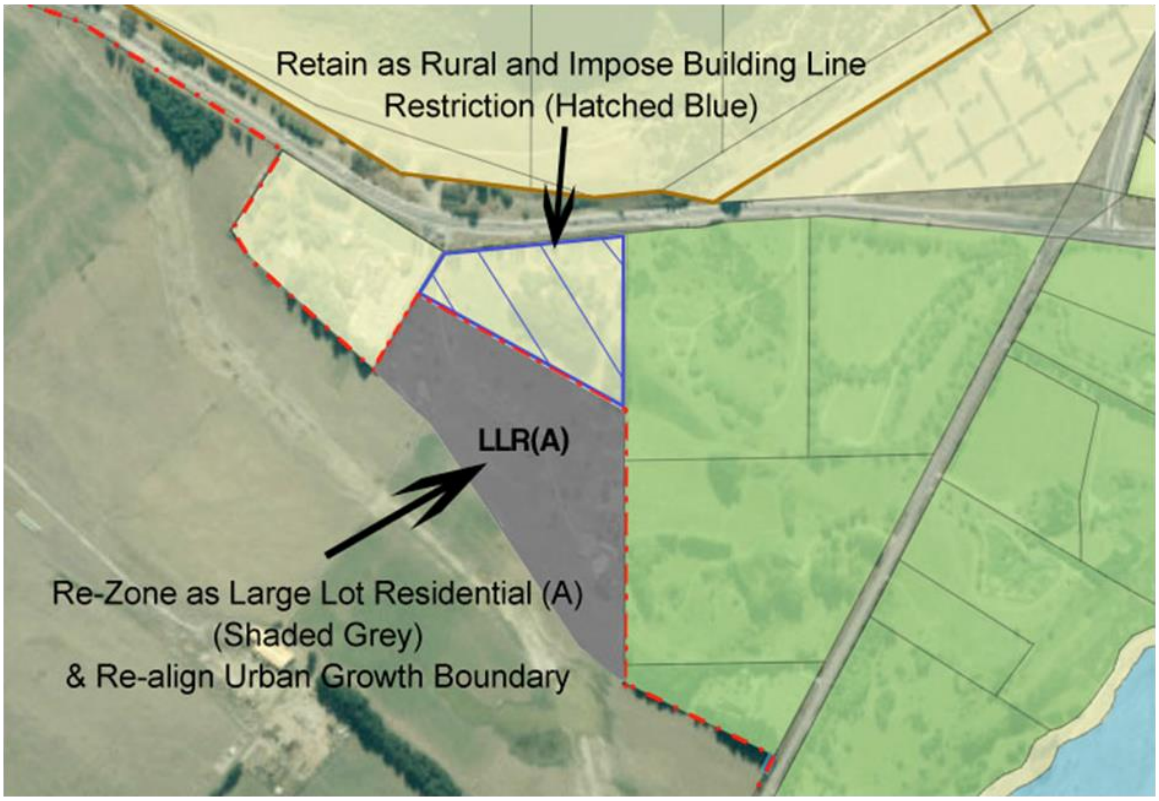


Figure 8*:* Planning maps 8 and 18: Area recommended to be rezoned and consequential amendment to the UGB

15. UGB AT WATERFALL PARK

BLENNERHASSETT FAMILY TRUST (413)
MURRAY STEWART BLENNERHASSETT (322),
RN MACASSEY, M G VALENTINE, LD MILLS & RIPPON VINEYARD AND WINERY LAND CO LIMITED (692)

15.1 Overall Recommendation

353. We recommend the submissions be rejected

15.2 Summary of Reasons for Recommendation

354. There is no resource management reason for relocation of the UGB to align with the ONL line along Ruby Island Road and there was no evidence from the submitters in support of their requested relief.

15.3 Subject of Submissions

355. Submission 413 relates to 280 Wanaka-Mt Aspiring Road (Lot 1 DP 303207) which is zoned Rural, outside the Wanaka UGB and classified RLC, as shown on Planning Maps 18 and 22.

356. Submissions 322 and 692 are from landowners including Rippon Winery adjacent to the Wanaka UGB, with land fronting the northern side of Wanaka-Mt Aspiring Road.

15.4 Outline of Relief Sought

357. Submission 413 supported the location of the ONL as it relates to the submitter's property; however, it also sought the amendment of the UGB line at the western end of Wanaka to follow the ONL. No rezoning has been requested.

358. Submissions 322 and 692 are similar and requested that:
   a. The UGB line is moved to coincide with the ONL line;
   b. The ONL line is moved to follow Waterfall Creek rather than Ruby Island Road.

359. As no evidence was provided by any of the above submitters in support of their submissions, the approach adopted in this report is to firstly address the issues raised in the Blennerhassett Family Trust submission 413, having regard to the legal submissions by Mr Todd at the hearing, followed by our recommendation on the first submission point (the UGB) in submissions 322 and 692. The second submission point (the ONL line) is addressed in a separate report[85].

15.5 Description of the Site and Environs

360. The land which is the subject of submission 413 fronts the northern side of the Wanaka-Mt Aspiring Road and the eastern side of Ruby Island Road, as illustrated in an excerpt from the section 42A (Urban Fringe) report (Figure 9 below). It has an open, rural character with extensive views of Lake Wanaka and surrounding mountains. The proposed ONL line begins at the lake below the property, follows the boundary of the site with the Waterfall Creek Reserve, then follows the eastern boundary of Ruby Island Road before crossing the Wanaka-Mt Aspiring Road and doglegging around the rural lifestyle zoned land west of the road, to follow the lower contours of Mt Alpha to the south.

361. The land affected by submissions 322 and 692 is immediately west of the proposed UGB between existing urban development off Bills Way/ Sunrise Bay Drive and the Blennerhassett Family Trust property the subject of submission 413. It includes the Rippon vineyard and winery, and 'Barn Pinch Farm', totalling approximately 100 ha. The properties are gently undulating, with mature trees and open areas of pasture also providing lake views and the mountains encircling the lake. Opposite the properties, on the south side of Wanaka-Mt Aspiring Road, development comprises large lot residential and rural lifestyle areas.

[85] Report 16.1

Figure 9: the Blennerhassett Family Trust property is outlined in blue and the land to which submissions 322 and 692 relate is between that site and existing urban development.

15.6 The Case for Relocating the UGB

362. Submission 413 does not provide reasons for requesting that the UGB line should follow the ONL line along Ruby Island Road. However, in his submissions at the hearing Mr Todd, counsel for the submitter, contended that the UGB should be consistent with the ONL and more importantly should be consistent with the Wanaka 20/20 report, which identifies what is now known as the UGB.

363. Mr Todd argued that the 20/20 report reflects community input and it would be short sighted for the PDP to not give effect to it. He emphasised that the submitter has no proposal for rezoning, but that it is prudent to think ahead. In response to the Hearing Panel's questions, Mr Todd confirmed that the Wanaka 20/20 report in fact identified both an Inner Growth Boundary which corresponds to the UGB and an outer UGB beyond that. He accepted that there is an argument for a buffer between the UGB and ONL, but noted that immediately on the other side of the line, the Council had recently approved a dwelling and there is now only one property on the lake side between Ruby Island Road and Glendhu Bay that does not have a resource consent for a dwelling. That property is the McRae land north of the Teal property.

364. Mr Todd also suggested that the ONL represents a spectrum from Ruby Island Road all the way to Mt Aspiring. Some properties have dwellings whereas some are more remote and would not support a dwelling. He submitted that the submitter did not want the same situation as has occurred in the Wakatipu Basin.

365. Responding to a further question from the Hearing Panel, Mr Todd agreed that the inference to be drawn from the submitter's case is that a dwelling would be the extent of development envisaged, noting that no one has sought to subdivide.

15.7 The Council's Position

366. Mr Barr undertook an assessment of the merits of the submission in his section 42A analysis/evidence, recommending its rejection, along with the related submissions to which we have referred above.

367. He considered that the land uses, pattern of development and character of the land is consistent with its Rural zoning and that it was not appropriate to extend the PDP Wanaka UGB to follow the ONL line, because there are no sound resource management reasons to justify doing so and the submitter had not provided any reasons for extending the UGB, or sought any urban zoning.

368. Mr Barr also considered whether the UGB needed to be extended to the west to provide for growth in the short to medium term, and concluded that this was not necessary as there is sufficient land to accommodate growth within the UGB.

369. He referred to notified Policy 4.2.2.4, which acknowledges that not all land within the UGB will be suitable for urban development, but observed that in the submitter's case, there is no case for its inclusion based on factors such as the land being a buffer area associated with urban development, or a park or reserve that cannot practically be separated from the wider urban area. In his opinion, the urban limit and UGB as notified provided a necessary and distinct transition between rural and urban, which is a valued part of the approach to and from Mt Aspiring National Park into Wanaka.

370. Mr Barr also pointed out that notified Policy 4.2.8.1 refers specifically to the importance of the transition between rural and urban to protect the quality and character of the environment and visual amenity.

15.8 Planning Framework

371. In our Report 16, we summarised the key background provisions in the PDP, as recommended by the Hearing Panel, that is to say, a further iteration along from those considered in the planning evidence. For the purposes of our discussion here, we have not repeated the reference to every objective, policy or other provision to which we have had regard.

372. The provisions of the NPSUDC and Strategic Chapters 3 and 4 of the PDP, which we have discussed in some detail in Report 16, are in principle relevant to consideration of any extension of the UGB. Many of the objectives set out in the NPSUDC relate to the operation of urban environments and thus focus primarily on the activities that may occur within those environments, whereas submission 413 does not refer to land use within the UGB.

373. Focussing on the most relevant provisions within the PDP, there are specific policies applicable to the Urban Growth Boundaries ('UGBs'), being the application of UGBs around the urban areas of the Wakatipu Basin (including Jacks Point), Wanaka, and Lake Hawea Township (Policy 3.3.13) and the application of provisions that enable urban development within the UGBs and avoid urban development outside the UGBs (Policy 3.3.14). There are also several policies relating specifically to how UGBs are defined.

374. Chapter 4 provides further direction on urban development. Recommended Objective 4.2.1 relates to use of UGBs: "Urban Growth Boundaries used as a tool to manage the growth of larger urban areas within distinct and defendable urban edges." This is supported by Policy 4.2.2.2 - to *"allocate land within Urban Growth Boundaries into zones which are reflective of the appropriate land use."* Land allocation for particular purposes is to be undertaken with regard to a wide range of factors including topography, connectivity and integration with existing urban development, and the need to provide a mix of housing densities and forms within a compact and integrated urban environment as well as appropriate provision of infrastructure.

375. The first three policies of Chapter 4 expand on the policies of Chapter 3 related to definition of UGBs, focussing urban development within UGBs, and to a lesser extent within smaller rural settlements, and ensuring UGBs operate as effective boundaries to urban development.

376. Policy 4.2.1.4 might particularly be noted:

"Ensure Urban Growth Boundaries encompass a sufficient area consistent with:

a. the anticipated demand for urban development within the Wakatipu and Upper Clutha Basins over the planning period assuming a mix of housing densities and form;

b. ensuring the ongoing availability of a competitive land supply for urban purposes;

c. the constraints on development of the land such as its topography, its ecological, heritage, cultural or landscape significance; or the risk of natural hazards limiting

d. the ability of the land to accommodate growth;

e. the need to make provision for the location and efficient operation of infrastructure, commercial and industrial uses, and a range of community activities and facilities;

f. a compact and efficient urban form;

g. avoiding sporadic urban development in rural areas;

h. minimising the loss of the productive potential and soil resource of rural land."

377. The recommended Chapter 4 also provides two related objectives for management of development within UGBs as follows:

"4.2.2.A A compact and integrated urban form within the Urban Growth Boundaries that is coordinated with the efficient provision and operation of infrastructure and services.

4.2.2.B Urban development within Urban Growth Boundaries that maintains and enhances the environment and rural amenity and protects outstanding natural landscapes and outstanding natural features and areas supporting significant indigenous flora and fauna."

378. Policies particularly relevant to zoning choices within UGBs include:

"4.2.2.1 Integrate urban development with the capacity of existing or planned infrastructure so that the capacity of that infrastructure is not exceeded and reverse sensitivity effects on regionally significant infrastructure are minimised.

4.2.2.2 Allocate land within Urban Growth Boundaries into zones which are reflective of the appropriate land use, having regard to a range of physical, functional, geographical, urban design and community parameters

4.2.2.12 Ensure that any transition to rural areas is contained within the relevant Urban Growth Boundary."

379. Recommended Policy 4.2.2.22 should also be noted:

"Define the Urban Growth Boundaries for Wanaka and Lake Hawea Township, as shown on the District Plan Maps that:

- *are based on existing urbanised areas;*
- *identify sufficient areas of urban development and the potential intensification of existing urban areas to provide for predicted visitor and resident population increases in the Upper Clutha Basin over the planning period;*
- *have community support as expressed through strategic community planning processes;*
- *utilise the Clutha and Cardrona Rivers and the lower slopes of Mount Alpha as natural boundaries to the growth of Wanaka; and*
- *avoid sprawling and sporadic urban development across the rural areas of the Upper Clutha Basin."*

15.9 Issues

380. The sole issue we have identified is whether there is a case for the requested extension of the UGB.

15.10 Discussion of Issues and Conclusions

381. In terms of the relief sought in the Blennerhassett Family Trust's submission, we conclude that identification of the UGB is not merely a matter of drawing a line on the planning maps, but requires a considered approach to the land use either side of that boundary having regard to the extensive and detailed policy framework set out in Chapters 3 and 4 to which we have referred above. The objectives and policies of those chapters in turn give effect to the NPSUDC which we have discussed at some length in the context of our assessment of the adequacy of the Council evidence on future demand for housing and the extent to which the PDP provides for that future demand in Report 16.

382. It is also apparent to us that all of the submitters seeking relocation of the UGB along Ruby Island Road are relying on the Outer Development line in the Wanaka 20/20 report, which was intended to serve a different purpose from the Inner Growth Boundary that has become the UGB in the PDP. In terms of recommended Policy 4.2.2.22, it is the latter that Wanaka 20/20 supports.

383. We had no evidence before us which addressed these matters and it follows from the conclusions we reached in Report 16 that we would not support a significant extension of the UGB based on any demand issues.

384. We find that there is no nexus between the UGB and the ONL line, which are employed to achieve quite separate resource management objectives and we agree with Mr Barr that in the case of the submitters' properties there are sound reasons for maintaining separation between them. In particular, while in some locations in the District, there is no other option but to have the ONL and UGB lines aligning[86], recommended Policy 4.2.2.12 suggests that where possible, the two should diverge, to enable the transition the policy seeks.

385. For the above reasons, we recommend that submission 413 is rejected insofar as it requests the relocation of the UGB line along Ruby Island Road and it therefore follows that for the same reasons, the relief sought in Submissions 322 and 692 as they relate to the UGB line, should likewise be rejected.

386. Given our conclusion supports the status quo, no further analysis is required under section 32AA.

PART C: HAWEA

16. LAKE HAWEA TOWNSHIP

JUDE BATTSON (460)
JOEL VAN RIEL (462)
Further Submission: FS1138 AND FS1141 DARYL AND MELANIE ROGERS
STREAT DEVELOPMENTS LTD (697)
Further Submission: FS1138 AND 1141 DARYL AND MELANIE ROGERS
WILLOWIDGE DEVELOPMENTS LTD (249)
JAN SOLBACK (816)
LAURA SOLBACK (119)
HAWEA COMMUNITY ASSOCIATION (771)
ROBERT DEVINE (272)
GAYE ROERTSON (188)
Further Submission: FS1012 WILLOWRIDGE DEVELOPMENTS LTD

16.1 Overall Recommendation

387. The submissions of Jude Battson and Joel Van Riel and further submissions of Dayle and Melanie Rogers should be accepted.

388. The submissions of Streat Developments Ltd, Hawea Community Association and Willowridge Developments Ltd should be accepted in part and the further submissions of Daryl and Melanie Rogers and Willowridge Developments Ltd should be accepted in part.

389. The submissions of Jan Solback, Laura Solback, Robert Devine and Gaye Robertson should be rejected and the further submission of Willowridge Developments Ltd should be accepted

[86] Queenstown Hill is an obvious example.

16.2 Summary of Reasons for Recommendation

390. Hawea's southern extent should be coordinated with the inclusion of an Urban Growth Boundary generally aligned with Cemetery Road. The land generally east of Grandview Road has been developed previously to a density of approximately 4,000m^2 lots and while limited additional intensification, down to 2,000m^2 lots via the Large Lot Residential Area A zone[87], can be appropriately accommodated, density beyond this would not be appropriate. The Willowridge Developments Ltd land generally west of Grandview Road is in various stages of greenfield subdivision and would be appropriately enabled for Low Density Residential zone.

391. Together, the above will enable the most appropriate framework to manage growth in Hawea.

16.3 Subject of submissions

392. The land subject to the submissions relates to the southern side of Hawea, generally north of Cemetery Road and between Muir Road (east) and Domain Road (west). The Streat Developments Ltd submission also addresses Lot 1 DP 304937, a triangular corner of land on the south side of Cemetery Road with frontage to Domain Road.

16.4 Outline of Relief Sought

393. The submissions addressed the extent to which the land generally north of Cemetery Road immediately behind the existing Hawea township shown on Planning Map 17, including areas zoned and in places developed for rural residential densities, should provide for development at urban densities. Included in this is the question of whether an Urban Growth Boundary should apply to Hawea, and if so, where it should be located.

394. In summary:

a. Willowridge Developments Ltd sought land zoned Rural Residential in the notified PDP to be instead zoned Low Density Residential zone. A nuance of the submission is that part of the site that is subject to the submission is zoned in the ODP as Township zone, and this raised a procedural question as to whether that portion of the submitter's site was or was not within the scope of the Stage 1 PDP process (the Council has excluded all land zoned ODP Township from Stage 1 of the PDP, even though the zone sought by the submitter for that land is of itself a subject of the Stage 1 PDP).
b. Streat Developments Ltd sought land currently zoned Rural Residential to be instead zoned Township as per the ODP. This applies to its land on both the north and south sides of Cemetery Road.
c. Joel Van Riel and Jude Battson sought that the land east of Grandview Place be enabled to support lot sizes of a minimum 2,000m^2.
d. Jan Solback, Laura Solback, Hawea Community Association, Robert Devine and Gaye Robertson supported retention of the PDP rural residential / 4,000m^2 minimum lot size requirement.
e. Hawea Community Association requested that an Urban Growth Boundary be added to the District Plan around Hawea. This was supported in the further submission of Willowridge Developments Ltd.

16.5 Description of site and environs

395. The land subject to the submissions is generally flat and mostly in cleared pasture, or large-lot residential density developments.

396. The land east of Grandview Road and north of Cemetery Road has been developed to rural residential densities (lots around 4,000m^2), served by a combination of culs-de-sac. These are

[87] As per the Stream 6 Panel recommendations.

Lichen Lane, Sam John Place, and Grandview Road (this may become a crescent in the future that links through land being developed by Streat Developments Ltd, back to Cemetery Road). The land east of Grandview Road is in the process of being developed. Notably, both Streat Developments Ltd and Willowridge Developments Ltd have subdivision consents enabling ODP Township zone densities on their land (down to 800m^2 lots). This land is predominantly still in pasture but is likely to change considerably in the coming years.

397. This land is also the subject of recommendations within the Hawea 2020 document, a Council-led community plan developed in 2003. The extent to which the Hawea 2020 plan was relevant or should be implemented formed one strand of the arguments put to us.

398. North of the land the subject of submissions, a low moraine ridge and established urban areas (zoned Township under the ODP) separate the land from Lake Hawea. Land north of Cemetery Road is in transition, with urban development varying from conventional suburban density to lifestyle lot-scale development readily visible from the road.

399. Beyond Mill Road to the east, and Cemetery Road to the south, the landform is of an unmistakeably rural production character and shows virtually no evidence of urban-scaled buildings or subdivision for some distance.

400. The contrast between the northern and southern sides of Cemetery Road makes the road act as an informal edge to the Hawea settlement at this time, in our view.

16.6 The Case for Rezoning

401. In his s.42A reports "*1A Wanaka Urban and Lake Hawea*" (sections 10 and 11), and "*Strategic Overview and Common Themes*" (section 18), Mr Barr evaluated these submissions. He combined elements of concurrent and individual-submitter analysis. He took advice from the Council's technical specialists in terms of traffic, infrastructure and ecology, and landscape. Generally, the Council witnesses, including Mr Barr, did not support the submissions, preferring the PDP Rural Residential zone. In terms of the land east of Grandview Road, Mr Barr felt the 'die had been cast', and that as existing roads and blocks had not been designed or placed with future intensification in mind, such intensification could not occur in a satisfactory manner.

402. At the hearing, the matter of how to intensify this area while also maintaining the amenity values of existing property owners was accepted as being the key issue. Jude Battson, in agreement with Joel van Riel, identified that a minimum lot size of 2,000m^2 would strike an appropriate balance between those favouring and opposing further change, and would better implement the Hawea 2020 plan than has occurred to date.

403. Maintaining the character and amenity values (and infrastructure / servicing) of existing development, however, remained the principal concern of those submitters that opposed changing the PDP Rural Residential zone.

404. By the time of the Council's reply, Mr Barr had reconsidered his view. He came to agree with those submitters seeking greater development enablement, and supported the Large Lot Residential Area B zone (2,000m^2 minimum lot size) for the land east of Grandview Road. Mr Barr felt that at such densities, the amenity and character values of the existing environment would be adequately maintained, infrastructure and servicing issues could be overcome, and no landscape effects of concern would arise.

405. Streat Developments Ltd requested the Operative Township zone as recommended in the Hawea 2020 plan. However, there is no Township zone included in the PDP zones and the submitter provided no analysis or evidence to demonstrate whether and to what extent that ODP zone was compatible with the PDP policy framework.

406. Willowridge Developments Ltd sought the Low Density Residential zone across its entire site, including that part currently zoned Township in the ODP.

407. Mr Barr remained of the view that Rural Residential remained the most appropriate zone for both the Streat Developments Ltd and Willowridge Developments Ltd land. However, Mr Barr did acknowledge the logic of the Willowridge Developments Ltd submission, observing that an urban zoning could be considered during the Stage 2 PDP process.

408. In terms of the planning framework, the submissions raise strategic growth management questions relating to the role and appropriateness of an urban growth boundary. This is a matter that relates to Chapter 4 of the PDP, and we refer to our Report 16 for a summary of that chapter. We also refer to that report for a description of key aspects of the Rural Residential, Large Lot Residential, and Low Density Residential zones.

409. We also note that as it relates to the Willowridge submission, there is a jurisdictional limitation inasmuch as only part of the land falls within the scope of Stage 1 PDP. Much of that submitter's land is zoned Township in the ODP and that zone has been excluded from the Stage 1 process. As a result, we are only able to consider the portion of the site that has been identified as being within Stage 1.

16.7 Issues

410. We find that these submissions raise overlapping resource management issues that would benefit from a concurrent determination and we have approached them on this basis. In approaching the submissions, we have considered the following issues:
    a. How relevant is the Hawea 2020 Plan and its spatial recommendations for Hawea?
    b. What is the most appropriate zone for the land east of Grandview Road, already developed at a generally rural-residential density?
    c. What is the most appropriate zone for the land west of Grandview Road, that is either undeveloped or in the process of being developed, including at densities consistent with the ODP Township zone and down to 800m^2 lots?
    d. What is the most appropriate zone for the Streat Development Ltd land south of Cemetery Road?
    e. If there is to be an urban growth boundary around Hawea, where should it be located?

16.8 Discussion of Issues and Conclusions

16.9 Hawea 2020

411. Hawea 2020 is a non-statutory community plan undertaken by the Council in the early 2000s. Its purpose was to identify with the community where and how Hawea should grow. It includes a map of the town including annotations indicating where future growth could locate, and what sort of development that could be. We record that some submitters, including Jude Battson, considered that it was a very relevant and important document that we should be guided by. Other submitters, including Hawea Community Association, considered it was nothing more than a point-in-time plan that did not necessarily represent the community's current views, at least as regards upzoning of the Rural Residential land.

412. We accept that it is entirely at our discretion whether to place weight on Hawea 2020 and if so to what extent. Of note, Hawea 2020 included a recommendation for an Urban Growth Boundary, and proposed residential zoning across the land that is the subject of the majority of the submitters' land. Hawea Community Association relied on it for that purpose in its submission on the subject (seeking imposition of an urban growth boundary).

413. We find that Hawea 2020 is logical and, most significantly, has proven quite accurate in predicting how (or at least where) Hawea should grow over time. We also observe that its content is reasonably well correlated with the recommendations given to us by Mr Barr through his s.42A evaluation of the submissions and the analysis of the Council's technical specialists.

414. Hawea 2020 remains the only strategic planning document looking at the settlement as a whole that is before us, and it has the benefit of having been through at least some form of community consultation process. It contains a coherent and well-explained process and of most significance, we received no evidence that explained exactly how its recommendations were deficient, unreliable or incorrect.

415. We find that the Hawea 2020 recommendations are relevant and credible – although not determinative. In other words, while there are no grounds to expect the Hawea 2020 vision to be compulsorily implemented, its vision is nonetheless convincing and well substantiated, in our view. We therefore find that Hawea 2020 outcomes have some relevance to how we should view the submissions.

416. In relation to the specific issue of the urban growth boundary, we note that recommended Policy 4.2.2.22 makes community support as expressed through strategic community planning processes (such as Hawea 2020) is a relevant factor to their location in the Wanaka and Hawea context.

16.10 The Land east of Grandview Road

417. This land has been developed and presented the greatest contention between the submitters. The existing lots are generally around 4,000m^2, and while we find that this is relevant to our consideration of the submissions, it is not of itself determinative of how we should respond to the submissions; there is no policy presumption within the Act or PDP that the existing environment should be inherently conserved. But it does form a starting point of the character and amenity values that existing residents derive and enjoy. The adverse effects on those parties that could result from enabling substantial changes to those values must be considered carefully against the benefits, including to the community and future residents, that could result from enabling change.

418. Our analysis of the residential area of Hawea is that it is a product of its time, and one characteristic of this is the presence of numerous curvilinear culs-de-sac rather than a well-connected network based on some manner of grid. While we agree with Mr Barr regarding the desirability and benefits of the more connected urban structure outcomes now promoted by the Council though the PDP provisions (notably subdivision), we find that intensification of the land east of Grandview Road could occur in a manner that would be satisfactorily compatible with much of existing Hawea's character values. On that basis, we find that a less-than-ideal road network is not sufficient to reject submissions seeking intensification.

419. We find that the pragmatic position taken by the submitters was helpfully constructive as to the level of intensification that might be appropriate.

420. Through the Council's right of reply, Mr Barr confirmed a change in his view to support the 2,000m^2 minimum lot sizes that were discussed with the submitters at the Hearing, and that the Large Lot Residential Area B zone would be appropriate to achieve this. We agree with Mr Barr's conclusion that this would adequately maintain amenity and character values, and that at 2,000m^2 minimum lot size, the existing subdivision pattern could relatively comfortably accommodate new development on the basis of discrete site-by-site subdivisions. Some landowners would take advantage of this, while others would likely remain at the existing 4,000m^2 sizes. We consider that the amenity and character values of occupants of the existing 4,000m^2 lots would not be inappropriately degraded by 2,000m^2 lots being developed around them. We also accept that enabling such an outcome, even if landowners did not all seek to utilise it, would still result in a form of benefit to those landowners (property values and utility, which form one component of amenity values).

421. Having determined that a 2,000m^2 Large Lot Residential Area zone could achieve this satisfactorily, we turned our minds to the more strategic considerations around whether this would be more appropriate than the notified PDP's Rural Residential zone.

422. Having found that the Hawea 2020 plan was reasonably helpful in a technical sense, we referred to it when considering the submissions. It recommended the land in question ultimately be zoned ODP Township. This would have enabled 800m^2 lots. We consider that this would now be very difficult to accommodate in light of the development that has occurred to date, and it would create a number of practical character and amenity values conflicts between existing homeowners and new development across the existing culs-de-sac. However, to the extent that Hawea 2020 identified that this part of the town could logically and appropriately accommodate higher density, we have found it lends support to the 'middle ground' Large Lot Residential Area B zone proposal from Ms Battson, Mr van Riel and Mr Barr. We also consider that this zone would better contribute to a compact and contained settlement for Hawea that connected people to their daily needs and contributed to a prevention of unnecessary outward expansion.

423. We find that the 2,000m^2 minimum lot size enabled by the Large Lot Residential Area A zone[88] is the most appropriate outcome and we recommend it for the land north of Cemetery Road, East of Grandview Road and West of Muir Road. The Rural Residential zone is not warranted and would be an inefficient use of land well connected and close to Hawea.

424. Therefore, we recommend that the submissions of Jude Battson and Joel Van Riel, and the further submissions of Daryl and Melanie Rogers be accepted. If Council accepts that recommendation, the submissions of Jan Solback, Laura Solback, Robert Devine and Gaye Robertson should be rejected and the further submission of Willowridge Developments Ltd should be accepted.

425. In this respect we accept and adopt Mr Barr's analysis and s.32AA evaluation that was included in his right of reply statement. No further evaluation in this respect is considered necessary.

16.11 The land west of Grandview Road

426. This land includes land that is the subject of submissions from Streat Developments Ltd and Willowridge Developments Ltd.

[88] As previously noted, the Stream 6 Hearing Panel has recommended that the nomenclature for the two Large Lot Residential zones recommended by Council Officers be reversed so the A zone enables 2000m^2 density development, and the B zone 4000m^2.

427. Mr Barr's view that the ODP Township zone would not be appropriate for the Streat Developments Ltd land forms the whole body of expert evidence before us on the matter. We accept this advice and consider it would not be sound resource management practice to insert an ODP zone into the PDP framework without considerably more analysis and justification than has been available to us. We note that this is consistent with the position taken in Wanaka for a Willowridge Developments Ltd / Industrial B submission earlier in this report.

428. However, we are not limited to only consider the ODP Township zone. We find we have the scope to accept the submission in part, to the extent that we could find any outcome that was between the notified Rural Residential zone and the requested ODP Township zone would be possible. While this means we could not, for instance, consider the PDP Low Density Residential zone as this has a minimum lot size of 600m^2 (compared to 800m² in the Township Zone) and that is more than the relief sought by the submitter, we could consider the Large Lot Residential Area A zone as recommended by the Stream 6 Hearing Panel, which has a minimum of 2,000m^2. This is also what we determined would be appropriate east of Grandview Road.

429. The Streat Developments Ltd land is subject to an approved subdivision resource consent (RM050083) for 90 residential lots. These would be typically 800m^2 – 1000m^2 in area. Clearly this, if implemented, would be different to all of the ODP zoning, the PDP Rural Residential zone, or the Large Lot Residential Area A zone that we have identified could give partial relief to the submitter.

430. We find that in respect of the Streat Developments Ltd submission, the most appropriate overall outcome would be the Large Lot Residential Area A zone. This would be suitable in this location having regard to our findings for the land east of Grandview Road and in light of the Hawea 2020 plan and PDP strategic framework. It would also come closest to the subdivision consent already granted by the Council and that is likely to become part of the existing environment in the near term.

431. In terms of the Willowridge Developments Ltd submission, part of that site, zoned Township in the ODP, sits beyond the areal scope of the Stage 1 PDP. The remainder of the site, proposed to be zoned Rural Residential in the PDP, is within the Stage 1 PDP and we have jurisdiction to consider submissions thereon.

432. The submitter sought the Low Density Residential zone across its entire site. We find that we cannot grant the relief sought on that part of the site that sits outside the Stage 1 PDP. As we have noted, Mr Barr's analysis was that urban development could be appropriate for the site, but that it should be revisited as part of the Stage 2 PDP. We had difficulty with Mr Barr's suggestion for the following reasons:
    a. We have no certainty as to what land will or will not be considered in a subsequent stage of the District Plan review process. We do know the Willowridge Township zone land is not part of the variations notified on 23 November 2017. It could be that in the same way that part of the site is currently excluded from Stage 1 now, that the part of the site that is subject to Stage 1 now will be in turn excluded from a later stage. This may mean the submitter does not get any opportunity for its site to be considered in its entirety. While the Council has ensured such issues do not arise as a result of the interrelationship of the PDP and the Stage 2 Variation processes, we cannot rely on that stance being adopted for future variations.

b. We see no reason why we cannot or should not consider, for the land that is within Stage 1 PDP, which of the zones that are the specific subject of Stage 1 PDP would be the most appropriate. This includes the majority of the submitter's site and the Low Density Residential zone requested.

433. We are aware that Willowridge Developments Ltd, like Streat Developments Ltd, is in the process of consenting and developing land at the ODP Township zone density across the land. Some consents have been granted and others are being planned. Willowridge Developments Ltd has already established residential development down to Cemetery Road on land immediately west of that which is the subject of this submission. The land also has a connection to Noema Terrace and from there into the heart of Hawea town.

434. We find that in light of the urban densities to the immediate north and west, the Low Density Residential zone would be a more compatible fit than the Rural Residential zone proposed in the PDP.

435. We have previously identified our acceptance of the core thinking behind the Hawea 2020 plan and its vision for ODP Township zone density across the land north of Cemetery Road (800m^2 lots). In light of the 'undershot' achievable for the land east of Grandview Road and also the Streat Developments Ltd land, a balancing 'overshot' on the Willowridge Developments Ltd land would serve a helpful and pragmatic purpose of contributing, overall, to the scale of urban change that was envisaged within the Hawea 2020 plan. We similarly find that the Low Density Residential zone will by some margin better implement the PDP's strategic policy framework than the Rural Residential zone.

436. The Council's advisors, including for infrastructure and traffic, were not supportive of zoning greater than Rural Residential on the land. We found these views effectively impossible to reconcile with the reality that the Council has been granting subdivisions for 800m^2 lots on much of the land (e.g. Streat Developments Ltd and the already implemented Willowridge Developments Ltd subdivisions), with the developers making necessary investments with the Council in enabling trunk infrastructure. Based on the approved subdivisions that we witnessed in Hawea, including on land that is subject to these submissions, we are satisfied that satisfactory infrastructure capacity exists to support our recommendations. In terms of the LLRZ Area A, these lots would be large enough to contain on-site water and waste-water services if necessary and would not necessarily require use of existing network infrastructure capacity. In respect of the Low Density Residential zone (Lower Density Suburban Residential zone in the Stream 6 recommendations), we are satisfied that the extent of development already enabled for the submitters site on the Township Zoned portion is evidence that the land can be serviced and developed.

437. Overall, we therefore find, in agreement with the submitter, that the Low Density Residential zone would be the most appropriate outcome for that part of the site that is subject to Part 1 of the PDP. The submission should therefore be accepted in part. While the remainder of the site sits outside our jurisdiction, we record our view that it forms an 'L' shape that would have established 800m^2 lots to its north and west, and an enablement for 600m^2 lots to its east and south (the effect of our current Stage 1 PDP recommendations). This strongly suggests that the land should either have a continuation of the Low Density Residential zone, which is the request of the submitter, or some other Stage 2 PDP zone that approximates the current Township zone. We recommend that the Council address this in a future stage of the District Plan review.

16.12 The land south of Cemetery Road

438. This is limited to the Streat Developments Ltd land at Lot 1 DP 304937, at the corner of Cemetery Road and Domain Road. The rezoning is opposed by all of the Council's officers. The submitter did not produce expert evidence or any other response to the Council's s.42A reporting.

439. We consider that, consistent with our previous findings, we have no real ability to consider the ODP Township zone in the absence of any analysis demonstrating its compatibility with the PDP policy framework. However, we would have scope to consider any PDP zone that provided residential outcomes at densities between the PDP Rural Residential zone that was notified, and the 800m^2 density that the ODP Township zone would enable. This effectively allows for Large Lot Residential Area A zone (2,000m^2).

440. We find that in the absence of any expert evidence that explains why the Large Lot Residential Area A zone would be more appropriate than the Rural Residential zone, especially in terms of any adverse effects likely from urban development 'jumping' Cemetery Road at this time, it is difficult for us to see past the Council staff recommendations. We also consider that whereas the land north of Cemetery Road could be developed in a manner that was not dependent on a clear decision being made by the Council on the management of Cemetery Road, 'jumping' to the south side would raise a number of practical safety and planning questions that we do not have the ability to determine at this stage. This includes a safe and suitable pedestrian crossing facility to connect people into their community.

441. While we consider that there may be some 'gateway' benefits in presenting a consistent urban form on both sides of Cemetery Road at its intersection with Domain Road, we are also in agreement that a 'hard' boundary along Cemetery Road is also appropriate. We also note that Hawea 2020 plan also excluded land south of Cemetery Road at the 'gateway'.

442. Overall, we have concluded that with the outcomes determined for the land north of Cemetery Road, a significant additional enablement of development beyond the notified PDP scenario will eventuate. This will be more than sufficient to meet the needs of the National Policy Statement on Urban Development Capacity[89] and the PDP's strategic planning framework. The lack of justification in support of the re-zoning is at this point insurmountable.

443. We recommend that this aspect of the Streat Developments Ltd submission be rejected and that the land south of Cemetery Road should remain zoned Rural Residential as per the notified PDP. Given that we are in agreement with the Mr Barr, we adopt his s.42A conclusions and s.32AA RMA evaluation. No additional analysis or evaluation is necessary.

16.13 An Urban Growth Boundary for Hawea?

444. Our site visits in and around Hawea reinforced the point made by many submitters that Hawea's character was substantially influenced by its small-scale and contained extent. In our view, these qualities help give it the charm and quality of an urban village surrounded by an immense, open landscape. That compactness and 'hard' transition from rural to urban contribute significantly to its character and amenity values.

445. We consider that Hawea's character and amenity values would be unacceptably weakened if resource management methods were not in place to actively protect this compactness and clear edge, while also recognizing the need for growth and expansion over time. We consider

[89] Refer the discussion of the NPSUDC in Report 16 at Section 3.9

that strategic decisions such as providing for urban density development to 'jump' the general town edge of Cemetery Road should be taken with care and only in a well-planned, coordinated fashion. This would be best enabled by an Urban Growth Boundary that could be changed (shifted) as necessary through a future plan change premised on the settlement's resource management needs and opportunities at that time.

446. We received no environmental effects or 'real world' argument against an urban growth boundary; the main issue was in Mr Barr's opinion one of how such a method could be justified in light of the PDP position on urban growth boundaries (and where they should be used) in the strategic chapters of the Plan. We are aware that the Stream 1B Panel has considered submissions on that matter, and is recommending that the Plan's strategic policy framework be amended to incorporate reference to a Hawea UGB

447. For ourselves, we find the argument for an Urban Growth Boundary around Hawea to be very compelling. It would reinforce and support the zone pattern we have determined would be most appropriate for Hawea, as well as send a clear message to the community that Hawea was a contained and purposefully planned community.

448. We have considered our view in light of recommendations made by the Stream 1B Panel regarding (now) Policy 4.2.2.22. This policy guides location of urban growth boundaries for Wanaka and Hawea. We consider that our proposed Hawea UGB is consistent with that policy.

449. We recommend that an Urban Growth Boundary should be shown on the planning maps, located in the area bound by Cemetery Road, Muir Road, Lake View Terrace / Capell Avenue and Domain Road, including developed land on the north side of Lake View Terrace / Capell Avenue including Flora Dora Parade and Skinner Crescent.

450. It follows that in our view, this aspect of the Hawea Community Association's submission should be accepted, along with the further submission in support of a Hawea Urban Growth Boundary made by Willowridge Developments Ltd.

PART D: OVERALL CONCLUSIONS AND RECOMMENDATIONS

451. In summary, for the reasons set out in detail in our report, we make the following recommendations on the submissions we had before us:

17. WANAKA

a. Beacon Point:
    i. Anzac Trust[90]- Accept in part
b. Kellys Flat:
    i. Iain Weir[91] and Queenstown Lakes District Council[92]- Accept
c. Kiromoko:
    i. Wanaka Central Developments Ltd[93]- Accept in part
d. Scurr Heights
    i. Alan Cutler[94]- Reject

[90] Submission 142
[91] Submission 139
[92] Submission 790, opposed by FS1019
[93] Submission 326, opposed by FS1018, FS1326, and FS1316
[94] Submission 110, opposed by FS1285

ii. Willum Richards Consulting Ltd[95], Infinity Investment Group Ltd[96], and Margaret Prescott[97]- Accept in part
iii. Queenstown Lakes District Council[98]-Accept

e. Terranova Place:
i. Christopher Jopson, Jacqueline Moreau, Shane Jopson[99]- Accept

f. Golf Course Road:
i. Trustees of the Gordon Family Trust[100]- Accept

g. Cardrona Valley Road
i. Willowridge Developments Ltd[101], JA Ledgerwood[102], Susan Meyer[103]- Accepted in part
ii. Wanaka Lakes Health Centre[104], Aspiring Lifestyle Retirement Village[105]- Reject
iii. Stuart Ian & Melanie Kiri Agnes Pinfold & Satomi Enterprises Ltd[106]- Reject
iv. JA Ledgerwood[107]- Reject
v. Satomi Enterprises Ltd[108]- Reject

h. Orchard Road/Riverbank Road:
i. Orchard Road Holdings Ltd[109] and Jackie Redai & Others[110], and Ian Percy and Aitken Family Trust[111]- Reject
ii. Willowridge Developments Ltd[112]- Reject

i. Anderson Road:
i. Murray Fraser[113]- Accept in part

j. Studholme Rd area:
i. Hawthenden Ltd[114]- Accept in Part
ii. Calvin Grant & Joline Marie Scurr[115], Glenys & Barry Morgan[116], Don & Nicola Sargeson[117], AW and MK McHutchon[118], Robert & Rachel Todd[119] and Joanne Young[120]- Accept in part

[95] Submission 55
[96] Submission 729
[97] Submission 73
[98] Submission 790
[99] Submission 287, supported by FS1008
[100] Submission 395, opposed by FS1101 and FS1212
[101] Submission 249, opposed by FS1193
[102] Submission 507, opposed by FS1193 and supported by FS1012
[103] Submission 274, supported by FS1101 and FS1212
[104] Submission 253, supported by FS1101
[105] Submission 709
[106] Submission 622, opposed by FS1193
[107] Submission562
[108] Submission 619
[109] Submission 249, opposed by FS1027 and FS1131
[110] Submission 152, opposed by FS1013 and opposed in part by FS1136
[111] Submission 725, opposed by FS1013
[112] Submission 249
[113] Submission 293
[114] Submission 776
[115] Submission 160
[116] Submission 161
[117] Submission 227
[118] Submission 253
[119] Submission 783
[120] Submission 784

iii. Murray Stewart Blennerhassett[121]- Accept in part

k. West Meadows Drive:
   i. Willowridge Developments Ltd[122], Nic Blennerhassett[123], Jon Blennerhassett[124]- Accept in part

l. State Highway 84:
   i. Ranch Royale Estate Ltd (ex Skeggs)[125]- Accept in part
   ii. Winton Partners Funds Management No 2 Ltd[126]- Reject

m. UGB at Waterfall Park:
   i. Blennerhassett Family Trust[127], Murray Stewart Blennerhassett[128] , RN Macassey, M G Valentine, LD Mills & Rippon Vineyard and Winery Land Co Limited[129]- Reject

18. HAWEA

Hawea Urban Area and UGB:

a. Jude Battson[130], Joel Van Riel[131], Jan Solback[132], Laura Solback[133], Robert Devine[134], and Gaye Robertson[135]- Accept
b. Streat Developments Ltd[136], Willowridge Developments Ltd[137]- Accept in part
c. Hawea Community Association HCA[138]- Accept in part,

452. Our recommendations for further submissions reflect, in each case, the recommendation on the principal submission to which they relate

453. Throughout this report, where we recommend acceptance of submissions in whole or in part, we have recommended amendments to the Planning Maps. Those recommended changes are shown on the face of the revised maps attached to Report 16.

19. ADDITIONAL RECOMMENDATIONS

454. In addition, we have recommended

a. That Chapter 15 be revised to include additional policies and rules governing development of the Cardrona Valley Road Local Shopping Centre Zone as set out in Appendix 1 attached.
b. The Council, working with landowners and the community, should develop a structure plan for the land generally bound by Orchard Road (southwest), Riverbank Road (south east) and Ballantyne Road (northeast). This structure plan would identify a long-term

[121] Submission 322, supported by FS1156 and FS 1135
[122] Submission 249
[123] Submission 335; includes Anderson Family Trust as part successor
[124] Submission 65
[125] Submission 412: Supported by FS1012
[126] Submission 653: Supported by FS1166
[127] Submission 413
[128] Submission 322
[129] Submission 692
[130] Submission 460
[131] Submission 462, supported by FS1138 AND FS1141
[132] Submission 816
[133] Submission 119
[134] Submission 272
[135] Submission 188, opposed by FS1012
[136] Submission 697, supported by FS1138 AND FS1141
[137] Submission 249
[138] Submission 771

urban form outcome, staging / timing sequence, and a platform for timely Plan Changes as appropriate[139].

c. That Chapter 27 be revised by the Stream 4 Hearing Panel to include the "West Meadows Drive Structure Plan" proposed by Mr Barr in his reply statement, together with consequential amendments as set out in Appendix 2 to this report.
d. That Council consider imposition of an appropriate urban zoning for the Willowridge land at Hawea currently zoned Township in the ODP as part of a future stage of the District Plan review process, taking account of our recommendations as to the zoning of the balance of the Willowridge land[140].

For the Hearing Panel

Trevor Robinson, Chair
Dated: 27 March 2018

[139]Discussed in sections 10.8 and 10.16 above.
[140] Refer section 16.11 above

Appendix 1

Recommended Amendments to Chapter 15:

a. Insert a new policy underneath notified Objective 15.2.1 (Local Shopping Centre zones) as follows:

"Limit the total gross floor area of retail and office activities within the Local Shopping Centre Zone located on Cardrona Valley Road to ensure that the commercial function of Wanaka Town Centre and Three Parks is not adversely affected."

b. Insert a new rule in notified section 15.5 as follows:

*"**Retail and office activities in the Local Shopping Centre Zone located at Cardrona Valley Road, Wanaka***
The total combined area of retail and office activities shall occupy no more than 3,000m^2 gross floor area.
Note:
For the purposes of this rule the gross floor area calculation applies to the total combined area of retail and office activities within the entire Local Shopping Centre Zone at Cardrona Valley Road, and shall not be interpreted as applying to individual sites within the zone."

with non-compliance stated to be a Discretionary Activity.

Appendix 2

Recommended amendments to Chapter 27

a. Insert a new location-specific objective and policies, worded as follows:

"West Meadows Drive

Objective - The integration of road connections between West Meadows Drive and Meadowstone Drive.

Policies

Enable subdivision at the western end of West Meadows Drive which has a roading layout that is consistent with the West Meadows Drive Structure Plan.

Enable variances to the West Meadows Drive Structure Plan on the basis that the roading layout results in the western end of West Meadows Drive being extended to connect with the roading network and results in West Meadows Drive becoming a through-road."

b. Insert a new location-specific Controlled Activity rule worded as follows:

"Subdivision *of lots zoned Lower Density Suburban Residential at the western end of West Meadows Drive identified in Section 27.13 which is consistent with the West Meadows Drive Structure Plan in Section 27.13.*
Control is reserved to:
a. the matters of control listed under Rule 27.7.1; and
b. roading layout."

c. Insert a new location-specific Discretionary Activity rule, worded as follows:

"Subdivision of lots zoned Lower Density Suburban Residential at the western end of West Meadows Drive identified in Section 27.13 that is inconsistent with the West Meadows Drive Structure Plan in Section 27.13."

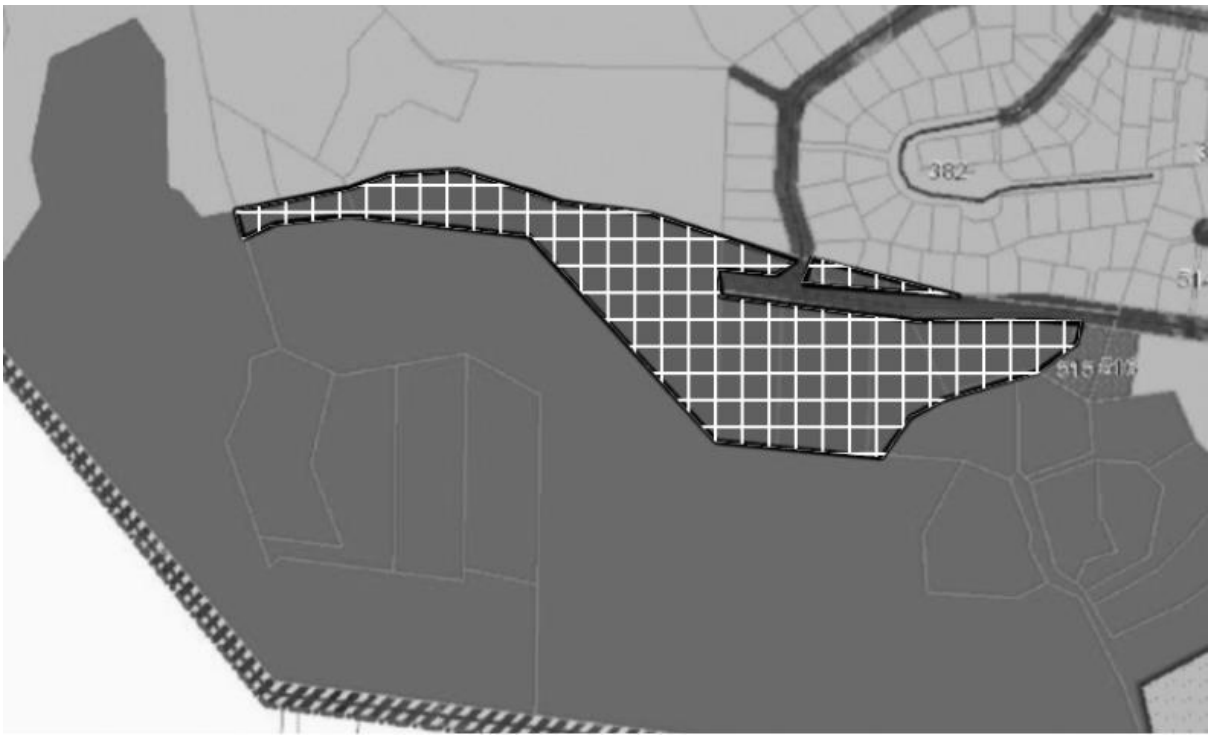
d. Insert Assessment Criteria for the Controlled Activity rule in b) above, worded as follows:

"a. the assessment criteria identified under Rule 27.7.1 as they apply to the West Meadows Drive area.

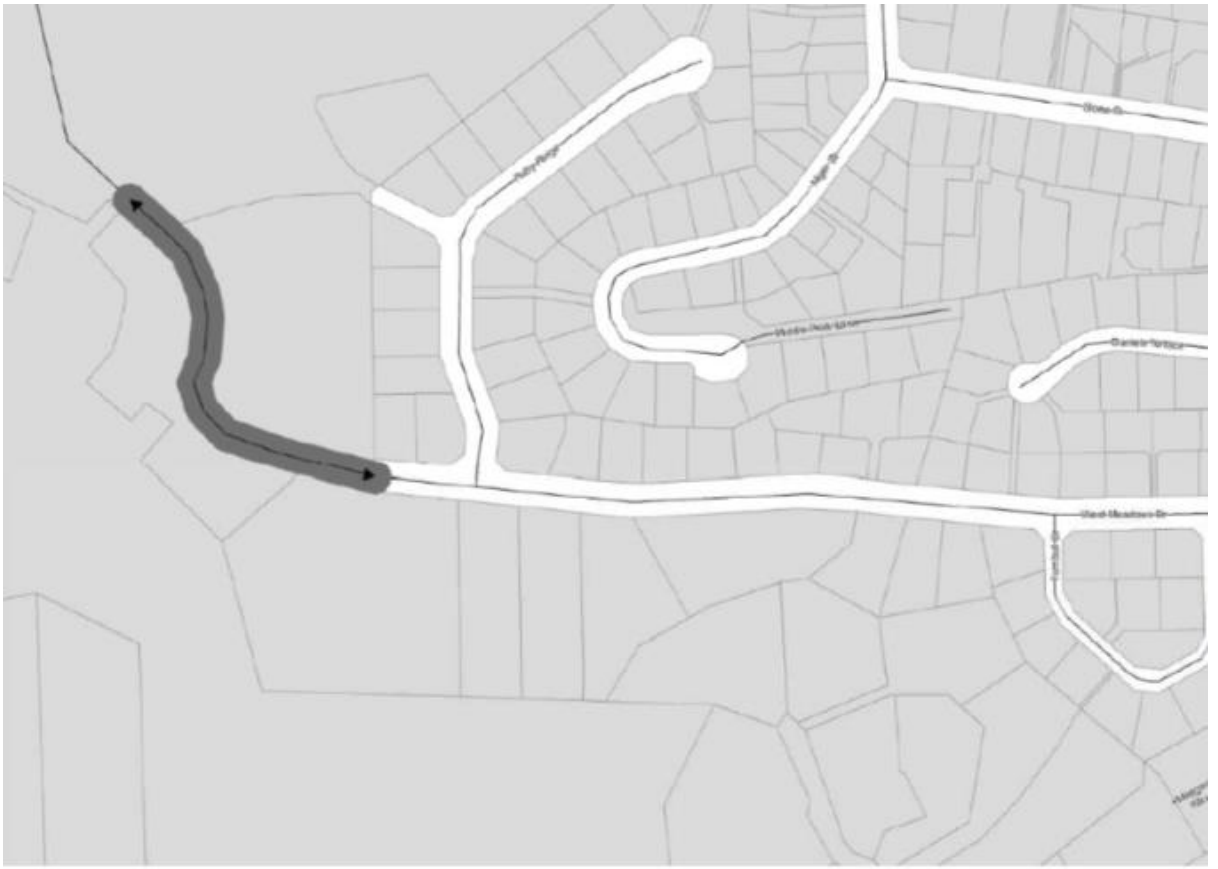
b.the extent to which the roading layout integrates with the operation of West Meadows Drive as a through-road."

e. Insert the following diagrams and accompanying text into Section 27.13:

Area of Lower Density Suburban Residential land the subject of the West Meadows Structure Plan



West Meadows Drive Structure Plan



Legend

- Historic Heritage Features
- Protected Tree
- Aurora Distribution Lines – For Information Only
- Roads
- Parcel/Road Boundary
- Landscape Classification (ONF,ONL,RCL)
- Urban Growth Boundary
- Unformed Roads
- Designated Areas
- Building Restriction
- Medium Density Residential
- Large Lot Residential A
- Lower Density Suburban Residential
- Local Shopping Centre
- Rural
- Rural Residential
- Rural Lifestyle
- Water (zoned Rural unless otherwise shown)

ONL

RCL

QUEENSTOWN LAKES DISTRICT COUNCIL

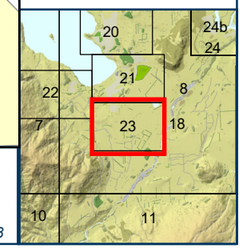
PDP Decisions Version Map 23 - Wanaka Rural

0 0.175 0.35 Km

N

Date Published: 17-Apr-18

23



QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 9A

Report and Recommendations of Independent Commissioners Regarding
Chapter 7, Chapter 8, Chapter 9, Chapter 10 and Chapter 11

COMMISSIONERS
Denis Nugent (Chair)
Mel Gazzard
Ian Munro

CONTENTS

Attachments

PART A: INTRODUCTORY MATTERS

1. PRELIMINARY MATTERS

1.1. Terminology in this Report

1. Throughout this report, we use the following abbreviations:

Act	Resource Management Act 1991 as it was prior to the enactment of the Resource Legislation Amendment Act 2017, unless otherwise stated
ANB	Airport Noise Boundary
ARHMZ	Arrowtown Residential Historic Management Zone
BARNZ	Board of Airline Representatives New Zealand Incorporated
Clause 16(2)	Clause 16(2) of the First Schedule to the Resource Management Act 1991
Council	Queenstown Lakes District Council
NPSET 2008	National Policy Statement for Electricity Transmission 2008
NPSREG 2011	National Policy Statement for Renewable Electricity Generation 2011
NPSFM 2011	National Policy Statement for Freshwater Management 2011
NPSFM 2014	National Policy Statement for Freshwater Management 2014
NZIA	NZIA Southern and Architecture + Women Southern
OCB	Outer Control Boundary
ODP	The Operative District Plan for the Queenstown Lakes District as at the date of this report
ONF	Outstanding Natural Feature(s)
ONL	Outstanding Natural Landscape(s)
PDP	Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
Proposed RPS	The Proposed Regional Policy Statement for the Otago Region Decisions Version dated 1 October 2016, unless otherwise stated
QAC	Queenstown Airport Corporation

Reply version	The revised / changed version of the S.42A version of the relevant PDP chapter(s) recommended in the Council's reply at the conclusion of the hearing
RMA	Resource Management Act 1991 as it was prior to the enactment of the Resource Legislation Amendment Act 2017, unless otherwise stated
RPS	The Operative Regional Policy Statement for the Otago Region dated October 1998
S.42A version	The revised / changed version of the relevant PDP chapter(s) recommended in response to the submissions and further submissions by the Council through its Section 42A Reports to us
Stage 2 variations	The variations, including changes to the existing text of the PDP, notified by the Council on 23 November 2017.
Stream 6	The hearings group that included submissions to PDP chapters 7, 8, 9, 10 and 11
Stream 6A	The hearings that considered submissions to Variation 1
UGB	Urban Growth Boundary
Variation 1	Variation 1 to the PDP as publicly notified on 20 July 2016.

1.2. Topics Considered

2. The subject matter of Stream 6 was Chapters 7, 8, 9, 10 and 11 of the PDP (Hearing Stream 6). These are, collectively, the residential chapters of the PDP. It is noted that residential activities are proposed to be provided for, and have been also considered in, the hearings and reports relating to the Business and Rural zones. Hearing Stream 6A (Variation 1 – Arrowtown Design Guideline) was heard concurrently with Stream 6 but is the subject of a separate report (Report 9B).

3. The differentiation between the "residential" Chapters 7, 8, 9, 10 and 11 of the PDP and other chapters where residential activities are also provided for, is that within the residential zones, residential activities are intended to be the principal and predominant ones that eventuate. Non-residential activities are proposed, broadly, to be restricted to those that are compatible with and bring direct benefits to adjacent residents.

4. Chapter 7 seeks to manage development within the "Low Density Residential zone". It contains objectives, policies and methods that would apply to the use and development of resources within that zone (to be spatially confirmed in subsequent mapping hearings). The notified version of Chapter 7 included the following in its explanation of the zone purpose[1]:

"Fundamentally the zone provides for traditional suburban densities and housing forms. Houses will typically be detached and set on sections between 450 and 1000 square metres in area. However, the zone will also support some increased density, whether through smaller

[1] Page 7-1, PDP.

scale and low rise infill development, or larger comprehensively designed proposals, to provide more diverse and affordable housing options."

5. Chapter 8 seeks to manage development within the "Medium Density Residential zone". It contains objectives, policies and methods that would apply to the use and development of resources within that zone (to be spatially confirmed in subsequent mapping hearings). The notified version of Chapter 8 included the following in its explanation of the zone purpose[2]:

"The zone will enable a greater supply of diverse housing options for the District. The main forms of residential development anticipated are terrace housing, semi-detached housing and detached townhouses on smaller sections. The zone will realise changes to density and character over time to provide for the social, economic, cultural and environmental wellbeing of the District. In particular, the zone will provide a greater diversity of housing options for smaller households including single persons, couples, small young families and older people seeking to downsize. It will also enable more rental accommodation for the growing population of transient workers in the District.

While providing for a higher density of development than is possible in the Low Density Residential Zone, the zone utilises development controls to ensure reasonable amenity protection is maintained. Importantly, building height will be generally limited to two storeys."

6. Chapter 9 seeks to manage development within the "High Density Residential zone". It contains objectives, policies and methods that would apply to the use and development of resources within that zone (to be spatially confirmed in subsequent mapping hearings). The notified version of Chapter 9 included the following in its explanation of the zone purpose[3]:

"The High Density Residential Zone will provide for more intensive use of land within close proximity to town centres that is easily accessible by public transport, cycle and walk ways. In conjunction with the Medium Density Residential Zone, the zone will play a key planning role in minimising urban sprawl and consolidating growth in existing urban areas.

In Queenstown, buildings greater than two storeys in height are anticipated, subject to high design quality and environmental performance. In Wanaka, buildings of two storeys in height are anticipated, accounting for its less urban character, however relatively high densities are achievable. Such development will result in a greater diversity of housing supply, provide for the visitor accommodation required to respond to projected growth in visitor numbers, help support the function and vibrancy of town centres, and reduce reliance on private transport."

7. Chapter 10 seeks to manage development within the ARHMZ. It contains objectives, policies and methods that would apply to the use and development of resources within that zone (to be spatially confirmed in subsequent mapping hearings). The notified version of Chapter 10 included the following in its explanation of the zone purpose[4]:

"The purpose of this zone is to allow for the continued sensitive development of the historic area of residential Arrowtown in a way that will protect and enhance those characteristics that make it a valuable part of the town for local residents and for visitors attracted to the town by its historic associations and unique character.

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2 Page 8-1, PDP.

3 Page 9-1, PDP.

4 Page 10-1, PDP.

In particular the zone seeks to retain the early subdivision pattern and streetscape, and ensure future development is of a scale and design sympathetic to the present character."

8. Chapter 11 seeks to manage development within the "Large Lot Residential zone". It contains objectives, policies and methods that would apply to the use and development of resources within that zone (to be spatially confirmed in subsequent mapping hearings). The notified version of Chapter 11 included the following in its explanation of the zone purpose[5]:

"The Large Lot Residential Zone provides low density living opportunities within defined Urban Growth Boundaries. The zone also serves as a buffer between higher density residential areas and rural areas that are located outside of Urban Growth Boundaries.

The zone generally provides for a density of one residence every 4000m². Identified areas have a residential density of one residence every 2000m² to provide for a more efficient development pattern to utilise the Council's water and wastewater services while maintaining opportunities for a variety of housing options, landscaping and open space."

9. As is evident from the above summary, the PDP has approached the management of residential-predominant development by way of a cascade or tier of specialised land use zones. It seems no coincidence that this is similar to the approach taken in the ODP and it thus enjoys a high level of familiarity with the community. This probably also explains the lack of submissions challenging this fundamental way of managing different types of residential activity.

10. The relevance of this approach as it relates to our decisions and recommendations is that each zone is only intended to provide for a specified range of residential activities. To this end a number of matters relating to what zone is the "best fit" for properties across the District were of recurrent interest to submitters we heard from, but are not addressed in the Stream 6 hearings. They sit properly in the separate mapping hearings and the justifications relating to the resultant zone allocation will be provided in those reports.

11. The focus of Stream 6 was therefore the 'toolbox' of zone provisions that would apply to each residential zone but not the spatial extent or location of those zones (nonetheless we considered the PDP zone distribution relevant to our analysis of the PDP and submissions received especially, as will be explained later, in respect of the Large Lot Residential zone at Wanaka).

12. It is also noted that subdivision activities would relate very closely with the development outcomes provided for in the land use (residential) zones. The subdivision chapter of the PDP has been addressed in a separate report (Report 7), although through the Stream 6 hearings we were mindful of the relationship between the proposed land use and subdivision provisions, and considered them throughout our deliberations.

1.3. Hearing Arrangements

13. Stream 6 matters were heard on 10 and 11 October 2016 in Queenstown, 12 October 2016 in Wanaka, and 25-27 October 2016 in Queenstown. The hearing combined all of Chapters 7, 8, 9, 10 and 11 and in consequence we heard evidence from submitters across all of the zones at the same time.

14. The parties heard from on Stream 6 matters were:

[5] Page 11-1, PDP.

Queenstown Lakes District Council

- Sarah Scott, Legal Counsel
- Ulrich Glasner, Engineer
- Stephen Chiles, Acoustician
- Philip Osborne, Economist
- Garth Falconer, Urban Designer
- Amanda Leith, Planner and author of the Section 42A Reports for Chapters 7, 8, and 11
- Kimberly Banks, Planner and author of the Section 42A Report for Chapter 9
- Rachel Law, Planner and author of the Section 42A Report for Chapter 10

David Barton[6]

- Ian Greaves, Planner

Plaza Investments Ltd[7]

- Ian Greaves, Planner

Varina Propriety Ltd[8]

- Ian Greaves, Planner

New Zealand Transport Agency[9]

- Tony MacColl, Planner

Matt Suddaby[10] and **C Hughes and Associates Ltd**[11]

- Matt Suddaby, Surveyor

Peter Bullen[12]

Loris King[13]

Nic Blennerhassett[14], **Blennerhassett Family Trust**[15]

- Nic Blennerhassett

Universal Developments Ltd[16]

- Dan Curly
- Tim Williams, Planner and Urban Designer
- Warwick Goldsmith, Counsel

Land and Infrastructure Management Ltd[17]

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6 Submission 269
7 Submission 551
8 Submission 591
9 Submission 719
10 Submission 33
11 Submission 448
12 Submission 47
13 Submission 230
14 Submission 335/Further Submission 1285
15 Submission 487
16 Submission 177
17 Submission 812

- Duncan White, Planner

Nick Mills[18], **Bridget Rennie**[19], **Myffie James**[20], **Jo Mills**[21], **Anna Mills**[22], and **John Coe**[23]
- Duncan White, Planner

MR & SL Burnell Trust[24]
- Julie Rickman

Pounamu Body Corporate Committee[25]
- Rebecca Wolt, Counsel
- Tim Walsh, Planner

Panorama Trust / Gordon Sproule (Trustee)[26]
- Gordon Sproule

Southern District Health Board[27]
- Warren Taylor
- Julie McMinn, Planner

Willum Richards Consulting Ltd[28] and **Deborah Richards**[29]
- Willum Richards

Queenstown Airport Corporation)[30]
- Rebecca Wolt, Counsel
- John Kyle, Planner

Otago Foundation Trust Board[31]
- Alyson Hutton, Planner

Arcadian Triangle Ltd[32]
- Warwick Goldsmith, Counsel

New Zealand Fire Service[33]
- Keith McIntosh
- Ainsely McLeod, Planner

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18 Further Submission 1332
19 Further Submission 1207
20 Further Submission 1198
21 Further Submission 1140
22 Further Submission 1126
23 Further Submission 1110
24 Submission 427
25 Submission 208/Further Submission 1148
26 Submission 64
27 Submissions 649 and 678
28 Submission 55
29 Submission 92
30 Submission 433/Further Submission 1340
31 Submission 408
32 Submission 836
33 Submission 438/Further Submission 1125

Middleton Family Trust[34]
- Nicholas Geddes, Planner

Body Corporate 22362[35], **Sean and Jane McLeod**[36]
- Sean McLeod

Lynn Campbell[37]

Sue Knowles, Angela Waghorn and Diane Dever[38]

Board of Airline Representatives New Zealand Incorporated[39]
- Gill Chappell, Counsel
- John Beckett
- Eric Morgan, Aviation Consultant

Antony and Ruth Stokes[40]
- Antony Stokes

Estate of Normal Kreft[41]; **Wanaka Trust**[42]
- Vanessa Robb, Counsel
- Jane Rennie, Urban Designer

Scott Freeman & Bravo Trustee Company Ltd[43]
- Scott Freeman

Erna Spijkerbosch[44]

NZIA Southern and Architecture + Women[45]
- Gillian McLeod

DJ and EJ Cassells, **The Building Family**, **The Bennett Family**, **M Lynch**[46]; **Friends of Wakatipu Gardens and Reserves**[47]
- Rosie Hill, Counsel
- Jay Cassells

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34 Submission 336
35 Submission 389
36 Submission 391
37 Submission 420
38 Submissions 7, 76, 77, and 193
39 Submission 271/ Further Submission 1077
40 Submission 575
41 Submission 512/Further Submission 1300
42 Submission 536
43 Submission 555
44 Submission 392/Further Submission 1059
45 Submission 238
46 Submission 503/Further Submission 1265
47 Submission 506

Mount Crystal Ltd[48]

- Sean Dent, Planner
- Tim Williams, Planner and Urban Designer

15. In addition, the following parties tabled evidence but did not appear at the hearing:
    - Coherent Hotels Ltd[49]
    - Fritz and Heather Kaufmann[50]
    - Sue Wilson[51]

16. A substantial number of written submissions and further submissions were also made on the various residential chapters and have also been considered in our deliberations.

17. We note that a number of the above attendees presented information that on occasion related to the separate mapping hearings. These submitters were advised that they would have opportunity to present their arguments in support of the relief they sought during those hearings.

1.4. Procedural Steps and Issues

18. The hearing of Stream 6 proceeded on the basis of the general pre-hearing directions made in the memoranda summarised in the Introductory Report. We note that these directions were generally followed.

19. Due to the pre-circulated evidence, the Council's experts had the opportunity in discussion with us to provide further analysis or comments. On this basis, some experts called by submitters used their time before us to provide supplementary or additional commentary. The most explicit such analysis came from Sean Dent and Tim Williams on behalf of Mount Crystal Ltd[52]. We accepted this further discussion as it was helpful to narrow down areas of disagreement or technical assumption between experts.

20. We refer readers of this report to the Council website which has full written copies and electronic recordings of the hearings. All information presented to us, including the answers provided by attendees and expert witnesses to our questions, are available. We also refer to the minutes and decisions associated with the mapping hearings, which included discrete matters proposed within the residential zones that were deferred to those hearings.

1.5. Stage 2 Variations

21. On 23 November 2017 the Council notified the Stage 2 variations. This included provisions relating to visitor accommodation to be included in each zone, plus Chapters 25 (Earthworks), 29 (Transport) and 31 (Signs), being part of Stage 2 of the District Plan Review.

22. As, in terms of Clause 16B of the First Schedule to the Act, the variations are merged with the PDP from the date of notification, we have incorporated the relevant provisions into text appended to this recommendation report. In each case we have shown the amendments in italics to distinguish them from our recommended text. These amendments do not form part of our recommendations.

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48 Submission 150

49 Submission 699/Further Submission 1172

50 Submission 68

51 Submission 58

52 Submission 150

2. STATUTORY CONSIDERSATIONS

23. The Hearing Panel's Report 1 contains a general discussion of the statutory framework within which submissions and further submissions on the PDP have to be considered, including matters that have to be taken into account, and the weight to be given to those matters. We have had regard to that report when approaching our consideration of submissions and further submissions on the matters before us.

24. While the legal obligations discussed in Report 1 are on the Council in its capacity as the decision maker on the final form of the PDP, we have put ourselves in the Council's shoes, as if we were subject to those same obligations, when determining what recommendations we should make to Council. Our report is framed on that basis, both for convenience, and to avoid confusion regarding the various roles the Council has in the process.

25. The Section 42A Reports provided us with a general overview of the matters of relevance to our deliberations, including summaries of the provisions of the RPS and the Proposed RPS. Planning witnesses appearing on behalf of submitters were also asked questions in respect of the statutory considerations relevant to their client(s) that we should consider.

26. Two particularly important sections of the Act relevant to our work are sections 32 and 32AA. These set out requirements for the analysis and reporting of our evaluation of planning options. In Report 1 we set out our overall approach to these sections. In summary, for the residential sections we have taken the Council's reports, all submissions and further submissions, and associated evidence provided to us at the hearings including the Council's right of reply, as part of the body of section32 analysis and evaluation.

27. While the commentary that follows in this report will provide our overall findings and reasons, we refer to the body of information we received in its totality as evidence of the work undertaken to identify the most appropriate objectives to achieve the purpose of the act, and the most appropriate policies and methods (including rules) to implement the objectives.

3. COMMENTARY ON SUBMISSIONS, EVIDENCE AND ISSUES RAISED

28. We heard submitters on the basis of their availability and time needs. We did not hear all submissions relevant to each chapter sequentially.

29. The Section 42A Reports formed the basis for our approach to and consideration of the submissions and further submissions as a whole. Each of Chapters 7, 8, 9, 10 and 11 had a different Section 42A Report prepared. Each Section 42A Report had an analysis and discussion of submissions and further submissions with reference to the additional conclusions of subject matter experts as required, recommended decisions, and of key note a track-change version of the notified chapter with recommended text changes (these formed Appendix 1 to all of the Section 42A Reports). The reports also included section 32 and section 32AA analysis to support, in the view of the Section 42A Report authors, their recommendations. In turn, the commentary and evidence provided to us via pre-circulation and at the hearings responded to the Section 42A Report and in particular what we have termed the 'S.42A version' of the PDP.

30. We also acknowledge that at the conclusion of the hearing the Council provided a written reply. The reply included further recommendations to us including further section 32AA analyses. We have referred to this as the 'Reply version' of the PDP.

31. The S.42A and Reply versions of the provisions do not have the statutory status of the notified PDP provisions, however given the extent of renumbering and new provisions proposed by the Council to us across the hearings we have found it necessary to make these distinctions so that users can track our analysis and findings. To complete this matter, we lastly note our distinction of the provisions and numbering we recommend as 'our recommended version' of the PDP provisions. These are the provisions attached to this notice as **Appendices 1**, **2**, **3**, **4** and **5**.

32. We note at the outset that we heard from, in the context of the PDP and its significance, a very small number of submitters. The overall tenor of the written submissions and the submitters that attended the hearings, was one of general acceptance or agreement with the PDP approach to the residential zones. There was limited reference to case law or other legal argument put to us; most technical debate was related to potential effects and opinions on grammatical preference. We surmised that because the PDP is a Plan review, rather than attempt to 'reset' a new plan from scratch (such as occurred recently with the Auckland Unitary Plan), the fundamental principle of residential zones was regarded as working well and not in need of fundamental overhaul.

33. The issues raised in the written submissions and at the hearings were, on the whole, issue-specific or site-specific, and often provision-specific. In this respect, we record our appreciation to the submitters for being so explicit.

34. The relevance of this is to note that the absence of a serious challenge to the fundamental residential zone framework (Chapters 7, 8, 9, 10 and 11 as a whole), or evidence that the proposed framework was defective or missing anything significant, were key factors in our deliberations and the conclusions we ultimately reached.

35. The closest consistent potential omission raised was whether or not the PDP residential zones, notably the medium and high density residential zones, should include development design guidelines. Our findings on that matter will be discussed below, but even on this issue we consider that the question raised was not whether or not the PDP had or had not identified all relevant resource management issues and environmental effects through the proposed policy framework; it was a question of whether the proposed methods to implement the framework were the most appropriate. That is ultimately a matter of, at most, refinement to the PDP's core direction rather than one of fundamental reconsideration. We note on this particular matter that the Council has advised us that it intends to introduce design guideline provisions to the Residential zones by way of a separate Variation.

36. We also made inquiries relating to the Council's withdrawal of visitor accommodation provisions (particularly in relation to the written submission of Totally Tourism Ltd[53]), however the consequence of this for the PDP was helpfully clarified by the Council in its written reply at the conclusion of the hearing. We note that the Council has now introduced visitor accommodation provisions to the residential zones by way of the Stage 2 variations.

37. But overall, our approach to the residential chapters became one of largely editing and balancing the discrete issues raised by the individual submitters than of weighting a more fundamental issue of supporting or opposing the broad framework.

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53 Submission 571

38. Our first principal finding is therefore that we accept and agree that the Plan should contain a series of chapters providing for and managing tiers or groupings of residential-predominant activities on the basis of a Large Lot Residential, Low Density, Medium Density, High Density, and Arrowtown Residential Historic Management zone framework proposed by the Council, but subject to individual refinements set out below. We find that the Council's justification for this approach is well-grounded in the ODP and will most appropriately enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety.

39. We find that the lack of concerted or consistent opposition to this fundamental framework for managing the residential areas of the District (including the question of whether there should even be residential-predominant areas or dedicated land use zones within the district) reflects a high degree of community acceptance with the Council's approach.

3.1. Scope of Submissions

40. The written submissions and further submissions made on Chapters 7, 8, 9, 10 and 11 varied substantially in terms of comprehensiveness, explicitness, and detail. Some submissions identified specific provisions of concern and proposed specific changes to those provisions. Others addressed more generalised effect categories or principles either without direct reference to particular provisions, or without being limited to just the provisions identified as examples.

41. We have considered how to address the question of scope for us to recommend changes to the provisions in response to the submissions and further submissions. The demands of natural justice and accepted principles for determining scope require us to consider whether or not a reasonably informed person could anticipate the extent of changes that could result to the PDP provisions as a result of a submission or further submission. But we find that this would be too rigidly and inappropriately interpreted as only allowing changes to provisions that were explicitly identified within a submission or further submission. We are also mindful that it would be unreasonable, and exclusionary in a manner that would not be consistent with the promotion of sustainable management, to expect each submitter to be able to articulate sophisticated resource management expertise as a pre-requisite to participation.

42. In the context of a whole-of-Plan review, where all submitters are plainly informed of the opportunity for any and all aspects of the Plan to be revisited, we find that submissions and further submissions that identify general but clear issues and/or outcomes sought but do not identify explicit provisions that should be changed or explicit changes to those provisions, have given us scope to make consequential or other changes to the notified provisions on the basis of our analysis of the facts and evidence before us.

43. We have applied this on a case by case basis and there are a number of instances where we have identified a lack of scope for us to make the changes we would have otherwise recommended.

44. We also acknowledge that many recommendations we have made do not relate to specific submissions, but are minor and can be made under Clause 16(2). These recommendations are, for the most part, necessary clarifications to improve the consistency and coherence of the Plan provisions.

45. Where we recommend a change that would qualify under either or both of the scope of submissions or further submissions, or Clause 16(2), we have identified each authority. This is

on the basis of our finding that a notified Plan provision can be justified simultaneously for each of these reasons rather than only requiring or being allowed by either one.

3.2. Background to Residential Zones

46. As noted earlier, the ODP contains a number of residential zones that manage different 'tiers' of residential-predominant development largely on the basis of dwelling density and spatial location within broader settlement patterns. A hallmark of the ODP is the principle of a low density, medium density and high density zone framework to manage the majority of dwellings in the district (measured primarily by dwelling numbers, not necessarily land area). The distribution of these zones adheres generally to the "centres-based" approach to urban planning predominant in all of the major urban areas of New Zealand. This approach underpins the PDP, although as noted earlier the specific spatial allocation of the different zones was not the purpose of this stream of hearings.

47. The PDP has been quite clearly premised on a 'revise and streamline' approach to the ODP (our words), and in our view this is a reasonable approach given how much of the proposed residential zones relate to land that has already been subject to residential development. Changing the planning basis on which the majority of the population has already adapted to and made significant household investment decisions on should be approached with some caution as we see the section 5 goal of helping people to provide for their social and economic wellbeing. One could liken it to the principle of pulling the rug from under one's feet.

48. The planning witnesses called on behalf of the Council and who wrote the Section 42A Reports (and subsequent Council reply recommendations), namely Ms Amanda Leith (Chapters 7, 8, and 11), Ms Kimberly Banks (Chapter 9) and Ms Rachel Law (Chapter 10) were not involved in the drafting of the PDP. While this limited their ability to describe to us the rationale or assumptions behind many of the proposed provisions we found that this did not significantly impair our ability to make decisions on the submissions. We also appreciate that their lack of previous involvement gave them a possibly greater degree of separation and impartiality than might have otherwise been the case when they considered the merits of submissions to change the notified provisions. In that regard we found Ms Leith's approach particularly, and very helpfully, fresh.

3.3. Format of Our Report

49. As we explain below, there is a commonality of section numbering, and of objectives, policies and rules across all five chapters. Rather than considering each chapter separately, in this Report we consider the matters before us section by section, and within each section, by chapter. This enables us, when the same provision occurs in more than one chapter, to ensure and demonstrate a consistent approach across all chapters, unless the context requires a different approach.

50. The attached Appendices include our recommended chapters (Appendices 1 to 5) and a list of submission and further submission points with our recommendations.

PART G: RULES 7.5, 8.5, 9.5, 10.5 and 11.5 – STANDARDS FOR ACTIVITIES

25. RULES 7.5

25.1. Overview

474. As notified, there were 15 rules intended to manage the scale, intensity, and location of development. Generally, the rules are proposed to provide a permitted activity threshold based on enabling reasonable use of residential zoned sites, with development beyond those thresholds requiring a resource consent, with activity status and associated provisions as required under sections 77A and 77B of the Act also specified on a rule-by rule basis.

475. We note that the PDP rule thresholds are generally analogous with those set out within the ODP.

476. As has been previously canvassed in our decisions above, the key issues raised within the submissions related to managing density, commercial activity, and development in proximity to the airport and state highways.

477. We note that as a result of our deliberations, the numbering of rules has in some cases been proposed to change. This has arisen largely as a result of looking to group like rules together.

25.2. Rules 7.5.5, 7.5.7, 7 5.12, 7.5.13, and 7.5.14

478. In the Reply version of the rules, 7.5.5 (building coverage), 7.5.7 (landscaped permeable surface coverage), 7.5.12 (waste and recycling storage space, 7.5.13 (glare), and 7.5.14 (setback from water bodies) were not proposed to be changed from the notified version (although the rules would be renumbered as a result of other proposed changes).

479. We agree with the Ms Leith's recommendation in respect of Rule 7.5.5, and furthermore note that permitted site coverage greater than this would create potential conflict with the outcomes sought within the policy framework once other rules for site size / density (including provision for residential flats ancillary to a principal residential unit or dwelling) and bulk and location are considered. Building coverage greater than 40% is likely to lead to development with a more urban characteristic that is intended to be managed by the Medium and High Density Residential Zones.

480. In terms of Rule 7.5.7, we find that we have no scope to change the notified rule, however note our support for the non-complying activity status for contraventions. This rule will be a key means to implementing the policy framework we determined was most appropriate, including through reinforcing building height and site density requirements seeking to enable higher densities in a way that maintained suburban, predominantly detached-house amenity values and the presence of visually obvious planting and vegetation between and around buildings.

481. In terms of Rule 7.5.12, we find that we have no scope to change the notified rule, however we have not been convinced, including with reference to other residential zones where this rule has not been proposed, that Rule 7.5.12.1, which specifies a waste storage space to be provided is relevant or required. We recommend the Council undertake a variation to delete it on the basis that it is unnecessary and hence inefficient and ineffective.

482. In terms of Rules 7.5.13, and 7.5.14, we find that we have no scope to change the notified rules, and there is no reason to change Rule 7.5.13. However, we do recommend the Council

undertake a variation to change the contravention status of Rule 7.5.13 from non-complying to restricted discretionary. This is because we cannot see any basis for requiring a non-complying activity status, and likewise consider potential effects to be so specific they could be readily identified as matters of discretion.

483. We similarly recommend a variation to change the 7m setback distance specified within Rule 7.5.14 to 20m. Twenty metres is relevant inasmuch as it is the default width of an esplanade reserve requirement that is triggered once a subdivision application that adjoins or includes the bed of a river, lake or wetland. While at the land use consent stage a subdivision for an esplanade reserve may not be being sought, retaining the 20m setback will not foreclose future subdivision in light of the significance attached to public access to and along waterbodies within the Act (see section 6(a) and (d)). While we accept that esplanade requirements do not apply in all cases (primarily when a stream is less than 3m wide), we are satisfied that a 20m rule requirement instead of 7m would overall be the more appropriate.

484. Our recommended text for Rules 7.5.5 (building coverage), 7.5.7 (landscaped permeable surface coverage) 7.5.12 (waste and recycling storage space, 7.5.13 (glare), and 7.5.14 (setback from water bodies) are set out below.

7.5.5	**Building Coverage** A maximum of 40%.	D
7.5.6	**Landscaped permeable surface coverage** At least 30% of the site area shall comprise landscaped (permeable) surface.	NC
7.5.12	**Waste and Recycling Storage Space** 7.5.12.1 Residential and Visitor Accommodation activities shall provide, as a minimum, space for a 120 litre residential wheelie bin and 240 litres recycling wheelie bin per residential unit. 7.5.12.2 All developments shall suitably screen waste and recycling storage space from the road or public space, in keeping with the building development, or provide space within the development that can be easily accessed by waste and recycling collections.	NC
7.5.13	**Glare** 7.5.13.1 All exterior lighting shall be directed downward and away from the adjacent sites and roads. 7.5.13.2 No activity on any site shall result in greater than a 3.0 lux spill (horizontal or vertical) of lights onto any other site measured at any point inside the boundary of the other site.	NC

7.5.14	**Setback of buildings from water bodies** The minimum setback of any building from the bed of a river, lake or wetland shall be 7m.	RD Discretion is restricted to: a. Indigenous biodiversity values; b. Visual amenity values c. Landscape character; d. Open space and the interaction of the development with the water body; e. Environmental protection measures (including landscaping and stormwater management); f. Whether the waterbody is subject to flooding or natural hazards and any mitigation to manage the location of the building.

25.3. Rules 7.5.1 and 7.5.2

485. Rules 7.5.1 and 7.5.2 (both relating to building height) have been proposed by Ms Leith to be largely retained although re-structured to be clearer for readers. These rules attracted a number of submissions, including particular interest on proposed additional controls on building height on sites smaller than 900m^2 proposed to accommodate more than 1 residential unit. The clearest submission in opposition to the Council's approach was from Aurum Survey Consultants[208], which was concerned with the Council's over-complicated and over-controlling proposal.

486. Ms Leith agreed with a number of the points made by the submitters and proposed to change the status of more than 1 residential unit on sites smaller than 900m^2 a discretionary, rather than non-complying activity. A key part of her justification for retaining the essence of the proposed approach was her interpretation of the phrase "gentle density".

487. As discussed previously, we did not agree with Ms Leith's eventually discarded phrase "gentle density", or Ms Leith's interpretation of that as an important outcome for the zone. We are supportive of Mr Falconer's view that the zone anticipates one to two storey units and consider that a clearer rules framework be in place to implement (our recommended) Objective 7.2.3 and its policies.

488. We find that contravention of proposed Rule 7.5.1.3 (an additional height restriction for higher density developments) should be a discretionary activity provided that the total height does not contravene the limits of Rules 7.5.1 or 7.5. 2 (the general zone height limits for flat or sloping sites respectively) as the case may be. Height above the limits of Rules 7.5.1 and 7.5.2 for the purposes of Rule 7.5.3 would then be a non-complying activity to avoid creating a reverse incentive for additional building height on the smallest sites.

[208] Submission 166

489. We find that the most appropriate provisions to address the policy framework we recommend are as set out below. This in summary is to accept the Reply version that there should be three height rules (for flat sites, for sloping sites, and for more than 1 dwelling on a site 900m^2 or smaller) subject only to our own minor amendments using Clause 16(2). Separating the density-related height control from the other two also makes the plan simpler.

7.5.1	**Building Height (for flat sites)** 7.5.1.1 Wanaka: Maximum of 7 metres. 7.5.1.2 Arrowtown: Maximum of 6. 5 metres. 7.5.1.3 All other locations: Maximum of 8 metres.	NC
7.5.2	**Building Height (for sloping sites)** 7.5.2.1 Arrowtown: Maximum of 6 metres. 7.5.2.2 In all other locations: Maximum of 7 metres.	NC
7 5.3	**In addition to Rules 7.5.1 and 7.5.2, where a site is less than 900m^2 net area and more than 1 residential unit will result per site, the following height provisions apply:** a. Where residential units are proposed in addition to an existing residential unit, then the additional residential unit(s) shall not exceed 5.5m in height; b. Where no residential units exist on the site, or where an existing residential unit is being demolished to provide for 2 or more new residential units on the site, then all proposed residential units shall not exceed 5.5m in height; c. Items (a) and (b) above do not apply where a second residential unit is being created within an existing residential unit that is taller than 5.5m.	D

25.4. Rules 7.5.3 and 7.5.4

490. In terms of Rules 7.5.3 (airport noise) and 7.5 4 (airport noise), the key submission was from QAC[209]. We have previously discussed the resource management issues relevant to residential development within close proximity to the Queenstown Airport and our agreement with the need to manage development in light of very likely, and very adverse, future noise and amenity effects.

491. Ms Leith, through the Reply, proposed that rule 7.5.4 could be deleted and its substance rolled into an amended rule 7.5.3. We agree with this and consider it will make the plan more administratively efficient. We do note that Ms Leith's Reply version needs a minor amendment to remove any ambiguity as to which buildings this rule applies to.

[209] Submission 433

492. Overall, we find that subject to the amendments set out in the Reply version Rule 7.5.3 (renumbered to 7.5.4), including our clarification, is the most appropriate means of implementing the objectives and policies we identified earlier, in particular objective 7.2.2 and its policies. It is included below.

7.5.4	**Airport Noise – Queenstown Airport (excluding any non-critical listening environments)** 7.5.4.1 Buildings Within the Outer Control Boundary and Air Noise Boundary Buildings and alterations and additions to existing buildings containing an Activity Sensitive to Aircraft Noise (ASAN) shall be designed to achieve an Indoor Design Sound Level of 40 dB Ldn within any Critical Listening Environment, based on the 2037 Noise Contours. 7.5.4.2 Compliance Within the Air Noise Boundary (ANB) Compliance shall be demonstrated by either adhering to the sound insulation requirements in Rule 36.6.1 and installation of mechanical ventilation to achieve the requirements in Rule 36.6.2, or by submitting a certificate to the Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the Indoor Design Sound Level with the windows open. 7.4.5.3 Compliance Between the Outer Control Boundary (OCB) and the Air Noise Boundary (ANB) Compliance shall be demonstrated by either installation of mechanical ventilation to achieve the requirements in Rule 36.6.2 or by submitting a certificate to the Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the Indoor Design Sound Level with the windows open. Note – Refer to Chapter 2 Definitions for a list of activities sensitive to aircraft noise (ASAN)	NC

25.5. Rule 7.5.6

493. In terms of Rule 7.5.6 (density), the notified rule limited density to one residential unit (inclusive of any ancillary residential flat) per 300 square metres of net site area, with an exclusion for an area identified as the Queenstown Heights Overlay Area. This rule was proposed to be deleted in Ms Leith's Section 42A Report and this recommendation was carried over to the Council's reply.

494. A number of submissions addressed the matter of residential density, both for and against. This has been discussed previously, and our findings in respect of the objectives and policies (to enable and encourage additional density compatible with local amenity values) is referred to.

495. We consider that deletion of this rule has not been substantiated, and we do not agree with it. The proposed subdivision rule acts as the 'first step' in limiting development density with its minimum site requirement of 450 square metres. This applies in the case of a fee-simple vacant lot development. Where development is proposed first, or if no subdivision is actually sought (such as a developer constructing a number of units to maintain as rental properties in

one ownership), the Chapter 7 land use rules apply. If this rule were to be deleted, then the only other density control would be the height rule at 7.5.3 (introduced through the Council's reply but agreed with in our evaluation above), which would limit densities greater than 1:450 square metres only insofar as building height would be in the first instance limited. No other density controls would apply, amounting to an unlimited density in the zone, with residential flats additional to this again.

496. We find that a land use density control is desirable and necessary to implement the objectives and policies we have determined as most appropriate, notably Objective 7.2.1, and in particular Objective 7.2.3, and their policies. We consider that the 1 unit per 300 square metres control is a helpful and relevant intermediary. Given that it is more generous than the basic subdivision control, it has the effect of offering a regulatory incentive for comprehensive "land use + subdivision" planning, which we consider is more effects based and in line with the optimal enablement of community wellbeing. We also consider that the notified non-complying activity status for contravention of this rule is the most appropriate, particularly the requirements of section 104D that would apply given the potential for unacceptable adverse effects and policy conflicts that densities higher than 1 per 300 square metres could give rise to.

497. In reaching this decision, we also note our view that a density of 1 (independently disposable) unit per 300 square metres, with an independently habitable residential flat as well, will deliver a maximum effective household density of 1 unit per 150 square metres. We find that this is approaching the absolute limit that can be described by the lower density, suburban residential character that the zone objectives and policies enable. Beyond this, we consider that the medium and high density zones become more appropriate.

498. Our recommended text, included below, includes the retained Rule 7.5.6 as notified, inasmuch as it relates to the 300 square metres minimum net site area.

7.5.11	**Density** The maximum site density shall be one residential unit or dwelling per 300m^2 net site area.	NC

499. Turning to the Queenstown Heights Overlay Area, and in terms of the evidence presented by The Middleton Family Trust[210], we note that this particular matter was dealt with by the Stream 13 Panel which is recommending deletion of the Overlay Area and the more restrictive density rule. This deletion is reflected above and in Appendix 1.

25.6. Rule 7.5.8

500. In terms of Rule 7.5.8 (recession plane), the key submission was from the Council[211], which sought clarifications around the applicability of the rule on flat and sloping sites. Ms Leith, in her Section 42A Report and through the Council reply, agreed with the change sought. The recommended rule would see the plane apply on flat sites to all buildings, and on sloping sites only for accessory buildings.

501. We find that the recession plane is a critical control in the zone, as it helps to shape development along a predominantly detached, suburban character. In so doing, it also maintains the amenity values of adjacent sites by limiting building height close to boundaries where it would be most likely to impede sun and daylight, and result in visual privacy

210 Submission 336

211 Submission 383

(overlooking) effects on or between neighbours. It complements the building height, and density controls already addressed and for that reason we also support the non-complying activity status proposed to apply to any contravention(s) of the rule so that the controls remain operating as an integrated package in support of the policy framework.

502. Our recommended text has been included below. We have made further refinements using Clause 16(2).

7.5.7	**Recession planes:** **On flat sites applicable to all buildings;** **On sloping sites only applicable to accessory buildings.** 7.5.7.1 Northern boundary: 2.5m and 55 degrees. 7.5.7.2 Western and eastern boundaries: 2.5m and 45 degrees. 7.5.7.3 Southern boundary: 2.5m and 35 degrees. Exemptions: a. Gable end roofs may penetrate the building recession plane by no more than one third of the gable height. b. Recession planes do not apply to site boundaries adjoining a Town Centre Zone, or fronting a road, or a park or reserve.	NC

25.7. Rule 7.5.9

503. In terms of Rule 7.5.9 (minimum boundary setbacks), Ms Leith recommended a number of additions to the rule (effectively all exclusions) through her Section 42A Report and also the Council's reply, in agreement with issues raised by submitters NZIA[212] and Aurum Survey Consultants Ltd[213]. The effect of the amendments recommended to us would be to provide for minor parts of buildings, including eaves, all subject to specified limits, to extend into a setback area on the basis that it would bring greater benefits to the community, including visual design quality and weathertightness, and add negligible further adverse effects on the environment.

504. We agree with the submitters and Ms Leith, and find that Rule 7.5.9 as notified be changed as proposed in the Reply version of the provisions, subject only to our own further Clause 16(2) clarifications. Our recommended text is included below.

7.5.8	**Minimum Boundary Setbacks** 8.1.1.1 Road boundary: 4.5m 8.1.1.2 All other boundaries: 2.0m Exceptions to boundary setbacks: a. Accessory buildings for residential activities may be located within the boundary set back distances (other than from road boundaries), where they do not exceed 7. 5m in length, there are no windows or openings (other than for carports) along any walls within 1. 5m of an internal boundary, and they comply with rules for Building Height and Recession Plane;	D

212 Submission 238

213 Submission 166 / Further Submission 1202

	b. Any building may locate within a boundary setback distance by up to 1m for an area no greater than $6m^2$ provided the building within the boundary setback area has no windows or openings; c. Eaves may be located up to 600mm into any boundary setback distance along eastern, western and southern boundaries; d. Eaves may be located up to 1m into any boundary setback distance along northern boundaries.	

25.8. Rule 7.5.10

505. In terms of Rule 7.5.10 (building separation within sites), Ms Leith recommended to us through her Section 42A Report and the Reply version of the provisions that the rule threshold should reduce from 6m to 4m, and that contravention should elevate to a full discretionary activity rather than the notified restricted discretionary activity status.

506. The key submitters to this rule included Aurum Survey Consultants Ltd[214], Sean McLeod[215] and Sean and Jane McLeod[216]. The principal argument in support of a reduced rule threshold from 6m to 4m was that this was equivalent to what two buildings on adjoining sites could result in, based on the 2.0m minimum yard requirement in (notified) Rule 7.5.9. Ms Leith agreed with this but considered the uncertainty of effects to be such that a full discretionary activity should be required to contravene that reduced standard.

507. We find that it is appropriate that the separation between residential units on a single site be managed by the rules. This directly relates to the scale, intensity and character of buildings within the zone and the identified priority of maintaining a suburban level of amenity values therein. We find that the requirement for separation should, on the basis of like-for-like environmental effects, be equivalent to what would be required for buildings separated by a legal boundary.

508. We therefore disagree with Ms Leith. That 4m is the effective separation that permitted activities on adjoining sites are proposed to enjoy, without any supervision, is difficult to reconcile with a potential for adverse effects arising from that same width being achieved between buildings on the same site. We find that the restricted discretionary status should remain, however disagree with T Proctor[217] that an additional matter of discretion relating to ground level changes is appropriate.

509. We also find, relying on the submission of J Harrington[218] that an additional matter of discretion that should be added relating to, for development within Arrowtown only, consistency with the Arrowtown Design Guidelines 2016.

510. Our recommended text is included below (including Clause 16(2) clarifications).

214 Submission 166
215 Submission 389
216 Submission 391
217 Submission 169
218 Submission 309

7.5.9	**Building Separation Within Sites** For detached residential units on the same site, a minimum separation distance of 4m between the residential units within the development site applies. Note: this rule does not apply to attached dwellings.	RD Discretion is restricted to: a. Whether site constraints justify an alternative separation distance; b. Whether an overall better amenity values outcome is being achieved, including for off-site neighbours; c. Design of the units, with particular regard to the location of windows and doors so as to limit the potential for adverse effects on privacy between units; d. In Arrowtown, consistency with Arrowtown's character, as described within the Arrowtown Design Guidelines 2016

25.9. Rule 7.5.11

511. In terms of Rule 7.5.11 (continuous building length), Ms Leith explained to us in her Section 42A Report that this rule has something of a genesis in the ODP[219]. We were told that the operative rule is cumbersome and difficult to use, despite numerous explanatory diagrams being made available by the Council.

512. Key submitters to this rule were NZIA[220] and Aurum Survey Consultants[221]. These submitters did not oppose the rule, but sought clarifications. On analysis of these submissions, Ms Leith concluded that wording changes would be sufficient to make the rule clear, and that diagrams (sought by NZIA) were not necessary.

513. We find that Ms Leith's recommendations are sound and we agree with them. We disagree that interpretative diagrams are necessary and as a general principle of rule drafting, we consider that if a diagram is required to make a rule legible then there is something amiss with the rule. On that basis, we have considered Ms Leith's recommended text, consider it is legible and straight-forward, and recommend it be adopted.

514. Our recommended text is included below.

219 A Leith, Chapter 7 Section 42A Report, paragraphs 10.15-10.19

220 Submission 238

221 Submission 166

7.5.10	**Continuous Building Length** The length of any building facade above the ground floor level shall not exceed 16m.	RD Discretion is restricted to: a. External appearance, location and visual dominance of the building(s) as viewed from the street(s) and adjacent properties; b. In Arrowtown, consistency with Arrowtown's character, as described within the Arrowtown Design Guidelines 2016.

25.10. Rule 7.5.15

515. In terms of Rule 7.5.15 (parking – residential flat), Ms Leith, in her Section 42A Report, agreed with submitter Aurum Survey Consultants Ltd[222] that parking standards should reside in the District Plan's transport chapter. We see no justification for this notified rule in the zone policy framework, and find in agreement that the rule should be deleted from this section.

25.11. New Rules Proposed to be Introduced by the Section 42A Report and/or Council Reply

516. Ms Leith, through her Section 42A Report, proposed to add two additional rules (road noise – state highway, and height restrictions along Frankton Road), and then through the Reply version two more were proposed (building restriction area, and home occupation).

517. In terms of proposed Rule 7.5.15: road noise state highway, this arose in response to Ms Leith agreeing with the submission of New Zealand Transport Agency[223]. Our analysis is that the rule is appropriate to implement Objective 7.2.1 and its Policy 7.2.1.4 (our recommended numbering) and we recommend this rule's inclusion.

518. In terms of proposed Rule 7.5.16: height restrictions along Frankton Road, this rule was proposed by Ms Leith, however by the time of the Council's Reply she had reversed this view and recommended it be deleted. Given that this rule was not notified, and has not enjoyed any section 32 or section 32AA analysis other than by Ms Leith, we are inclined to agree with her that the rule is not necessary or appropriate. We have further considered the submission of Pounamu Body Corporate Committee[224] and find that there is insufficient justification to include a new height restriction.

519. In terms of recommended Rule 7.5.16: building restriction area, this was proposed by Ms Leith as an administrative clarification through the Reply version inasmuch as an equivalent rule was notified in Rule 7.4 (land use activities). We agree with Ms Leith that it is more appropriate that this rule sit in Rule 7.5 and find that it should be included as a Clause 16(2) clarification.

520. In terms of recommended Rule 7.5.17: home occupation, this was also proposed by Ms Leith as a clarification through the Council's reply for what was originally proposed within Rule 7.4. We agree with Ms Leith and find that the rule should be added to Rule 7.5 as a Clause 16(2) clarification.

222 Submission 166

223 Submission 719

224 Submission 208

521. Our recommended text for new rules relating to highway noise, buildings within a Building Restriction Area, and home occupations, are included below.

7.5.15	**Road Noise – State Highway** Any new residential buildings or buildings containing Activities Sensitive to Road Noise, located within: a. 80 metres of the boundary of a State Highway that has a speed limit of 70km/h or greater; or b. 40 metres of the boundary of a State Highway that has a speed limit less than 70km/h; shall be designed, constructed and maintained to ensure that the internal noise levels do not exceed 40dB $L_{Aeq(24h)}$ for all habitable spaces including bedrooms.	NC
7.5.16	**Building Restriction Area** Where a building restriction area is shown on the District Planning Maps, no building shall be located within the restricted area	NC
7.5.17	**Home Occupation** 7.5.16.1 No more than 1 full time equivalent person from outside the household shall be employed in the home occupation activity. 7.5.16.2 The maximum number of two-way vehicle trips shall be: a. Heavy vehicles: none permitted; b. Other vehicles: 10 per day. 7.5.16.3 Maximum net floor area of 60m^2. 7.5.16.4 Activities and storage of materials shall be indoors.	D

25.12. Overall Analysis

522. In terms of the above development rules, we record our finding that they, individually and collectively, are the most appropriate means of implementing the zone objectives and policies. We find that they will be more efficient and effective than the notified rules, and are soundly based on the management of effects and outcomes promoted within the zone policy framework.

26. RULE 8.5

26.1. Overview

523. In the notified PDP, there were 14 activity standards. In Ms Leith's Section 42A Report and subsequent Reply version she recommended increasing this to 16. She recommended a number of other changes on the basis of submissions and her own suggested clarifications.

26.2. Notified Rule 8.5.1 and Reply Version Rule 8.5.15

524. In terms of notified Rule 8.5.1 (the maximum height rule), Ms Leith recommended adding a height restriction on land adjacent to Designation 270, on the basis of submissions from M Prescott[225], W Richards[226], D Richards[227], and Universal Developments Ltd[228]. By the time of

225 Submission 73
226 Submission 55
227 Submission 92
228 Submission 177

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 7

Report and Recommendations of Independent Commissioners
Regarding Chapter 27 – (Subdivision and Development)

Commissioners
Denis Nugent (Chair)
Trevor Robinson
Scott Stevens

TABLE OF CONTENTS

1. PRELIMINARY MATTERS

1.1 Terminology in this Report

1. Throughout this report, we use the following abbreviations:

Act	Resource Management Act 1991 as it was prior to the enactment of the Resource Legislation Amendment Act 2017
Clause 16(2)	Clause 16(2) of the First Schedule to the Act
Council	Queenstown Lakes District Council
NPSET 2008	National Policy Statement for Electricity Transmission 2008
ODP	the Operative District Plan for the Queenstown Lakes District as at the date of this report
ONF	Outstanding Natural Feature(s)
ONL	Outstanding Natural Landscape(s)
PDP	Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
Proposed RPS	the Proposed Regional Policy Statement for the Otago Region as modified by decisions on submissions and dated 1 October 2016
Proposed RPS (notified)	the Proposed Regional Policy Statement for the Otago Region dated 23 May 2015
QAC	Queenstown Airport Corporation
RPS	the Operative Regional Policy Statement for the Otago Region dated October 1998
UCES	Upper Clutha Environmental Society
Stage 2 Variations	the variations, including changes to the existing text of the PDP, notified by the Council on 23 November 2017

1.2 Topics Considered

2. The subject matter of this hearing was Chapter 27 of the PDP (Hearing Stream 4).

3. Chapter 27 sets out objectives, policies, rules and other provisions related to subdivision and development.

4. As notified, it was set out under the following major headings:
   a. 27.1 – Purpose;
   b. 27.2 – Objectives and Policies;
   c. 27.3 – Other Provisions and Rules;

d. 27.4 – Rules – Subdivision;
e. 27.5 – Rules – Standards for Subdivision Activities;
f. 27.6 – Rules – Exemptions;
g. 27.7 – Location – Specific Objectives, Policies and Provisions;
h. 27.8 – Rules – Location Specific Standards;
i. 27.9 – Rules – Non-Notification of Applications;
j. 27.10 – Rules – General Provisions;
k. 27.11 – Rules – Natural Hazards;
l. 27.12 – Financial Contributions.

1.3 Hearing Arrangements

5. Hearing of Stream 4 took place over five days. The Hearing Panel sat in Queenstown on 25-26 July and 1-2 August 2016 inclusive and in Wanaka on 17 August 2016.

6. The parties we heard on Stream 4 were:

Council:
- Sarah Scott (Counsel)
- Garth Falconer
- David Wallace
- Nigel Bryce

Millbrook Country Club Limited[1] and **RCL Queenstown Pty Limited**[2]**:**
- Daniel Wells

Roland and Keri Lemaire-Sicre[3]**:**
- Keri Lemaire-Sicre

G W Stalker Family Trust, Mike Henry, Mark Tylden, Wayne French, Dave Finlin, Sam Strain[4]**, Ashford Trust**[5]**, Bill and Jan Walker Family Trust**[6]**, Byron Ballan**[7]**, Crosshill Farms Limited**[8]**, Robert and Elvena Heywood**[9]**, Roger and Carol Wilkinson**[10]**, Slopehill Joint Venture**[11]**, Wakatipu Equities Limited**[12]**, Ayrburn Farm Estate Limited**[13]**, FS Mee Developments Limited**[14]**:**
- Warwick Goldsmith (Counsel)
- Alexander Reid

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1 Submission 696
2 Submission 632/Further Submission 1296
3 Further Submission 1068
4 Submissions 534 and 535
5 Further Submission 1256
6 Submission 532/Further Submissions 1259 and 1267
7 Submission 530
8 Submission 531
9 Submission 523/Further Submission 1273
10 Further Submission 1292
11 Submission 537/Further Submission 1295
12 Submission 515/Further Submission 1298
13 Submission 430
14 Submission 525

- Jeff Brown (also on behalf of Hogan Gully Farming Limited[15], Dalefield Trustee Limited[16], Otago Foundation Trust Board[17], and Trojan Helmet Limited[18]):
- Ben Farrell

New Zealand Transport Agency[19]:
- Tony MacColl

Darby Planning LP[20], Soho Ski Area Limited[21], Treble Cone Investments Limited[22], Lake Hayes Limited[23], Lake Hayes Cellar Limited[24], Mt Christina Limited[25], Jacks Point Residential No.2 Limited, Jacks Point Village Holdings Limited, Jacks Point Developments Limited, Jacks Point Land Limited, Jacks Point Land No.2 Limited, Jacks Point Management Limited, Henley Downs Land Holdings Limited, Henley Downs Farms Holdings Limited, Coneburn Preserve Holdings Limited, Willow Pond Farm Limited[26], Glendhu Bay Trustees Limited[27], Hansen Family Partnership[28]:
- Maree Baker-Galloway (Counsel)
- Chris Ferguson
- Hamish McCrostie (17 August only)

NZ Fire Service Commission[29] and **Transpower New Zealand Limited[30]:**
- Ainsley McLeod
- Daniel Hamilton (Transpower only)

Queenstown Park Limited[31] and **Remarkables Park Limited[32]:**
- John Young (Counsel)

UCES[33]:
- Julian Haworth

Federated Farmers of New Zealand[34]:
- Kim Riley
- Phil Hunt

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15 Submission 456
16 Submission 350
17 Submission 406
18 Further Submission 1157
19 Submission 719
20 Submission 608
21 Submission 610
22 Submission 613
23 Submission 763
24 Submission 767
25 Submission 764
26 Submission 762
27 Submission 583
28 Submission 751
29 Submission 438/Further Submission 1125
30 Submission 805/Further Submission 1301
31 Submission 806/Further Submission 1097
32 Submission 807/Further Submission 1117
33 Submission 145/Further Submission 1034
34 Submission 600/Further Submission 1132

Ros and Dennis Hughes[35]:

- Ros Hughes
- Dennis Hughes

QAC[36]:

- Rebecca Wolt and Ms Needham (Counsel)
- Kirsty O'Sullivan

Patterson Pitts Partners (Wanaka) Limited[37]

- Duncan White
- Mike Botting

Aurora Energy Limited[38]:

- Bridget Irving (Counsel)
- Nick Wyatt

7. Evidence was also pre-circulated by Ulrich Glasner (for Council), Joanne Dowd (for Aurora Energy Limited[39]), Carey Vivian (for Cabo Limited[40], Jim Veint[41], Skipp Williamson[42], David Broomfield[43], Scott Conway[44], Richard Hanson[45], Brent Herdson and Joanne Phelan[46]), and Nick Geddes (for Clark Fortune McDonald & Associates Limited[47]).

8. Mr Glasner was unable to attend the hearing and his evidence was adopted by David Wallace who appeared in his stead at the hearing.

9. Ms Dowd was unable to travel to the hearing due to an unfortunate accident. In lieu of her attendance, we provided written questions for Ms Dowd, to which she responded in a Supplementary Statement of Evidence dated 5 August 2016.

10. Messrs Vivian and Geddes were excused attendance at the hearing.

11. Mr Jonathan Howard also provided a statement on behalf of Heritage New Zealand Pouhere Taonga[48] and requested that it be tabled.

1.4 Procedural Steps and Issues

12. The hearing of Stream 4 proceeded based on the general pre-hearing directions made in the memoranda summarised in Report 1.

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35 Submission 340
36 Submission 433/Further Submission 1340
37 Submission 453
38 Submission 635/Further Submission 1121
39 Submission 635/Further Submission 1121
40 Submission 481
41 Submission 480
42 Submission 499
43 Submission 500
44 Submission 467
45 Submission 473
46 Submission 485
47 Submission 414
48 Submission 426

13. Other procedural directions made by the Chair in relation to this hearing were:
    a. Consequent on the Hearing Panel's Memorandum dated 1 July 2016 requesting that Council undertake a planning study of the Wakatipu Basin (Noted in Report 1), a Minute was issued directing that if the Council agreed to the Hearing Panel's request[49], submissions relating to the minimum lot sizes for the Rural Lifestyle Zone would be deferred to be heard in conjunction with hearing the results of the planning study and granting leave for any submitter in relation to the minimum lot size in the Rural Lifestyle Zone to apply to be heard within Hearing Stream 4 if they considered that their submission was concerned with the zone provisions as they apply throughout the District[50];
    b. Granting leave for Mr Farrell's evidence to be lodged on or before 4pm on 20 July 2016;
    c. Granting leave for Ms Dowd's evidence to be lodged on or before noon on 3 August 2016, waiving late notice of Aurora Energy Ltd.'s wish to be heard and directing that Ms Dowd supply written answers to any questions we might have of Ms Dowd on or before noon on 16 August 2016;
    d. During the course of the hearing of submissions and evidence on behalf of Darby Planning LP and others, the submitters were given leave to provide additional material on issues that had arisen during the course of their presentation. Supplementary legal submissions and a supplementary brief of evidence of Mr Ferguson were provided. Ms Baker-Galloway, Mr Ferguson and Mr Hamish McCrostie appeared on 17 August to address the matters covered in this supplementary material.
    e. Directing that submissions on Chapter 27 specific to Jacks Point Resort Zone would not be deferred;
    f. Admitting a memorandum dated 18 August 2016 on behalf of UCES into the hearing record;
    g. Extending time for Council to file its written reply to noon on 26 August 2016.

1.5 Stage 2 Variations

14. On 23 November 2017, Council publicly notified the Stage 2 Variations. Relevantly to the preparation of this report, the Stage 2 Variations included changes to a number of provisions in Chapter 27.

15. Clause 16B(1) of the First Schedule to the Act provides that submissions on any provision the subject of variation are automatically carried over to hearing of the variation.

16. Accordingly, the provisions of Chapter 27 the subject of the Stage 2 Variations have been reproduced as notified, but 'greyed out' in the revised version of Chapter 27 attached as Appendix 1 to this report, in order to indicate that those provisions did not fall within our jurisdiction

1.6 Statutory Considerations

17. The Hearing Panel's Report 1 contains a general discussion of the statutory framework within which submissions and further submissions on the PDP have to be considered, including matters that have to be taken into account, and the weight to be given to those matters. We have had regard to that report when approaching our consideration of submissions and further submissions on Chapter 27.

18. Some of the matters identified in Report 1 are either irrelevant or have only limited relevance to the objectives, policies and other provisions of Chapter 27. The National Policy Statement

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49 The Hearing Panel was advised by Memorandum dated 8 July 2016 from counsel for the Council that the Council would undertake the study requested

50 In the event, no such application was received

for Renewable Electricity Generation 2011 and the National Policy Statement for Freshwater Management 2014 are in this category. The NPSET 2008 and the NPSUDC 2016, however, are of direct relevance to some provisions of Chapter 27. The NPSUDC 2016 was gazetted after the hearing of submissions and further submissions concluded and the Chair sought written input from the Council as to whether the Council considered the provisions of the PDP that had already been the subject of hearings gave effect to the NPSUDC 2016. Counsel for the Council's 3 March 2017 memorandum concluded that the provisions of the PDP gave effect to the majority of the objectives and policies of the NPSUDC 2016, and that updated outputs from the Council's dwelling capacity model to be presented at the mapping hearings would contribute to the material demonstrating compliance with Policy PA1 of the document. We note specifically counsel for the Council's characterisation of the provisions of the NPSUDC 2016 as 'high level' or 'direction setting' rather than as providing detailed requirements. The Chair provided the opportunity for any submitter with a contrary view to express it but no further feedback was obtained. We discuss in some detail later in this report the provisions necessary to give effect to the NPSET and NPSUDC.

19. In his Section 42A Report, Mr Bryce drew our attention to particular provisions of the RPS. He noted in particular Objectives 5.4.1-5.4.4 that he described as promoting sustainable management of Otago's land resource by:

"Objective 5.4.1
To promote sustainable management of Otago's land resource, in order:

a. *To maintain and enhance the primary production capacity and life-supporting capacity of land resources; and*

b. *To meet the present and reasonably foreseeable needs of Otago's people and communities;*

Objective 5.4.2
To avoid, remedy or mitigate degradation of Otago's natural physical resources resulting from activities utilising the land resource;

Objective 5.4.3
To protect Otago's outstanding natural features and landscapes from inappropriate subdivision, use and development."

20. He also noted Objective 9.3.3 and 9.4.3 (Built environment) and the related policies as being relevant as seeking "*to avoid, remedy or mitigate the adverse effects of Otago's built environment on Otago's natural and physical resources, and promote the sustainable management of infrastructure."*

21. Mr Bryce also drew to our attention a number of provisions of the Proposed RPS (notified). By the time we came to consider our report, decisions had been made by Otago Regional Council on this document which superseded the provisions referred to us by Mr Bryce. We have accordingly had regard to the Proposed RPS provisions dated 1 October 2016.

22. We note, in particular, the following objectives of the Proposed RPS:

Objective 1.1
Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago.

Objective 2.1
The principles of Te Tiriti o Waitangi are taken into account in resource management processes and decisions.

Objective 2.2
Kai Tahu values, interests and customary resources are recognised and provided for.

Objective 3.1
The values of Otago's natural resources are recognised, maintained and enhanced.

Objective 3.2
Otago's significant and highly-valued natural resources are identified, and protected or enhanced.

Objective 4.1
Risk that natural hazards poised to Otago communities are minimised.

Objective 4.2
Otago's communities are prepared for and able to adapt to the effects of climate change.

Objective 4.3
Infrastructure is managed and developed in a sustainable way.

Objective 4.4
Energy supplies to Otago's communities are secure and sustainable.

Objective 4.5
Urban growth and development is well designed, reflects local character and integrates effectively with adjoining urban and rural environments.

Objective 5.1
Public access to areas of value to the community is maintained or enhanced.

Objective 5.2
Historic heritage resources are recognised and contribute to the region's character and sense of identity.

Objective 5.3
Sufficient land is managed and protected for economic production.

Objective 5.4
Adverse effects of using and enjoying Otago's natural and physical resources are minimised.

23. For each of the above objectives, there are specified policies that also need to be taken into account. Some of the policies of the Proposed RPS are particularly relevant to subdivision and development. We note at this point:

    a. Policy 1.1.2 Economic wellbeing:
    Provide for the economic wellbeing of Otago's people and communities by enabling the use and development of natural and physical resources only if the adverse effects of those

activities on the environment can be managed to give effect to the objectives and policies of the Regional Policy Statement;

b. Policy 2.1.2 Treaty principles:

Ensure that local authorities exercise their functions and powers, by:…
g) Ensuring that District and Regional Plans:
i. Give effect to the Nga Tahu Claims Settlement Act 1998;
ii. Recognise and provide for statutory acknowledgement areas in Schedule 2;
Iii Provide for other areas in Otago that are recognised as significant to Kai Tahu….;

c. Policy 2.2.2 Recognising sites of cultural significance:

"Recognise and provide for wahi tupuna, as described in Schedule 1C by all of the following:
a. Avoiding significant adverse effects on those values which contribute to wahi tupuna being significant;
b. Avoiding, remedying, or mitigating other adverse effects on wahi tupuna;
c. Managing those landscapes and sites in a culturally appropriate manner."

d. Policy 3.1.7 Soil values:

"Manage soils to achieve all of the following:….

f) Maintain or enhance soil resources for primary production……"

e. Policy 3.2.18 Managing significant soil:

"Protect areas of significant soil, by all of the following:….
c) Recognising that urban expansion on significant soils may be appropriate due to location and proximity to existing urban development and infrastructure…."

f. Policy 4.1.5 Natural hazard risk:

"Manage natural hazard risk to people and communities, with particular regard to all of the following:
a. The risk posed, considering the likelihood and consequences of natural hazard events;
b. The *implications of residual risk, including the risk remaining after implementing or undertaking risk reduction and hazard mitigation measures;*
c. The community's tolerance of that risk, now and in the future, including the community's ability and willingness to prepare for and adapt to that risk, and to respond to an event;
d. The changing nature of tolerance to risk;
e. Sensitivity of activities to risk;

g. Policy 4.3.2 Nationally and regionally significant infrastructure:

"Recognise the national and regional significance of all of the following infrastructure:

a. *Renewable electricity generation activities, where they supply the National Electricity Grid and local distribution network;*
b. *Electricity transmission infrastructure;*
c. *Telecommunication and radiocommunication facilities;*
d. *Roads classified as being of national or regional importance;*
e. *Ports and airports and associated navigation infrastructure;*
f. *Defence facilities;*
g. *Structures for transport by rail."*

h. Policy 4.3.4 Protecting nationally and regionally significant infrastructure:

"Protect the infrastructure of national or regional significance, by all the following:
a. *Restricting the establishment of activities that may result in reverse sensitivity effects;*
b. *Avoiding significant adverse effects on the functional needs of such infrastructure;*
c. *Avoiding, remedying or mitigating other adverse effects on the functional needs of such infrastructure;*
d. *Protecting infrastructure corridors from sensitive activities, now and for the future."*

i. Policy 4.4.5 Electricity distribution infrastructure:

"Protect electricity distribution infrastructure, by all the following:
a. *Recognise the functional needs of electricity distribution activities;*
b. *Restricting the establishment of activities that may result in reverse sensitivity effects;*
c. *Avoiding, remedying or mitigating adverse effects from other activities on the functional needs of that infrastructure;*
d. *Protecting existing distribution corridors for infrastructure needs, now and for the future;*

j. Policy 4.5.1 Managing for urban growth and development

"Manage urban growth and development in a strategic and co-ordinated way, by all of the following…..
c. *Identifying future growth areas and managing subdivision, use and development of rural land outside these areas to achieve all of the following:*
    i. *Minimise adverse effects on rural activities and significant soils;*
    ii. *Minimise competing demands for natural resources;*
    iii. *Maintain or enhance significant biological diversity, landscape or natural character values;*
    iv. *Maintain important cultural historic heritage values;*
    v. *Avoid land with significant risk from natural hazards;….*
e. *Ensuring efficient use of land…*
g. *Giving effect to the principles of good urban design in Schedule 5;*
h. *Restricting the location of activities that may result in reverse sensitivity effects on existing activities."*

k. Policy 4.5.3 Urban design:

"Encourage the use of Schedule 5 good urban design principles in the subdivision and development of urban areas."

l. Policy 4.5.4: Low impact design:

*"*Encourage *the use of low impact design techniques in subdivision and development to reduce demand on stormwater, water and wastewater infrastructure and reduce potential adverse environmental effects."*

m. Policy 4.5.5: Warmer buildings:

"Encourage the design of subdivision and development to reduce the adverse effects of the region's colder climate, and higher demand and costs for energy, including maximising the passive solar gain."

n. Policy 5.3.1: Rural activities:

"Manage activities in rural areas, to support the region's economy in communities, by all of the following:

a. Minimising the loss of significant soils;
b. Restricting the establishment of activities in rural areas that may lead to reverse sensitivity effects;
c. Minimising the subdivision of productive rural land to smaller lots that may result in rural residential activities;
d. Providing for other activities that have a functional need to locate in rural areas, including tourism and recreational activities that are of a nature and scale compatible with rural activities."

24. The Proposed RPS is a substantial document. Noting the above policies does not mean that the other policies in the Proposed RPS are irrelevant. We have taken all objectives and policies of the Proposed RPS into account and discuss them further, when relevant to specific provisions.

25. Mr Bryce reminded us of the existence of the Iwi Management Plans noted in Report 1. He did not, however, draw our attention to any particular provision of any of those Plans as being relevant to the matters covered in Chapter 27 and no representatives of the Iwi appeared at the hearing.

26. Consideration of submissions and further submissions on Chapter 27 has also necessarily taken account of the Hearing Panel's recommendations in Reports 2 and 3 as to appropriate amendments to the Strategic Chapters of the PDP (that is to say Chapters 3, 4, 5 and 6. We note in particular the following provisions:

Objective 3.2.2.1:
"Urban Development occurs in a logical manner so as to:

a. promote a compact, well designed and integrated urban form;
b. build on historical urban settlement patterns;
c. achieve a built environment that provides desirable, healthy and safe places to work and play;
d. minimise the natural hazard risk taking into account the predicted effects of climate change;
e. protect the District's rural landscapes from sporadic and sprawling development;
f. ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in;
g. contain a high quality network of open spaces and community facilities; and

h. be integrated with existing, and planned future, infrastructure."

Policy 3.3.24
"Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character."

Policy 3.3.26
"That subdivision and/or development be designed in accordance with best practice land use management so as to avoid or minimise adverse effects on the water quality of lakes, rivers and wetlands in the District."

27. The tests posed in section 32 form a key part of our review of the objectives, policies, rules and other provisions of Chapter 27 of the PDP. We refer to and adopt the discussion of section 32 in the Hearing Panel's Report 3. In particular, for the same reasons as are set out in Report 3, we have incorporated our evaluation of changes to the notified Chapter 27 into the report that follows rather than provide a separate evaluation meeting the requirements of section 32AA.

28. We note that the material provided to us by the Council did not include a quantitative analysis of costs and benefits either of the notified Chapter 27, or of the subsequent changes Mr Bryce proposed to us. We queried counsel for the Council on this aspect when she opened the hearing and were told that Council did not have the information to undertake such an analysis. None of the submitters who appeared before us provided us with quantitative evidence of costs and benefits of the amendments they proposed either. When we discussed with Ms Baker-Galloway whether her clients would be able to provide us with such evidence, she advised that any information they could provide would necessarily be limited to their own sites and therefore too confined to be useful.

29. We have accordingly approached the application of section 32(2) on the basis that a quantitative evaluation of costs and benefits of the different alternatives put to us is not practicable.

1.7 Scope Issue – Activity Status of Residential Subdivision and Development within ONLs and ONFs

30. The submissions and evidence of Mr Julian Haworth at the hearing on behalf of UCES sought that residential subdivision and/or development within ONLs and ONFs should be ascribed non-complying activity status. We discussed with Mr Haworth during his appearance whether we had jurisdiction to entertain his request given the terms on which the submission filed by UCES on the PDP had been framed. Mr Haworth's subsequent Memorandum of 18 August drew our attention to the potential relevance of a further submission made by UCES (on a submission by Darby Planning LP) to this issue.

31. In the legal submissions in reply on behalf of the Council, it was submitted that there was no scope for us to consider the UCES request in this regard.

32. Mr Haworth requested that we make a decision specifically on this point. In summary, we have concluded that counsel for the Council is correct and we have no jurisdiction to entertain Mr Haworth's request on behalf of UCES. Our reasons follow.

33. The legal submissions on behalf of counsel for the Council in reply summarised the legal principles relevant to determining the scope of our inquiry[51].

34. In summary, a two stage inquiry is required:
    a. What do submissions on the PDP provisions seek? and
    b. Is what submissions on the PDP seek itself within the scope of the inquiry – put colloquially, are they "*on"* the PDP?

35. The second point arises in relation to proposed plans that are limited by subject matter or by geography. Here, there is no doubt that Chapter 27 provides rules that govern residential subdivision within ONLs and ONFs as defined by other provisions in the PDP and so, subject to possible issues arising from the interpretation of the High Court decision in *Palmerston North City Council v Motor Machinists Limited*[52]*,* the UCES request would not fail a jurisdictional inquiry on that ground.

36. The larger issue turns on what it is that are sought by submissions. In determining this question, the cases establish a series of interpretative principles summarised by counsel for the Council as follows:

    a. *The paramount test is whether or not amendments [sought to a Proposed Plan] are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP. This would usually be a question of degree to be judged by the terms of the PDP and the content of submissions*[53]*.*

    b. *Another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought in a submission; the scope to change a Plan is not limited by the words of the submission*[54]*;*

    c. *Ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter*[55]*."*

37. Thus far, we agree that counsel for the Council's submissions accurately summarised the relevant legal principles. Those submissions, however, go on to discuss whether a submitter may rely on the relief sought by another submitter, on whose submission they have not made a further submission, in order to provide scope for their request. The Hearing Panel has previously received submissions on this point in both the Stream 1 and Stream 2 hearings from counsel for the Council. Counsel's Stream 4 reply submissions cross referenced the legal submissions in reply in the Stream 2 hearing and submitted that:

    "To the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief, it is submitted that the submitter could not advance relief."

38. This is contrary to the position previously put to the Hearing Panel by counsel for the Council. Those previous submissions said that while a submitter cannot derive standing to appeal decisions on a Proposed Plan by virtue of the submissions of a third party that they have not

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51 Refer Council Reply legal submissions at 13.2-13.4

52 [2014] NZRMA 519

53 *Countdown Properties (Northland) Limited v Dunedin City Council* [1994] NZRMA 145, and 166

54 *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556, and 574-575

55 Ibid*,* at 574

lodged a further submission on, if a submitter advances submissions and/or evidence before the Hearing Panel in relation to relief sought by a second submitter, the Hearing Panel can properly consider those submissions/evidence. This is based on the fact that the Hearing Panel's jurisdiction to make recommendations is circumscribed by the limits of all of the submissions that have been made on the Proposed Plan. In a subsequent hearing (on Stream 10), counsel for the Council confirmed that her position was correctly stated in the Stream 1 and 2 hearings.

39. It follows that if any submission, properly construed, would permit us to alter the status of residential subdivision and development within ONLs and ONFs to non-complying, we should consider Mr Haworth's submissions and evidence on that point, although we accept that if jurisdiction to consider the point depends on a submission other than that of UCES, and on which UCES made no further submission, that might go to the weight we ascribe to Mr Haworth's submissions and evidence (a related submission made by counsel for the Council).

40. As the Hearing Panel noted in its Report 3, we do not need to consider whether, if we conclude some third party's submission provides jurisdiction, UCES will have jurisdiction to appeal our decision on the point, that being a matter properly for the Environment Court, if and when the issue arises.

41. Focussing then on the provisions of the notified PDP as the starting point, the activity status of subdivisions was governed by Rules 27.4.1-27.4.3 inclusive.

42. Rule 27.4.1. was a catchall rule providing that all subdivision activities are discretionary activities, except otherwise as stated.

43. Rule 27.4.2 specified a number of subdivision activities that were non-complying activities. Residential subdivision within ONLs and ONFs may have been deemed to be non-complying under one of the subparts of Rule 27.4.2 (e.g. because it involved the subdivision of a building platform), but not generally so.

44. Rule 27.4.3 provided that subdivision undertaken in accordance with a structure plan or spatial layout plan identified in the District Plan had restricted discretionary activity status. The structure plans and special layout plans identified in the District Plan are of limited areas in the District. Clearly, they do not cover all of the ONLs and ONFs as mapped in the notified PDP.

45. It follows that as notified, residential subdivisions within ONLs and ONFs would usually fall within the default classification provided by Rule 27.4.1 and be considered as discretionary activities.

46. UCES did not make a submission seeking amendment to any of Rules 27.4.1-27.4.3 inclusive. The submission that Mr Haworth referred us to focusses on the section 32 reports supporting the PDP. Paraphrasing the reasons for the UCES submission in this regard, they noted:
    a. The section 32 reports do not refer to non-complying status in relation to residential subdivision and development;
    b. A March 2015 draft of the PDP proposed to make residential subdivision and development non-complying within ONLs and ONFs;
    c. A 2009 monitoring report referred to non-complying status within ONLs and ONFs as an option;
    d. Failure to discuss the issue is a critical flaw in the section 32 analysis.

47. The relief sought by UCES in relation to this submission was worded as follows:

"The Society, seeks that the S.32 Landscape Evaluation Report be re-written containing discussion of the costs and benefits associated with the option of residential subdivision and development becoming non-complying versus the option of it being discretionary, as required by S.32 of the Act and especially S.32(2).

The S.32 Landscape Evaluation Report, once rewritten, should then be publicly notified.
The Society seeks that the 40 working day submission period should apply to the rural part of the Proposed District Plan from the date of renotification of the rewritten S.32 Landscape Evaluation Report."

48. In the summary of submissions publicly notified by the Council, the UCES submission was listed as a submission on Rule 27.4.1. The summary of submission read:

"Expresses concern regarding the Discretionary Activity status within Outstanding Natural Landscapes and Outstanding Natural Features; and the change from a proposed non-complying activity status which was indicated in the March 2015 Draft District Plan. The Society seeks that the s32 Landscape Evaluation Report be re-written containing discussion of the costs and benefits associated with the option of residential subdivision and development becoming non-complying versus discretionary. The s.32 Landscape Evaluation Report should then be publicly notified with a 40 working day submission period."

49. Against this background, counsel for the Council submitted that amendment to the activity status of subdivision in the manner sought by UCES was not a reasonably foreseeable consequence of the UCES submissions and relief. In particular, it was argued that other submitters could not have identified that non-complying status was a likely or even possible consequence of the relief and, as such, could be prejudiced by the outcome now sought by UCES.

50. Counsel did not, however, explain how her submission could be reconciled against the fact that there were two further submissions[56] that state the further submitters' opposition to the UCES position that subdivision in ONLs and ONFs be non-complying. We note also that a third further submission[57] opposed the relief described within the summary of submissions, while stating that this was not part of the package of relief sought in UCES's submission.

51. We think that the last further submission (from Darby Planning LP) made a valid point. The summary of submissions recorded a position being taken in the UCES submission that, at best, is implicit. The further submitters similarly seem to have read between the lines in the summary of submissions, inferring where the argument might go, rather than reading what the submission actually said. It should not be necessary for interested parties to guess where a submission might be taken. While submissions are not to be read literally or legalistically, the substance of what is sought should be reasonably clear.

52. Stepping back and looking at the submission, we think it was misconceived from the outset. While a submission may attack the way in which a section 32 evaluation has been carried out, as we observed to Mr Howarth at the hearing, this is only a means to an end. The reason for attacking the section 32 evaluation is to form the basis of a challenge to the objective, policy, rule or other method supposedly supported by the section 32 evaluation. The link between

[56] Further Submissions 1029 and 1097
[57] Further Submission 1313

the two is illustrated by section 32A of the Act which states that a challenge to a plan provision on the basis that the section 32 evaluation is flawed may only be made in a submission **on the Plan**[58]. The section 32 analysis is not part of the PDP.

53. The solution to a flawed section 32 evaluation is to reassess the Plan provision sought to be changed, not to renotify the section 32 evaluation and to give the general public another opportunity to make submissions on the Plan.

54. Counsel for the Council also pointed out that the UCES submission referred only to the potential that on such renotification, submissions would be invited on the rural provisions of the Plan. While technically correct, we do not think that that is decisive.

55. The point that we are more concerned about is that on a fair and reasonable reading of the UCES submission (and indeed the summary of that submission), the public would have thought that at worst there would be another opportunity to make submissions before the activity status of residential submissions in ONLs and ONFs was changed to be more restrictive.

56. Given the advice we have received on the extent of the District currently mapped as ONL or ONF (nearly 97%), the relief now sought by UCES is a highly significant change. There is in our view considerable potential that interested parties would not have been as assiduous in reading 'between the lines' of the UCES submission as the further submitters referred to above and would be prejudiced by our embarking on a consideration of the merits of non-complying status applying to subdivision and development for residential purposes within ONLs and ONFs.

57. We have considered Mr Howarth's alternative point, made in his 18 August memorandum, which relies on a UCES further submission on Darby Planning LP's submission in relation to Rule 27.4.1.

58. The Darby Planning submission sought that Rule 27.4.1 be amended so that the default status for subdivisions is a controlled status unless otherwise stated. The submission suggested a number of areas of control as consequential changes to the proposed change of status.

59. The UCES further submission stated in relation to aspects of the Darby Planning submission related to subdivision and development:

"The Society opposes the entire submission in paragraphs 23-29, and in particular the request that rural subdivisions and development become a controlled activity. The Society seeks that this part of the submission is entirely disallowed."

60. The further submission went on, however, to note the potential significance of proposed legislative changes which, if adopted, would have the result that discretionary activity subdivisions would not be publicly notified[59], and stated:

"The Society is changing its position from that in its Primary Submission and it now seeks that all rural zone subdivision and development becomes non-complying."

61. The first thing to note is that UCES viewed this as a change from its primary submission. Clearly, the Society did not regard its submission as already raising this relief.

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58 See clause 6 of the First Schedule to the Act. Emphasis added.

59 The provision in question was Clause 125 of the Resource Legislation Amendment Bill 2015

62. Addressing the ability of a further submission to provide a jurisdictional basis for the relief sought, a further submission is not an appropriate vehicle to advise of substantive changes of position. This point is considered in greater detail in the Hearing Panel's Report 3, but in summary, clause 8(2) of the First Schedule to the Act states that a further submission must be limited to a matter in support of or in opposition to the relevant submission.

63. Clearly this particular further submission was in opposition to the relevant submission. It sought that the relevant submission be disallowed. If the Darby Planning LP submission was disallowed, the end result would be that Rule 27.4.1 would remain as notified, that is to say that unless otherwise stated, subdivision activities in ONLs and ONFs would be discretionary activities. A further submission cannot found jurisdiction in the manner that Mr Haworth sought.

64. We have considered, given the discussion above, whether any other submissions might provide jurisdiction for the relief now sought by UCES. There were a very large number of submissions seeking that Rule 27.4.1 be amended. The vast majority of those submissions sought, like Darby Planning LP, that the default status for subdivisions in the District be controlled activity status. Clearly those submissions do not provide jurisdiction for the relief UCES sought. They sought to move the rule in the opposite direction to that which UCES sought.

65. There are a number of more general submissions that sought that the entire Chapter 27 of the PDP be deleted and replaced with Chapter 15 of the ODP[60]. Under Chapter 15 of the ODP, the only non-complying subdivision activities are those falling within Rule 15.2.3.4. That rule related to a series of specific situations and does not support the UCES relief either.

66. Having reviewed all of the submissions on these Rules, none that we can identify provide jurisdictional support for the relief now sought by UCES.

67. We have therefore concluded that the altered relief now sought by UCES is outside the scope of any submission and cannot be considered further as the basis for any recommendation we might make on the final form of Chapter 27.

68. Before leaving the point, we should observe that had we identified any jurisdictional basis for Mr Haworth's submissions, there is considerable merit in the point he sought to make.

69. The Hearing Panel's Report 3 canvassed the material relevant to the strategic objectives and policies governing activities within and affecting ONLs and ONFs and concluded that the appropriate response would provide a high level of protection to those landscapes and features.

70. Against that background, discretionary activity status for subdivision and development associated with new residential activities being established in ONL's and ONFs appears somewhat incongruous. The Environment Court identified in relation to the ODP that discretionary activity status was an issue and sought to make it clear that that status had been applied in that context to activities in ONLs and ONFs because those activities are

60 E.g. Submissions 497, 512, 513, 515, 520, 522, 523, 525, 527, 529, 530, 531, 532, 534, 535, 536, 537, 608

inappropriate in almost all locations within the zone[61]. As the Court noted[62], it was necessary to displace the inferences that would otherwise follow from discretionary activity status. The Court also observed that if it had not been able to make clear that discretionary activity status was being used in that manner, non-complying status would have been appropriate.

71. In our view, it would be more consistent with the policy framework we have recommended, and arguably more transparent, if subdivision and development for the purposes of residential activities in ONLs and ONFs was a non-complying activity. Had we had jurisdiction, we would likely have recommended non-complying status for residential subdivision and development in ONLs and ONFs for this reason.

72. Mr Haworth drew our attention to another reason why, in our view, Council should consider this issue further.

73. At the time of our hearing, Parliament had before it the Resource Legislation Amendment Bill 2015. Among the amendments proposed was a change to the notification provisions that, as Mr Haworth observed, would mean that other than in special circumstances applications for subdivision consents would not be publicly notified unless they were non-complying activities. Mr Haworth expressed concern that this result would apply to residential development within the ONLs and ONFs. As noted above, this foreshadowed legislative change prompted a change in position from UCES.

74. The Resource Legislation Amendment Bill was enacted[63] in April 2017. As we read them, the notification provisions would have the same effect as those of the Bill that Mr Haworth drew to our attention.

75. We infer that this legislative change reflects the usual implications to be drawn from discretionary activity status discussed by the Environment Court in its 2001 decision, rather than the special meaning in the ODP, which has effectively been rolled over into the PDP.

76. We do not regard it as satisfactory that other than in exceptional circumstances, residential subdivision and development in ONLs and ONFs is considered on a non-notified basis given the national interest[64]in their protection and the intent underlying discretionary activity status in this situation. We recommend that Council initiate a variation to the PDP to alter the rule status of this activity to non-complying.

1.8 General Matters

77. There are a number of general submissions that we should consider at the outset. The first are the submissions that sought that Chapter 27 be deleted and replaced with Chapter 15 of the ODP. We have already noted the submissions in question in the context of our discussion of the UCES scope issue.

78. The equivalent rule to rule 27.4.1 in the ODP is Rule 15.2.8.1 which provides that the default status for subdivision is controlled activity status. This was at the heart of the huge bulk of submissions that we have considered on Chapter 27 and, indeed, much of the evidence and submissions we heard; namely that the default status under the ODP should not be changed.

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61 ODP 1.5.3(iii)(iii)

62 Lakes District Landowners Society Inc v QLDC C75/2001 at [43-46]

63 As the Resource Legislation Amendment Act 2017

64 Section 6, of course, identifies it as being a matter of national interest

79. The broad relief sought in a number of submissions (that Chapter 27 revert to Chapter 15 of the ODP) necessarily includes the narrower point (as to the default status of subdivision activities). We will consider the broad point first, and address the narrower point in the next section.

80. The other set of general submissions that we should address at the outset are those that sought that the structure of the Chapter 27 be amended so it is consistent with other zones, including using tables, and ensuring that all objectives and policies are located at the beginning of the section[65].

81. Other general submissions worthy of note are submissions 693 and 702, which suggested that the objectives and policies in Chapter 27 be reordered to make it clear which are solely applicable to urban areas, and submission 696, which sought that that the number of objectives and policies in Chapter 27 be reduced.

82. Submission 817 sought that objectives D1 and D4 of the National Policy Statement for Freshwater Management 2014 be implemented in Chapter 27.

83. Lastly Submission115 sought general but more substantive relief – related to provision for cycleways and pathways, and reserves.

84. Looking first at the question as to whether Chapter 27 should simply be deleted and Chapter 15 of the ODP substituted, the evidential foundation for this submission is contained in the evidence of Messrs Brown, Ferguson and Farrell. Mr Goldsmith summarised their evidence as being that the "ODP CA [standing for Controlled Activity] regime is not complex and works well."

85. That might be contrasted with the view set out in the section 32 report underpinning Chapter 27 which stated[66] that the ODP subdivision chapter is complicated and unwieldy. Mr Bryce, who gave planning evidence for the Council, noted the section 32 analysis, but focused his evidence more on the substance of the ODP Chapter 15 provisions that we will come to shortly.

86. Mr Goldsmith likewise sought to distinguish between the format of Chapter 15 and the substance. He accepted that the format of Chapter 15 could be improved and described[67] that aspect of the matter as follows:

> *"Format refers to the structure of the existing ODP Chapter 15 which follows the 'sieve' structure of the rest of the ODP. The 'sieve' structure is the approach which does not detail activity status in the likes of a Table, but requires activity status to be determined by reviewing a considerable number of plan provisions to see which layer of the multi-layered 'sieve' (each layer containing different size holes) catches the activity in question. This is a somewhat complex and counter-intuitive approach. It is acknowledged that the alternative PDP approach, classifying activities by reference to Tables, is clearer, more easily understood, and preferable. That is not challenged."*

87. As against that somewhat negative viewpoint, Mr Goldsmith suggested to us[68] that one of the virtues of the ODP Chapter 15 is that "*it is easy to find and apply the relevant Chapter 15*

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65 See Submissions 632, 636, 643, 688, 693, and 702. Submission 632 was the subject of a number of further submissions, but they do not appear to relate to this aspect of the submission.

66 Section 32 Evaluation at page 8

67 Legal submissions for GW Stalker Family Trust and others at page 3.

68 Ibid at page 4

objectives and policies. It is rarely necessary to have recourse outside Chapter 15 to the land use Residential, RR and RL Zones." At least in that regard, the broader structure of the PDP needs to be acknowledged. Unlike the ODP, the PDP seeks to provide strategic direction in its early chapters which guides the implementation of more detailed chapters of the PDP like Chapter 27. In Report 3, the Hearing Panel for that Stream recommended that submissions seeking that the strategic chapters be deleted and the PDP revert to the ODP approach be rejected.

88. The corollary of that recommendation is that Chapter 27 cannot operate as a code entirely separated from the balance of the PDP. Broader strategic objectives and policies need to be taken into account.

89. Further, if the subdivision chapter were to revert to the format of Chapter 15, that would be out of step with the chapters of the PDP governing specific zones which take a similar approach to Chapter 27 (indeed, some general submissions noted already seek that the format of Chapter 27 be moved even more closely into line with those other chapters).

90. Lastly, when considering the merits of the way in which Chapter 15 is constructed, we note that the final form of Chapter 15 was the subject of extensive negotiations as part of the resolution of the Environment Court appeals on the ODP. The Court confirmed the final form of Chapter 15 in a consent order, but commented[69]:

"The amendments to Section 15 have been the subject of a somewhat circuitous process of assessment, reassessment and finally confirmation by the parties. Having considered the amended Section 15 now confirmed by the parties, I find that it achieves the aim of consistency with Section 5 of the plan in substance, even if its form still appears somewhat incongruous and unwieldy when compared with the rest of the Plan."

91. This is hardly a ringing endorsement, such as would prompt us to reconsider the wisdom of a different format to the PDP approach that the parties we heard from appeared to accept is clearer and more easily understood, as well as being more consistent with the way the balance of the PDP is structured.

92. In summary, we recommend that the general submissions that sought Chapter 15 of the ODP be substituted for Chapter 27 be rejected. We emphasise that that is not the same thing as rejecting the submissions that sought incorporation of key elements of the existing ODP approach (in particular the controlled activity status for subdivisions generally). As Mr Goldsmith aptly put it, this is an issue of substance that needs to be distinguished from the format of the provisions.

93. Turning to the general submissions already noted, which sought that the structure of Chapter 27 be amended so that it has all objectives and policies together and utilises tables, those submissions were a response to the notified Chapter 27 which exhibited the following features:
    a. It separated general objectives and policies (in section 27.2) from location-specific objectives and policies (in section 27.7);
    b. Consequential on that division, the standards for subdivision activities were separated in a similar manner, with general standards in section 27.5 and location-specific standards in section 27.8;
    c. The general standards in section 27.5 are a mixture of text and tabulated standards.

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69 *Wakatipu Environmental Society Inc & Others v Queenstown Lakes District Council* C89/2005 at [8]

94. In each of these respects, Chapter 27 is out of step with the detailed chapters in the balance of the PDP and Mr Bryce recommended that it be reformatted, as suggested by the submitters.

95. While consistency in formatting of the PDP is desirable, we also consider that the altered format suggested by Mr Bryce is both more logical and easier to follow. Accordingly, we agree with Mr Bryce and recommend that those submissions be accepted.

96. One consequence of such a significant reorganisation of the chapter is that it becomes difficult to track substantive changes sought in submissions, because of course, the submissions relate to the numbering in the notified chapter. In our discussion of submissions following, we will refer principally to the provision number in the submission (which in turn reflects the notified chapter), but provide in brackets the number of the comparable provision in our reformatted and revised version attached in Appendix 1.

97. The remaining general submissions noted above can be addressed more briefly.

98. As regards the submissions that sought that objectives and policies be reordered and labelled to make it clear which are solely applicable to urban areas, we formed the view during the course of the hearing that there is an undesirable degree of uncertainty as to when particular policies related just to the urban environment, given that this appeared to be the intention. We asked Mr Bryce to consider the merits of separating the district-wide objectives and policies into urban and rural sections[70]. Section 3 of Mr Bryce's reply evidence canvassed the point. Mr Bryce's opinion was that while there was some merit in a separation of objectives and policies into rural and urban sections, a number of the objectives and policies apply to both, making such separation problematic. We accept Mr Bryce's point, that a complete separation is not feasible, but we think that much more clarity is required for those objectives and policies that do not apply to both rural and urban environments, as to what it is that they do apply to.

99. In summary, therefore, we recommend acceptance in part of the general submissions we have noted. We do not think a further reordering is required or desirable, but we accept that a number of the objectives and policies need to be amended to remove the ambiguity that currently exists. We will discuss the exact amendments we propose as we work through the provisions of Chapter 27.

100. While we accept the desirability of keeping the number of objectives and policies to a minimum, the Millbrook submission seeking that the number be reduced is framed too generally to be of assistance. RCL Queenstown Pty Ltd[71] provided more targeted relief, listing the objectives and policies it thought should be deleted. However, Mr Wells, who gave evidence for both Millbrook and RCL, expressed broad satisfaction with the amendments Mr Bryce had recommended. While he expressed the views that further refinement might be made, he did not advance that point further, discussing specific provisions. It follows that while we have kept an eye on the potential for further culling of the objectives and policies beyond Mr Bryce's recommendations, so to minimise duplication, we have no evidential basis on which we could recommend a substantial reduction in the number of objectives and policies in Chapter 27.

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70 Following the precedent set by the Independent Hearing Panel on the Proposed Auckland Unitary Plan

71 Submission 632

101. As regards Submission 817, the submission is non-specific as to what changes might appropriately be made to Chapter 27 and the submitter did not provide us with any evidence that would assist further. Mr Bryce recommended an amendment to Policy 27.2.5.12 to provide greater linkage between subdivision management and water quality in part to address this submission. We accept that suggested change. Having reviewed the point afresh, we have not identified any other respects in which the Chapter would be amended to properly give effect to the provisions of the National Policy Statement identified by the submitter.

102. Lastly, addressing Submission 115 Mr Bryce recommended its rejection. We concur. Provision for cycleways, pathways and reserves is a point of detail to be assessed on a case by case basis under the framework of the objectives and policies of Chapter 27.

2. DEFAULT ACTIVITY STATUS

2.1 Controlled Activity?

103. A logical analysis of the submissions on Chapter 27 would start with the objectives, move to the policies, and then consider the rules to implement those policies. In this case, however, the default activity status for subdivisions dominated the submissions and was almost the sole issue in contention at the hearing. Accordingly, although it may appear counter-intuitive, we have decided to address this issue first.

104. As already noted, Rule 27.4.1 of the notified subdivision chapter provided that all subdivision activities would be discretionary activities, except as otherwise stated.

105. Although Rules 27.4.2 and 27.4.3 provided for non-complying and restricted discretionary activities respectively, these rules addressed a series of specific situations that, with one exception, were likely to be a small subset of subdivision applications. The exception was the provision in Rule 27.4.2 that subdivision not complying with the standards in sections 27.5 and 27.8 should be non-complying (other than in the Jacks Point Zone).

106. It follows that on the basis of the PDP as notified, the overwhelming majority of subdivisions that met the Chapter 27 standards would be considered as discretionary activities. One submitter supported the notified provisions[72]. Two other submissions[73] supported discretionary activity status for subdivision in the low density residential zone. A very large number of submitters opposed Rule 27.4.1[74]. Most of those submitters sought that the default activity status be 'controlled'. Many submitters either proffered consequential changes such as suggested matters to which Council's control might be limited or sought consequential changes both to the rule and to the objectives and policies of Chapter 27 more generally.

107. Many submissions sought controlled activity status on a more targeted basis. Submission 591 sought controlled activity status for all subdivisions in the urban zones. Other submitters[75] sought controlled activity status in one or more of the urban zones. Another group of submissions focussed on the rural zones seeking that subdivision in the Rural Residential

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72 Refer Submission 21

73 Submissions 406 and 427: Opposed in FS1262

74 The tabulated summary of the submissions and further submissions either on Rules 27.4.1-3 generally or specifically on Rule 27.4.1 occupied some 25 pages of Appendix 2 to Mr Bryce's Section 42A Report.

75 E.g. Submissions 249, 336, 395,399, 485, 488: Supported in FS1029, FS1061 and FS1270

and/or Rural Lifestyle zones be controlled[76]. A number of submitters[77] nominated the Rural Zone as an exception to a general controlled activity position, suggesting subdivisions in that zone should remain as discretionary activities. Some submissions focussed on the special zones seeking that subdivision in the Millbrook[78] or Jacks Point[79] Zone should be controlled activities. Oher variations were a submission that sought that subdivision within a proposed new subdivision at Coneburn be controlled[80] and a submission that sought that subdivisions for infill housing (one lot only) in all zones be controlled[81]. A group of infrastructure providers[82] sought that subdivision for utilities be a controlled activity.

108. Some submitters were less definitive in the relief sought. Submission 748 sought either controlled or restricted discretionary activity status for complying subdivisions. Submission 277 suggested an even more nuanced position with subdivision of land in the 'Rural General Zone' being discretionary and a mix of controlled and restricted discretionary activity subdivision rules *"for rural living areas and residential zones"*.

109. Some submissions sought more confined relief in the alternative. Submission 610 for instance sought a new rule providing that subdivision within the Ski Area Sub-Zones should be controlled if its primary relief (controlled activity status for all subdivisions except as otherwise stated) was rejected[83].

110. Many submitters did not consider the relevance of standards/conditions to activity status. Read literally, they would have the effect that all subdivisions, irrespective of subdivision design, would be controlled activities to which consent could not be refused. Many others referred to the need to comply with subdivision standards either explicitly (e.g. referring to minimum lot size requirements) or more generally. Many submitters also recognised the need for consequential amendments if the default activity status changed, in particular to the objectives and policies.

111. We have approached this issue as one of principle, considering first what the default activity status for subdivisions should be across all zones before considering (later in this report) whether particular zones (or sub-zones), or alternatively, particular types of subdivisions, need to be recognised as having characteristics warranting either more or less restrictive subdivision activity status as the case may be. Because of the breadth of the submissions on this point, a virtually infinite number of permutations would be within jurisdiction between the notified position (default discretionary status subject to specified exceptions) and all subdivisions being 'controlled' without any standards or other requirements. To keep our report within reasonable bounds, we have restricted our consideration of alternative options to those

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76 Submissions 219,283, 345, 350, 360, 396, 401, 402, 403, 415, 416, 430, 467, 476, 500, 820: Supported in FS1097, FS1164 and FS1206; Opposed in FS1034, FS1050, FS1082, FS1084, FS1086, FS1087, FS1089, FS1099, FS1199, FS1133 and FS1146

77 Submissions 336, 497, 512, 513, 515, 520, 522, 523, 525, 527, 529, 530, 531, 532, 534, 535, 537, 608: Supported in FS1029, FS1125, FS1164, FS1259, FS1260, FS1267, FS1286, FS1322 and FS1331; Opposed in FS1034, FS1068, FS1071, FS1092, FS1097, FS1117 and FS1120

78 Submissions 234, 346, 541: Opposed in FS1266

79 Submission 567

80 Submission 361 – although the reasons for this submission appear to link it to a parallel submission on notified rule 27.5.2.1 because it refers to a house already being established, prior to subdivision- Supported in FS1118 and FS1229; Opposed in FS1296

81 Submission 169

82 Submissions 179, 191, 421 and 781: Supported in FS1121

83 Supported in FS1125

specifically the subject of submissions or which were canvassed during the course of the hearing.

112. The rationale for default discretionary status was set out in the Section 32 Evaluation accompanying the notified PDP. The key points made in the Section 32 Evaluation were that, in the view of the authors, the ODP contains insufficient emphasis on good subdivision and development design, that the ODP subdivision chapter is ineffective in encouraging good subdivision design, and that discretionary activity status would help focus on the importance of good quality subdivision design[84].

113. Mr Bryce reviewed the arguments as to the appropriate default subdivision status in his

114. Section 42A Report, concluding that the section 32 analysis had not demonstrated that a discretionary activity regime was necessarily the best mechanism to respond to subdivision in all zones. Specifically, Mr Bryce recorded his opinion that subdivisions in the Rural Residential and Rural Lifestyle Zones, and within the District's urban areas do not require the broad assessment that would follow from discretionary activity status[85].

115. Equally, however, Mr Bryce was of the opinion that a default controlled activity rule, as sought by a large number of submitters, would be not be particularly effective in responding to subdivision development within the District[86].

116. Mr Bryce saw subdivision and development within areas the subject of structure plans or spatial layout plans as being in a category of their own, justifying controlled activity status. Likewise, he recommended a controlled activity rule covering boundary adjustments. At the other end of the range, Mr Bryce recommended that subdivision and development within the Rural Zone should be a discretionary activity because of the range of potential issues in those areas. The recommendation in his Section 42A Report was, however, that the default activity status for both urban subdivision and development, and subdivision and development within the Rural Residential and Rural Lifestyle Zones, should be Restricted Discretionary (but with separate rules for each to recognise the differences between them)[87]. Consequent on his recommendation, Mr Bryce suggested revised rule provisions specifying the areas within which discretion was retained, based on the areas of control sought in submissions seeking controlled activity status.

117. The argument presented for submitters at the hearing, principally by Mr Goldsmith and Ms Baker-Galloway, supported by expert planning evidence, rested on a number of related considerations, including:
    a. The ODP regime based on a default controlled activity status had worked reasonably well.
    b. The ODP regime provided certainty for developers. By contrast, the PDP regime created significant uncertainty.
    c. While restricted discretionary activity status was an improvement on full discretionary status, the ambit of the matters for discretion was such that it was not materially different to a full discretionary activity status. In particular, retention of discretion over subdivision lot sizes was of particular concern because lot sizes ultimately determined the economic return from an investment in a subdivision.

84 Refer section 32 evaluation at pages 10 and 33
85 Section 42 Report at 10.28
86 Section 42 Report at 10.30
87 Noting that Mr Bryce recommended other targeted Restricted Discretionary rules

d. The Council's reliance on urban design assessments was flawed. To the extent that analysis indicated poor urban design, that was for reasons that had little or nothing to do with the subdivision activity rule status.
e. Further, to the extent that issues of poor urban design in the past had been identified, those issues could be addressed within a controlled activity framework.
f. The concern expressed by Mr Wallace in his evidence for Council regarding the need to retain control over road widths could be addressed under section 106 of the Act.
g. The statistics presented by Mr Bryce as to the percentage of subdivision applications in fact considered as 'controlled' under the ODP were misleading.

118. Other views that we received included evidence on behalf of two leading survey consultancies in the District. Mr Geddes on behalf of Clark Fortune McDonald and Co indicated that the recommendations of Mr Bryce's Section 42A Report largely resolved that submitter's concerns. Mr Duncan White, giving evidence for Patterson Pitts likewise supported a restricted discretionary activity rule.

119. Mr Vivian, giving evidence on behalf of a number of submitters, also generally supported Mr Bryce's recommendations. We note, in particular, Mr Vivian's observation that while it is easy to critique urban design of historic subdivisions, it is a lot harder to ascertain if those subdivisions could have been improved had a different class of rule been applied to them at the time they were consented. Notwithstanding that qualification, Mr Vivian saw merit in a restricted discretionary activity regime, certainly for urban subdivisions, although he recommended some alterations to the proposed matters for discretion in a restricted discretionary activity rule applying to Rural Residential and Rural Lifestyle subdivisions.

120. We did not hear evidence from infrastructure providers seeking to support controlled activity status specifically for utilities.

121. At the opening of the hearing, counsel for the Council advised that Mr Bryce had reflected on the evidence which had been pre-circulated and had formed the view that discretion over lot sizes, averages and dimensions should be deleted from his proposed restricted discretionary activity rule.

122. Mr Goldsmith frankly acknowledged that if this revised recommendation were accepted, then he would accept a restricted discretionary activity rule on behalf of his clients. Ms Baker-Galloway, however, maintained an objection in principle to the restricted discretionary activity rule proposed on behalf of the submitters she represented.

123. As the hearing proceeded, the matters in dispute were progressively narrowed. We would like to express our thanks, in particular, to Mr Bryce for his readiness to consider ways in which his recommendations might be refined to meet the concerns of submitters, while still achieving the policy objectives that underpinned the notified subdivision provisions.

124. Stepping back from the issues in contention, the evidence of Mr Falconer suggests to us that, for whatever reason, the ODP provisions have not been successful in driving high quality urban design. In Mr Falconer's words, while there is some variability between subdivision, generally they are very mediocre. He thought it was particularly concerning that there were no very good examples of urban design. Against the background where, as Mr Brown noted in his evidence, the PDP has a much greater urban design flavour, especially when coupled with the strategic direction provided in Chapters 3 and 4, this suggests to us a need for something to change.

125. While there is an issue (as counsel argued) whether previous mediocre urban design is the product of subdivision activity status, we have considerable difficulty with the argument put to us by both Mr Goldsmith and Ms Baker-Galloway that good design might be enforced within a controlled activity framework. Ms Baker-Galloway cited case law to us suggesting that conditions on subdivisions might produce different lot sizes and subdivisions that look different from what is proposed[88]. However, when we discussed the point with Ms Baker-Galloway, she agreed that the ambit of valid conditions is ultimately an issue of degree, which will determine whether particular issues are able to be controlled by a condition.

126. Accordingly, while counsel are correct, and the case law gives the consent authority considerable latitude to impose conditions on a resource consent application, so long as the conditions do not effectively prevent the activity taking place[89], in our view, the efficacy of those powers depends on the quality of what it is that one starts with. If the starting product is a reasonable quality design, then there will probably be scope to improve that design through discussion between the applicant and Council staff, and imposition of conditions as required to 'tweak' the design. By contrast, if the starting point is a poor quality subdivision design from a consent applicant who refuses to proffer a significantly changed (and improved) design, then in our view, it is neither practically nor legally possible for the Council to redesign a subdivision application by condition.

127. The clearest example of a need for discretion over subdivision design where the Council might need to require potentially significant changes to an applicant's design appeared to be in the width and location of internal roading networks. Mr Wallace summarised his evidence, when we discussed it with him, as being that there is no single formula to identify suitable roadworks based solely on the size of the subdivision.

128. As regards the specific issue of road widths and access issues, both Mr Goldsmith and Ms Baker-Galloway argued that this could be addressed under section 106(1)(c). That provision provides the Council with jurisdiction to refuse a subdivision consent application irrespective of the activity status of the subdivision in circumstances, among other things, where "*sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision".* Ms Baker-Galloway however could not point us to a case which has held that section 106 extends as far as road widths, as opposed to the existence of a practicable legal access.

129. She also accepted that section 106 would not answer a point that we discussed both with a number of the planning witnesses and with counsel who appeared before us that arises when the most efficient (in some cases the only practicable) access to adjacent subdividable land is via the road network of the subdivision. This situation has arisen in the past in the District[90].

130. Ultimately, though, we see the potential application of section 106 as something of a red herring. If section 106 confers the power to refuse a subdivision consent application, there is no practical difference if the District Plan similarly provides a discretion to refuse the consent on the same grounds, and good reason why it should do so – so applicants are more aware of that possibility. As Mr Goldsmith frankly acknowledged, the concern on the part of submitters

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88 She relied in particular on *Dudin v Whangarei District Council* A022/07 and *Mygind v Thames-Coromandel District Council* [2010] NZ EnvC 34

89 Refer *Aqua King Limited v Marlborough District Council* (1998) 4ELRNZ 385 at [23]

90 In Subdivision Consent RM130588 (Larchmont)

is that that position is not 'leveraged' to carve out a greater ambit for subdivision consents to be rejected than section 106 would provide.

131. Mr Goldsmith called valuation evidence from Mr Alexander Reid to support his submission that an excessively wide discretion (certainly the full discretionary status in the notified PDP provisions) would have a chilling effect on the economics of subdivision in the District by reason of the inability to obtain land valuations on which banks and other financiers might rely.

132. Mr Reid's evidence was helpful because he confirmed that uncertainty in consent outcomes is ultimately an issue of degree. If there is some, but not great, uncertainty, then valuers (and banks) will accept that.

133. We discussed with Mr Reid specifically the statistics that Mr Bryce had provided to us which suggested that under the ODP, approximately half the applications for subdivision consent in residential zones, and the Rural Residential Zone (and substantially more than half of the applications in the Rural Lifestyle Zone and deferred Rural Lifestyle Zone) were actually considered on the basis that they were either discretionary or non-complying. Mr Reid's evidence was that he had never regarded there being a great risk of subdivision not occurring in those zones and thus it had not been an issue to value the land[91].

134. We discussed with Mr Jeff Brown and Mr Chris Ferguson whether the difference between controlled activity status and restricted discretionary activity status would have cost implications for applicants. Mr Brown's view was that costs would generally not vary, provided the points of control and discretion were the same. Mr Ferguson pointed out the potential, if the ability to decline under a restricted discretionary rule were used to force an outcome, for transaction costs to increase. He also identified the potential for a different outcome to have cost implications.

135. We had difficulty reconciling Mr Ferguson's reasoning with the legal submissions we heard from both Mr Goldsmith and Ms Baker-Galloway that the same outcomes could be achieved under a controlled activity regime as with a restricted discretionary activity regime, unless the outcome Mr Ferguson was referring to was that consent applications would be declined.

136. Perhaps more importantly, Mr Ferguson agreed that the time and cost for compiling a high quality application would likely not vary greatly either way.

137. Taking these matters into consideration, we have formed the following views.

138. First, we agree with Mr Bryce's recommendation that the full discretionary default subdivision rule in the notified Chapter 27 is not the most appropriate way in which to achieve the objectives of the PDP or (to the extent that those objectives might envisage that status) the most appropriate way to achieve the purpose of the Act. For zones in which development is envisaged, with the scale of development the subject of minimum standards, the increase in uncertainty for subdivision applicants is, in our view, not justified by the potential environmental issues that a subdivision that complies with those minimum standards might raise.

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91 A view supported by the updated information provided in Mr Bryce's reply indicating that in the 6 years between 2009 and 2015 one subdivision consent application only had been declined after the exercise of the right of appeal, where applicable.

139. We also regard full discretionary status as being inconsistent with the strategic direction contained in Part Two of the Plan which seeks to enable urban development within defined Urban Growth Boundaries (recommended Policy 3.3.14) and to recognise the Rural Lifestyle and Rural Residential Zones as the appropriate planning mechanism to provide for new Rural Lifestyle and Rural Residential developments (recommended Policy 6.3.0).

140. Secondly, we agree with Mr Bryce's recommendation that there are a number of exceptions to that general position, where retention of full discretionary activity status is justified, most obviously in the Rural and Gibbston Character Zones[92]. Those zones have no minimum lot sizes and rely on the exercise of a broad discretion to ensure that subdivision and development is consistent with the objectives and policies applying to those areas. Submitters advanced the case at the hearing that the Ski Area Sub-Zones needed to be considered separately from the balance of the Rural Zone, having characteristics justifying controlled activity status for subdivisions. We will discuss that point separately. We also discuss the other exceptions later in this report.

141. Thirdly, we agree with Mr Bryce's recommendation that while controlled activity status may be appropriate in some specific situations, the most appropriate way to achieve the objectives of the PDP is to provide that the default activity status for subdivisions in both Urban Zones and the Rural Residential and Rural Lifestyle Zones should be restricted discretionary activity. We did not hear evidence justifying a different approach to Rural Residential and Rural Lifestyle Zones compared to urban residential zones, or indeed to distinguishing between different residential zones. The evidence we heard, as summarised above, is that the relative costs (between restricted discretionary and controlled activity status) are only likely to be material in the case of poor quality applications. In our view, the need for Council to be able to demand high quality outcomes, and to not have to accept poor applications, are key reasons for restricted discretionary activity status.

142. We do not regard utilities as one of the situations where controlled activity status would be appropriate. While subdivisions will on occasion solely relate to utilities, provision for utilities is an essential component of all subdivisions and in our view, the discretion to refuse consent (where applicable) needs to extend to the utility component. The important point (as Submission 179 notes as justification for controlled activity status) is that subdivisions for utilities are not subject to the minimum lot sizes specified for other subdivisions and this is achieved in our recommended Rules 27.6.2 and 27.7.11.

143. Fourthly, particular attention needs to be paid to limiting the matters in respect of which discretion is reserved to minimise the uncertainty for subdivision consent applicants, while providing the framework to best ensure good quality subdivision design outcomes.

144. As already noted, Mr Bryce recommended two restricted discretionary activity rules in his reply evidence to replace Rule 27.4.1 as notified. The first (now numbered 27.5.7 in our recommended version of Chapter 27) was recommended to read as follows:

> *"All urban subdivision activities, unless otherwise stated, within the following zones:*
>
> 1. *Low Density Residential Zones;*
> 2. *Medium Density Residential Zones;*

[92] Noting our previous finding that in those parts of the Rural Zone classified as ONL or ONF, residential subdivision and development might appropriately be classified as a non-complying activity and recommending Council consider initiating a variation to achieve that result.

3. *High Density Residential Zones;*
4. *Town Centre Zones;*
5. *Arrowtown Residential Historic Management Zone;*
6. *Large Lot Residential Zones;*
7. *Local Shopping Centres;*
8. *Business Mixed Use Zones;*
9. *Queenstown Airport Mixed Use Zone.*

Discretion is restricted to the following:

- *Lot sizes and dimensions in respect of internal roading design and provision, relating to access and service easements for future subdivision on adjoining land;*
- *Subdivision design and layout of lots;*
- *Property access and roading;*
- *Esplanade provision;*
- *On site measures to address the risk of natural and other hazards on land within the subdivision;*
- *Fire fighting water supply;*
- *Water supply;*
- *Stormwater design and disposal;*
- *Sewage treatment and disposal;*
- *Energy supply and telecommunications;*
- *Open space and recreation; and*
- *Ecological and natural values;*
- *Historic heritage;*
- *Easements; and*
- *Bird strike and navigational safety.*

For the avoidance of doubt, where a site is governed by a Structure Plan, spatial layout plan or concept development plan that is identified in the District Plan, subdivision activity should be assessed in accordance with Rule 27.7.1."

145. The second rule recommended by Mr Bryce in his reply (now numbered 27.5.8) would read as follows:

"All subdivision activities in the District's Rural Residential and Rural Lifestyle Zones."

Discretion is restricted to all of the following:

- *In the Rural Lifestyle Zone the location of building platforms;*
- *Lot sizes and dimensions in respect of internal roading design and provision,*
- *relating to access and service easements for future subdivision on adjoining land;*
- *Subdivision design and lot layout;*
- *Property access and roading;*
- *Esplanade provision;*
- *On site measures to address the risk of natural and other hazards on land within the subdivision;*
- *Fire fighting water supply;*
- *Water supply;*
- *Stormwater disposal;*
- *Sewage treatment and disposal;*
- *Energy supply and telecommunications;*

- *Open space and recreation;*
- *Ecological and natural values;*
- *Historic heritage;*
- *Easements; and*
- *Bird strike and navigational safety."*

146. These two suggested rules are virtually identical – the only difference in the matters to which discretion is reserved is recognition of the need to consider the location of building platforms in the Rural Lifestyle Zone – but like Mr Bryce, we think there is value in separating the rules related to subdivision in Urban Zones from those applying in the Rural Residential and Rural Lifestyle Zones, if only for clarity of coverage to lay readers of the Plan.

147. Looking first at the proposed urban subdivision rule, we recommend a minor change to the introductory wording to refer to activities otherwise "*provided for"* rather than otherwise "*stated*". The latter suggests a more explicit reference than may always be the case.

148. Consequential changes are also required arising from recommended changes to the names of different zones in other reports to the Lower Density Suburban Residential Zone and the Airport Zone – Queenstown respectively.

149. In terms of the matters in respect of which discretion is restricted, as Mr Bryce indicated, the list of matters is largely drawn from the submissions that suggested matters for control, in the context of a proposed controlled activity rule. As Mr Goldsmith acknowledged to us at the hearing, most of these are a standard list of matters that have to be considered on any subdivision application.

150. We therefore propose to discuss on an exceptions basis, the matters where Mr Bryce proposed amended wording, inserted additional considerations, or the one point that he proposed be deleted from the rule.

151. As above, much of the discussion at the hearing focussed on the first proposed matter of discretion. Having initially (at the opening of the Council case) formed the view that this matter might be entirely deleted, Mr Bryce came around to the view that limited provision for a discretion over lot sizes and dimensions was appropriate, to address the specific issue discussed during the course of the hearing of the need for access to adjoining subdivisable land.

152. We think that the debate at the hearing got a little side-tracked by the concerns of submitters about the ambit of any discretion over lot sizes. While important, the principal consideration justifying reservation of discretion is the need to promote quality subdivision design. We propose that should be the first matter listed.

153. As above, Mr Bryce's suggested matter of discretion is "*subdivision design and layout of lots"*. We regard the layout of lots as an aspect of subdivision design rather than a discrete issue in its own right. If the subdivision design changes, for whatever reason, the layout of lots, and indeed lot sizes (in m^2) and dimensions (i.e. shape) will change correspondingly. Mr Goldsmith had no problem with that in principle. The concern he was expressing was of an explicit and separate discretion over lot sizes.

154. To put that beyond doubt, we think it would be helpful to reframe this first and primary matter of discretion as follows:

"subdivision design and any consequential effects on the layout of lots, and on lot sizes and dimensions."

155. Like Mr Bryce, we consider that the potential need to require access to adjoining subdivisable land is a discrete issue that needs specific discretion to enable it to be properly considered. Mr Bryce's suggested drafting focussing on lot sizes and dimensions, whereas, to us, this is the consequence of a discretion over internal roading design and provision. As well as being more logical, putting it that way round assists in meeting the concerns expressed for submitters. We also think it would also be helpful if the same consequential flow-on effect on lot layouts were identified as with subdivision design.

156. In summary, we recommend that the relevant point of discretion be amended to read:

"internal roading design and provision relating to access to and service easements for future subdivision on adjoining land, and any consequential effects on the layout of lots, and on lot sizes and dimensions."

157. The submissions we received focussed only on property access. Like Mr Bryce, we think that the focus might more explicitly be on roading as the primary means of property access.

158. The submissions likewise focussed solely on "natural hazards". We agree with Mr Bryce's recommendation that in the context of restricted discretionary activity, the ambit of potential action required should be stated more clearly – it is about onsite measures to address the risk of both natural and other hazards on land within the subdivision rather than, for instance, attempts to address natural hazards at source. It is both unreasonable and impracticable to contemplate a subdivision applicant having responsibility, for instance, for mitigating the causes of flooding that is the result of natural processes occurring offsite.

159. In our view, it also needs to be made clear that it is not just a choice of what on-site measures are taken to mitigate natural hazard risk. In some cases, precisely because it is beyond the control of any subdivision applicant to control natural hazards at source, all available mitigation steps would still be insufficient to enable subdivision and development of the scale and in the manner proposed to proceed. We therefore recommend that the point of discretion should refer to "*the adequacy*" of on-site measures to address natural hazard risk.

160. The submissions we received suggested "*stormwater disposal"* as a matter of control. We agree with Mr Bryce's recommendation that discretion needs to be retained over the design of stormwater management, not just its disposal.

161. Mr Bryce recommended two new matters of discretion, being "*ecological and natural values"* and "*historic heritage"*. Given the identification of those values and the objectives and policies of the Plan (not to mention the provisions of the Proposed RPS quoted above that sit behind them, they are obvious additions.

162. Lastly, Mr Bryce recommended addition of "*bird strike and navigational safety".*

163. This addition reflected submissions we heard from QAC seeking recognition of the potential for the development associated with subdivision to cause a potential safety issue at Queenstown Airport (principally) due to bird strike. QAC both made legal submissions and called planning evidence on the need for PDP provisions to discourage activities attracting birds that might give rise to a bird strike risk.

164. We had some difficulty with QAC's case in this regard. Ms Kirsty O'Sullivan, giving expert planning evidence for QAC, advised us that the essential issue was with stormwater ponds that might form part of a subdivision design attracting birds that roost in the Shotover Delta.

165. At the hearing, we sought to explore with QAC's representatives the extent to which bird strike is already an issue given the location of the municipal wastewater facilities in close proximity to the eastern end of the runway, on the opposite side of the runway to Shotover Delta. The initial advice we received from Ms O'Sullivan was that bird strike was not an issue at present because QAC knows about current flight paths. Subsequently, however, after we sought input on where subdivision-related development might pose a risk of bird strike, we were advised that most reported bird strikes had been on the airfield, but that there have been reports of near misses further afield. We were also advised that the highest recorded bird strike was at 30,000 feet and that it was difficult to define the relevant area in a spatial sense.

166. We found this unhelpful to say the least. QAC were seeking examination of potential bird strike issues as a discrete matter of discretion on all urban subdivisions, so as to enable a case by case assessment. My Bryce also recommended that this be a matter of discretion in both urban areas and in the Rural Lifestyle and Rural Residential Zones.

167. The only way in which a subdivision consent applicant could address that issue would be by obtaining expert ornithological evidence as to the potential impact of the proposed subdivision and development on the existing pattern of bird flights and expert aviation evidence on the potential risk to aircraft within the District where they might intersect with the predicted flight-paths of birds. The collective costs involved, given that this would need to be considered on every subdivision application in urban areas and in the Rural Lifestyle and Rural Residential Zone if Mr Bryce's recommendation were accepted, might well be substantial, but we were not provided with any quantification of those costs[93].

168. While any threat to aircraft safety is of course a matter for considerable concern, we regard it as incumbent on QAC to provide us with expert evidence that would enable us to evaluate whether the risks that subdivision and development might pose to aircraft movements justified the imposition of those costs. At the very least, we would have expected QAC to produce expert evidence on where birds currently roost, the current flight-paths of birds to and from those roosting areas, and the nature and scale of future subdivision and development sufficient to materially alter those flight-paths in a manner with the potential to create a risk to aircraft. Demonstrably, Ms O'Sullivan was not equipped to provide evidence on these matters. And to be fair to her, she did not suggest she could do so other than at a very general level.

169. We inquired of QAC whether it had taken a position on the recently reviewed earthworks provisions of the ODP, given our understanding that birds are attracted by newly excavated earthworks. We were advised that QAC had made submissions on those provisions, but those submissions were not accepted and QAC did not pursue the matter.

170. Had QAC provided us with the evidential basis to do so, we might well have recommended a focus on effects on bird strike and navigational safety within some defined distance from the

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93 Mr Bryce identified that the addition of new matters of discretion would add costs in the s32AA evaluation attached to his reply evidence, but did not comment on the potential quantum of such costs. Ms O'Sullivan did not comment on the cost implications for applicants of the relief she supported.

flight paths into and out of Queenstown Airport, recognising a potentially greater risk in such areas (QAC told us existing spray irrigation at the end of the runway at Wanaka had not created an issue at Wanaka Airport and provided no information as to the position at the smaller facilities). As it was, QAC did not provide us with an adequate evidential foundation either for the planning relief sought, or for some more targeted response.

171. In summary, we do not agree with Mr Bryce's recommendation that the default rules contain a recognition of potential bird strike risk as a separate area of discretion.

172. Submissions seeking a controlled activity rule suggested that "*the nature, scale, and* adequacy *of environmental protection measures associated with earthworks"* be an additional matter of control. Mr Bryce did not recommend that earthworks be a matter for discretion. Rather, his recommendation was that a cross reference be inserted to provisions of the earthworks chapter of the ODP. We think there are good reasons to treat earthworks as a separate issue under the rules. We will revert to that point when we address Mr Bryce's recommendations in that regard.

173. We do, however, consider that there is a case for an additional matter of discretion based on the submissions and evidence we heard for Aurora Energy Ltd[94]. We explore the issues raised in much greater detail in the context of the policies related to subdivision and development affecting electricity distribution lines[95]. Mr Bryce recommended a new rule governing subdivision and development in close proximity to 'sub-transmission' lines. We discuss that recommendation later in this report also. In summary, we do not regard it as either necessary or efficient to have a standalone rule, but we do consider it necessary to preserve a discretion on subdivision applications that might be exercised in accordance with recommended Policy 27.2.2.8.

174. Having identified the desirability of an additional point of discretion, we then considered whether it should be limited to effects on electricity distribution lines. Mr Bryce's draft rule considers "*Energy supply and telecommunications"* together. While the rationale for that discretion is (we think) related to the adequacy of the infrastructural arrangements, the same logic would apply to reverse sensitivity effects on telecommunication networks as on energy networks – both are essential local infrastructure.

175. Accordingly, we recommend that the relevant matter of discretion be amended to read:

"energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks."

176. The suggested rule is stated to apply within the Low Density Residential Zone and the Queenstown Airport Mixed Use Zone. The Stream 6 Hearing Panel has recommended that the name of the Low Density Residential Zone be changed to the Lower Density Suburban Residential Zone. The Stream 8 Panel has recommended the Queenstown Airport Mixed Use Zone, as the term is used in Chapter 27, be changed to the Airport Zone - Queenstown. We therefore recommend use of those titles for those zones here, and elsewhere in Chapter 27 where they are referred to.

177. Lastly, we recommend that the language introducing the matters of discretion be tightened in this and the other Restricted Discretionary rules in Chapter 27 and that the specified matters

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94 Submission 71

95 Refer the discussion of our recommended Policy 27.2.2.8

be individually identified using an alphanumeric list for ease of subsequent reference. Again, this is a recommended general change. We also recommend that generally listing of sub-parts of policies or rules by identified by alphanumeric lists.

178. Turning to the parallel rule (now numbered 27.5.8), providing for subdivision in the Rural Residential and Rural Lifestyle Zones, the opening words, describing the ambit of the rule, need to provide for the operation of other rules in the rule package in the same way as Mr Bryce's recommended urban subdivision rule; that is to say, it needs the words "*unless otherwise provided for"* inserted into it.

179. As above, the only additional point of discretion Mr Bryce recommended in this rule was reference to building platforms in the Rural Lifestyle Zone. At the hearing, we discussed with both Mr Bryce and Mr Jeff Brown whether the size of building platforms might be an issue. Currently the zone standards for the Rural, Gibbston and Rural Lifestyle Zones[96] require identification of one building platform between 70m² in area and 1000m² in area per lot where allotments are created for the purposes of containing residential activity.

180. Mr Brown confirmed that in principle, both the location and size of building platforms are the issue in the Rural Lifestyle Zone, but he could not recall any consent holder trying to fill out building platforms to the full 1000m². Mr Goldsmith drew our attention to the fact that this issue was canvassed in the hearings on the rural chapters (the Stream 2 hearing). In that hearing, Mr Paddy Baxter, an expert landscape architect, suggested to the Hearing Panel that design controls might be appropriate for larger sized houses.

181. Relevant design controls in this context are those contributing to the visibility and external appearance of buildings constructed within approved building platforms since it is these matters that affect the ability of the landscape to absorb new or altered buildings.

182. We also note that Rule 22.4.2 provides that where a building is constructed or altered outside an approved building platform in the Rural Lifestyle Zone the Council retains discretion over external appearance, visibility from public places, landscape character and visual amenity. Logically, these matters should be equally relevant to the decision whether to approve building platforms (within which buildings might be constructed or altered as permitted activities).

183. Accordingly, we recommend that the relevant point of discretion be expanded to read:

"in the Rural Lifestyle Zone, the location and size of building platforms and in respect of any buildings within those building platforms:

a. external appearance;

b. visibility from public places;

c. landscape character; and

d. visual amenity.

184. In all other respects, the same conclusions about the matters in respect of which discretion is reserved follow as for subdivision in the urban zones.

[96] Rule 27.5.1.1 of the notified Chapter and 27.7.12.1 of our recommended revised Chapter

185. As already noted, a number of submissions identified the need for the objectives and policies of Chapter 27 to be amended to reflect any changes to the default rules related to subdivision. Accordingly, it is appropriate that we move now to address first the introductory statement of the purpose of Chapter 27 (in Section 27.1) and then the objectives and policies, before returning to the package of rules.

3. PURPOSE

3.1 Section 27.1 - Purpose

186. Section 27.1, as its title suggests, is designed to set out the purpose of Chapter 27. Submissions on it sought variously:
   a. Addition of reference to the protection of areas and features of significance and to passive solar design of dwellings[97];
   b. Deletion of reference to subdivision being discretionary, to be replaced with a statement that subdivision in zoned areas is controlled[98];
   c. Deletion of reference to logic[99];
   d. Deletion of reference to the Land Development and Subdivision Code of Practice and Subdivision Design Guidelines[100];
   e. Clarification that Chapter 27 does not apply to the Remarkables Park Zone and the proposed Queenstown Park Special Zone[101];
   f. Drawing attention to the relationship between subdivision and land use, softening the description of the relationship between subdivision and desirable community outcomes, deletion of specific reference to management of natural hazards and insertion of identification of the role of subdivision in provision of services[102].

187. Mr Bryce recommended the following changes to the notified version of Section 27.1:
   a. Consequential on his recommendation that the default status of subdivisions be restricted discretionary activity, the reference to all subdivision requiring resource consent as a discretionary activity should be amended;
   b. Deletion of reference to subdivision design being underpinned by logic;
   c. Separation of reference to the Subdivision Design Guidelines from the Land Development and Subdivision Code of Practice, recognising the focus of the Subdivision Design Guidelines on urban design and pitching the role of the Code of Practice as providing a best practice guideline;
   d. Deletion of reference to provisions in other chapters governing assessment of subdivision;
   e. Insertion of reference to the Council's development contributions policy.

188. We do not consider that the opening words of Section 27.1 need to place greater emphasis on the inter-relationship between subdivision and land use. In our view, the opening paragraph already draws that connection.

189. The reference in Section 27.1 to all subdivision requiring resource consent as a discretionary activity was problematic even on the basis of the notified Chapter 27, given that Rule 27.4.2

97 Submission 117
98 Submissions 288, 442, 806: Supported in FS1097
99 Submission 383
100 Submissions 567 and 806
101 Submission 806
102 Submission 806

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 7

Report and Recommendations of Independent Commissioners
Regarding Chapter 27 – (Subdivision and Development)

Commissioners
Denis Nugent (Chair)
Trevor Robinson
Scott Stevens

TABLE OF CONTENTS

1. PRELIMINARY MATTERS

1.1 Terminology in this Report

1. Throughout this report, we use the following abbreviations:

Act	Resource Management Act 1991 as it was prior to the enactment of the Resource Legislation Amendment Act 2017
Clause 16(2)	Clause 16(2) of the First Schedule to the Act
Council	Queenstown Lakes District Council
NPSET 2008	National Policy Statement for Electricity Transmission 2008
ODP	the Operative District Plan for the Queenstown Lakes District as at the date of this report
ONF	Outstanding Natural Feature(s)
ONL	Outstanding Natural Landscape(s)
PDP	Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
Proposed RPS	the Proposed Regional Policy Statement for the Otago Region as modified by decisions on submissions and dated 1 October 2016
Proposed RPS (notified)	the Proposed Regional Policy Statement for the Otago Region dated 23 May 2015
QAC	Queenstown Airport Corporation
RPS	the Operative Regional Policy Statement for the Otago Region dated October 1998
UCES	Upper Clutha Environmental Society
Stage 2 Variations	the variations, including changes to the existing text of the PDP, notified by the Council on 23 November 2017

1.2 Topics Considered

2. The subject matter of this hearing was Chapter 27 of the PDP (Hearing Stream 4).

3. Chapter 27 sets out objectives, policies, rules and other provisions related to subdivision and development.

4. As notified, it was set out under the following major headings:
   a. 27.1 – Purpose;
   b. 27.2 – Objectives and Policies;
   c. 27.3 – Other Provisions and Rules;

d. 27.4 – Rules – Subdivision;
e. 27.5 – Rules – Standards for Subdivision Activities;
f. 27.6 – Rules – Exemptions;
g. 27.7 – Location – Specific Objectives, Policies and Provisions;
h. 27.8 – Rules – Location Specific Standards;
i. 27.9 – Rules – Non-Notification of Applications;
j. 27.10 – Rules – General Provisions;
k. 27.11 – Rules – Natural Hazards;
l. 27.12 – Financial Contributions.

1.3 Hearing Arrangements

5. Hearing of Stream 4 took place over five days. The Hearing Panel sat in Queenstown on 25-26 July and 1-2 August 2016 inclusive and in Wanaka on 17 August 2016.

6. The parties we heard on Stream 4 were:

Council:
- Sarah Scott (Counsel)
- Garth Falconer
- David Wallace
- Nigel Bryce

Millbrook Country Club Limited[1] and **RCL Queenstown Pty Limited**[2]**:**
- Daniel Wells

Roland and Keri Lemaire-Sicre[3]**:**
- Keri Lemaire-Sicre

G W Stalker Family Trust, Mike Henry, Mark Tylden, Wayne French, Dave Finlin, Sam Strain[4]**, Ashford Trust**[5]**, Bill and Jan Walker Family Trust**[6]**, Byron Ballan**[7]**, Crosshill Farms Limited**[8]**, Robert and Elvena Heywood**[9]**, Roger and Carol Wilkinson**[10]**, Slopehill Joint Venture**[11]**, Wakatipu Equities Limited**[12]**, Ayrburn Farm Estate Limited**[13]**, FS Mee Developments Limited**[14]**:**
- Warwick Goldsmith (Counsel)
- Alexander Reid

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1 Submission 696
2 Submission 632/Further Submission 1296
3 Further Submission 1068
4 Submissions 534 and 535
5 Further Submission 1256
6 Submission 532/Further Submissions 1259 and 1267
7 Submission 530
8 Submission 531
9 Submission 523/Further Submission 1273
10 Further Submission 1292
11 Submission 537/Further Submission 1295
12 Submission 515/Further Submission 1298
13 Submission 430
14 Submission 525

- Jeff Brown (also on behalf of Hogan Gully Farming Limited[15], Dalefield Trustee Limited[16], Otago Foundation Trust Board[17], and Trojan Helmet Limited[18]):
- Ben Farrell

New Zealand Transport Agency[19]:
- Tony MacColl

Darby Planning LP[20], Soho Ski Area Limited[21], Treble Cone Investments Limited[22], Lake Hayes Limited[23], Lake Hayes Cellar Limited[24], Mt Christina Limited[25], Jacks Point Residential No.2 Limited, Jacks Point Village Holdings Limited, Jacks Point Developments Limited, Jacks Point Land Limited, Jacks Point Land No.2 Limited, Jacks Point Management Limited, Henley Downs Land Holdings Limited, Henley Downs Farms Holdings Limited, Coneburn Preserve Holdings Limited, Willow Pond Farm Limited[26], Glendhu Bay Trustees Limited[27], Hansen Family Partnership[28]:
- Maree Baker-Galloway (Counsel)
- Chris Ferguson
- Hamish McCrostie (17 August only)

NZ Fire Service Commission[29] and **Transpower New Zealand Limited[30]:**
- Ainsley McLeod
- Daniel Hamilton (Transpower only)

Queenstown Park Limited[31] and **Remarkables Park Limited[32]:**
- John Young (Counsel)

UCES[33]:
- Julian Haworth

Federated Farmers of New Zealand[34]:
- Kim Riley
- Phil Hunt

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15 Submission 456
16 Submission 350
17 Submission 406
18 Further Submission 1157
19 Submission 719
20 Submission 608
21 Submission 610
22 Submission 613
23 Submission 763
24 Submission 767
25 Submission 764
26 Submission 762
27 Submission 583
28 Submission 751
29 Submission 438/Further Submission 1125
30 Submission 805/Further Submission 1301
31 Submission 806/Further Submission 1097
32 Submission 807/Further Submission 1117
33 Submission 145/Further Submission 1034
34 Submission 600/Further Submission 1132

Ros and Dennis Hughes[35]:

- Ros Hughes
- Dennis Hughes

QAC[36]:

- Rebecca Wolt and Ms Needham (Counsel)
- Kirsty O'Sullivan

Patterson Pitts Partners (Wanaka) Limited[37]

- Duncan White
- Mike Botting

Aurora Energy Limited[38]:

- Bridget Irving (Counsel)
- Nick Wyatt

7. Evidence was also pre-circulated by Ulrich Glasner (for Council), Joanne Dowd (for Aurora Energy Limited[39]), Carey Vivian (for Cabo Limited[40], Jim Veint[41], Skipp Williamson[42], David Broomfield[43], Scott Conway[44], Richard Hanson[45], Brent Herdson and Joanne Phelan[46]), and Nick Geddes (for Clark Fortune McDonald & Associates Limited[47]).

8. Mr Glasner was unable to attend the hearing and his evidence was adopted by David Wallace who appeared in his stead at the hearing.

9. Ms Dowd was unable to travel to the hearing due to an unfortunate accident. In lieu of her attendance, we provided written questions for Ms Dowd, to which she responded in a Supplementary Statement of Evidence dated 5 August 2016.

10. Messrs Vivian and Geddes were excused attendance at the hearing.

11. Mr Jonathan Howard also provided a statement on behalf of Heritage New Zealand Pouhere Taonga[48] and requested that it be tabled.

1.4 Procedural Steps and Issues

12. The hearing of Stream 4 proceeded based on the general pre-hearing directions made in the memoranda summarised in Report 1.

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35 Submission 340
36 Submission 433/Further Submission 1340
37 Submission 453
38 Submission 635/Further Submission 1121
39 Submission 635/Further Submission 1121
40 Submission 481
41 Submission 480
42 Submission 499
43 Submission 500
44 Submission 467
45 Submission 473
46 Submission 485
47 Submission 414
48 Submission 426

13. Other procedural directions made by the Chair in relation to this hearing were:
    a. Consequent on the Hearing Panel's Memorandum dated 1 July 2016 requesting that Council undertake a planning study of the Wakatipu Basin (Noted in Report 1), a Minute was issued directing that if the Council agreed to the Hearing Panel's request[49], submissions relating to the minimum lot sizes for the Rural Lifestyle Zone would be deferred to be heard in conjunction with hearing the results of the planning study and granting leave for any submitter in relation to the minimum lot size in the Rural Lifestyle Zone to apply to be heard within Hearing Stream 4 if they considered that their submission was concerned with the zone provisions as they apply throughout the District[50];
    b. Granting leave for Mr Farrell's evidence to be lodged on or before 4pm on 20 July 2016;
    c. Granting leave for Ms Dowd's evidence to be lodged on or before noon on 3 August 2016, waiving late notice of Aurora Energy Ltd.'s wish to be heard and directing that Ms Dowd supply written answers to any questions we might have of Ms Dowd on or before noon on 16 August 2016;
    d. During the course of the hearing of submissions and evidence on behalf of Darby Planning LP and others, the submitters were given leave to provide additional material on issues that had arisen during the course of their presentation. Supplementary legal submissions and a supplementary brief of evidence of Mr Ferguson were provided. Ms Baker-Galloway, Mr Ferguson and Mr Hamish McCrostie appeared on 17 August to address the matters covered in this supplementary material.
    e. Directing that submissions on Chapter 27 specific to Jacks Point Resort Zone would not be deferred;
    f. Admitting a memorandum dated 18 August 2016 on behalf of UCES into the hearing record;
    g. Extending time for Council to file its written reply to noon on 26 August 2016.

1.5 Stage 2 Variations

14. On 23 November 2017, Council publicly notified the Stage 2 Variations. Relevantly to the preparation of this report, the Stage 2 Variations included changes to a number of provisions in Chapter 27.

15. Clause 16B(1) of the First Schedule to the Act provides that submissions on any provision the subject of variation are automatically carried over to hearing of the variation.

16. Accordingly, the provisions of Chapter 27 the subject of the Stage 2 Variations have been reproduced as notified, but 'greyed out' in the revised version of Chapter 27 attached as Appendix 1 to this report, in order to indicate that those provisions did not fall within our jurisdiction

1.6 Statutory Considerations

17. The Hearing Panel's Report 1 contains a general discussion of the statutory framework within which submissions and further submissions on the PDP have to be considered, including matters that have to be taken into account, and the weight to be given to those matters. We have had regard to that report when approaching our consideration of submissions and further submissions on Chapter 27.

18. Some of the matters identified in Report 1 are either irrelevant or have only limited relevance to the objectives, policies and other provisions of Chapter 27. The National Policy Statement

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49 The Hearing Panel was advised by Memorandum dated 8 July 2016 from counsel for the Council that the Council would undertake the study requested

50 In the event, no such application was received

for Renewable Electricity Generation 2011 and the National Policy Statement for Freshwater Management 2014 are in this category. The NPSET 2008 and the NPSUDC 2016, however, are of direct relevance to some provisions of Chapter 27. The NPSUDC 2016 was gazetted after the hearing of submissions and further submissions concluded and the Chair sought written input from the Council as to whether the Council considered the provisions of the PDP that had already been the subject of hearings gave effect to the NPSUDC 2016. Counsel for the Council's 3 March 2017 memorandum concluded that the provisions of the PDP gave effect to the majority of the objectives and policies of the NPSUDC 2016, and that updated outputs from the Council's dwelling capacity model to be presented at the mapping hearings would contribute to the material demonstrating compliance with Policy PA1 of the document. We note specifically counsel for the Council's characterisation of the provisions of the NPSUDC 2016 as 'high level' or 'direction setting' rather than as providing detailed requirements. The Chair provided the opportunity for any submitter with a contrary view to express it but no further feedback was obtained. We discuss in some detail later in this report the provisions necessary to give effect to the NPSET and NPSUDC.

19. In his Section 42A Report, Mr Bryce drew our attention to particular provisions of the RPS. He noted in particular Objectives 5.4.1-5.4.4 that he described as promoting sustainable management of Otago's land resource by:

"Objective 5.4.1
To promote sustainable management of Otago's land resource, in order:

a. *To maintain and enhance the primary production capacity and life-supporting capacity of land resources; and*

b. *To meet the present and reasonably foreseeable needs of Otago's people and communities;*

Objective 5.4.2
To avoid, remedy or mitigate degradation of Otago's natural physical resources resulting from activities utilising the land resource;

Objective 5.4.3
To protect Otago's outstanding natural features and landscapes from inappropriate subdivision, use and development."

20. He also noted Objective 9.3.3 and 9.4.3 (Built environment) and the related policies as being relevant as seeking "*to avoid, remedy or mitigate the adverse effects of Otago's built environment on Otago's natural and physical resources, and promote the sustainable management of infrastructure."*

21. Mr Bryce also drew to our attention a number of provisions of the Proposed RPS (notified). By the time we came to consider our report, decisions had been made by Otago Regional Council on this document which superseded the provisions referred to us by Mr Bryce. We have accordingly had regard to the Proposed RPS provisions dated 1 October 2016.

22. We note, in particular, the following objectives of the Proposed RPS:

Objective 1.1
Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago.

Objective 2.1
The principles of Te Tiriti o Waitangi are taken into account in resource management processes and decisions.

Objective 2.2
Kai Tahu values, interests and customary resources are recognised and provided for.

Objective 3.1
The values of Otago's natural resources are recognised, maintained and enhanced.

Objective 3.2
Otago's significant and highly-valued natural resources are identified, and protected or enhanced.

Objective 4.1
Risk that natural hazards poised to Otago communities are minimised.

Objective 4.2
Otago's communities are prepared for and able to adapt to the effects of climate change.

Objective 4.3
Infrastructure is managed and developed in a sustainable way.

Objective 4.4
Energy supplies to Otago's communities are secure and sustainable.

Objective 4.5
Urban growth and development is well designed, reflects local character and integrates effectively with adjoining urban and rural environments.

Objective 5.1
Public access to areas of value to the community is maintained or enhanced.

Objective 5.2
Historic heritage resources are recognised and contribute to the region's character and sense of identity.

Objective 5.3
Sufficient land is managed and protected for economic production.

Objective 5.4
Adverse effects of using and enjoying Otago's natural and physical resources are minimised.

23. For each of the above objectives, there are specified policies that also need to be taken into account. Some of the policies of the Proposed RPS are particularly relevant to subdivision and development. We note at this point:

    a. Policy 1.1.2 Economic wellbeing:
    Provide for the economic wellbeing of Otago's people and communities by enabling the use and development of natural and physical resources only if the adverse effects of those

activities on the environment can be managed to give effect to the objectives and policies of the Regional Policy Statement;

b. Policy 2.1.2 Treaty principles:

Ensure that local authorities exercise their functions and powers, by:…
g) Ensuring that District and Regional Plans:
i. Give effect to the Nga Tahu Claims Settlement Act 1998;
ii. Recognise and provide for statutory acknowledgement areas in Schedule 2;
Iii Provide for other areas in Otago that are recognised as significant to Kai Tahu….;

c. Policy 2.2.2 Recognising sites of cultural significance:

"Recognise and provide for wahi tupuna, as described in Schedule 1C by all of the following:
a. Avoiding significant adverse effects on those values which contribute to wahi tupuna being significant;
b. Avoiding, remedying, or mitigating other adverse effects on wahi tupuna;
c. Managing those landscapes and sites in a culturally appropriate manner."

d. Policy 3.1.7 Soil values:

"Manage soils to achieve all of the following:….

f) Maintain or enhance soil resources for primary production……"

e. Policy 3.2.18 Managing significant soil:

"Protect areas of significant soil, by all of the following:….
c) Recognising that urban expansion on significant soils may be appropriate due to location and proximity to existing urban development and infrastructure…."

f. Policy 4.1.5 Natural hazard risk:

"Manage natural hazard risk to people and communities, with particular regard to all of the following:
a. The risk posed, considering the likelihood and consequences of natural hazard events;
b. The *implications of residual risk, including the risk remaining after implementing or undertaking risk reduction and hazard mitigation measures;*
c. The community's tolerance of that risk, now and in the future, including the community's ability and willingness to prepare for and adapt to that risk, and to respond to an event;
d. The changing nature of tolerance to risk;
e. Sensitivity of activities to risk;

g. Policy 4.3.2 Nationally and regionally significant infrastructure:

"Recognise the national and regional significance of all of the following infrastructure:

a. *Renewable electricity generation activities, where they supply the National Electricity Grid and local distribution network;*
b. *Electricity transmission infrastructure;*
c. *Telecommunication and radiocommunication facilities;*
d. *Roads classified as being of national or regional importance;*
e. *Ports and airports and associated navigation infrastructure;*
f. *Defence facilities;*
g. *Structures for transport by rail."*

h. Policy 4.3.4 Protecting nationally and regionally significant infrastructure:

"Protect the infrastructure of national or regional significance, by all the following:
a. *Restricting the establishment of activities that may result in reverse sensitivity effects;*
b. *Avoiding significant adverse effects on the functional needs of such infrastructure;*
c. *Avoiding, remedying or mitigating other adverse effects on the functional needs of such infrastructure;*
d. *Protecting infrastructure corridors from sensitive activities, now and for the future."*

i. Policy 4.4.5 Electricity distribution infrastructure:

"Protect electricity distribution infrastructure, by all the following:
a. *Recognise the functional needs of electricity distribution activities;*
b. *Restricting the establishment of activities that may result in reverse sensitivity effects;*
c. *Avoiding, remedying or mitigating adverse effects from other activities on the functional needs of that infrastructure;*
d. *Protecting existing distribution corridors for infrastructure needs, now and for the future;*

j. Policy 4.5.1 Managing for urban growth and development

"Manage urban growth and development in a strategic and co-ordinated way, by all of the following…..
c. *Identifying future growth areas and managing subdivision, use and development of rural land outside these areas to achieve all of the following:*
    i. *Minimise adverse effects on rural activities and significant soils;*
    ii. *Minimise competing demands for natural resources;*
    iii. *Maintain or enhance significant biological diversity, landscape or natural character values;*
    iv. *Maintain important cultural historic heritage values;*
    v. *Avoid land with significant risk from natural hazards;….*
e. *Ensuring efficient use of land…*
g. *Giving effect to the principles of good urban design in Schedule 5;*
h. *Restricting the location of activities that may result in reverse sensitivity effects on existing activities."*

k. Policy 4.5.3 Urban design:

"Encourage the use of Schedule 5 good urban design principles in the subdivision and development of urban areas."

l. Policy 4.5.4: Low impact design:

*"*Encourage *the use of low impact design techniques in subdivision and development to reduce demand on stormwater, water and wastewater infrastructure and reduce potential adverse environmental effects."*

m. Policy 4.5.5: Warmer buildings:

"Encourage the design of subdivision and development to reduce the adverse effects of the region's colder climate, and higher demand and costs for energy, including maximising the passive solar gain."

n. Policy 5.3.1: Rural activities:

"Manage activities in rural areas, to support the region's economy in communities, by all of the following:

a. Minimising the loss of significant soils;
b. Restricting the establishment of activities in rural areas that may lead to reverse sensitivity effects;
c. Minimising the subdivision of productive rural land to smaller lots that may result in rural residential activities;
d. Providing for other activities that have a functional need to locate in rural areas, including tourism and recreational activities that are of a nature and scale compatible with rural activities."

24. The Proposed RPS is a substantial document. Noting the above policies does not mean that the other policies in the Proposed RPS are irrelevant. We have taken all objectives and policies of the Proposed RPS into account and discuss them further, when relevant to specific provisions.

25. Mr Bryce reminded us of the existence of the Iwi Management Plans noted in Report 1. He did not, however, draw our attention to any particular provision of any of those Plans as being relevant to the matters covered in Chapter 27 and no representatives of the Iwi appeared at the hearing.

26. Consideration of submissions and further submissions on Chapter 27 has also necessarily taken account of the Hearing Panel's recommendations in Reports 2 and 3 as to appropriate amendments to the Strategic Chapters of the PDP (that is to say Chapters 3, 4, 5 and 6. We note in particular the following provisions:

Objective 3.2.2.1:
"Urban Development occurs in a logical manner so as to:

a. promote a compact, well designed and integrated urban form;
b. build on historical urban settlement patterns;
c. achieve a built environment that provides desirable, healthy and safe places to work and play;
d. minimise the natural hazard risk taking into account the predicted effects of climate change;
e. protect the District's rural landscapes from sporadic and sprawling development;
f. ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in;
g. contain a high quality network of open spaces and community facilities; and

h. be integrated with existing, and planned future, infrastructure."

Policy 3.3.24
"Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character."

Policy 3.3.26
"That subdivision and/or development be designed in accordance with best practice land use management so as to avoid or minimise adverse effects on the water quality of lakes, rivers and wetlands in the District."

27. The tests posed in section 32 form a key part of our review of the objectives, policies, rules and other provisions of Chapter 27 of the PDP. We refer to and adopt the discussion of section 32 in the Hearing Panel's Report 3. In particular, for the same reasons as are set out in Report 3, we have incorporated our evaluation of changes to the notified Chapter 27 into the report that follows rather than provide a separate evaluation meeting the requirements of section 32AA.

28. We note that the material provided to us by the Council did not include a quantitative analysis of costs and benefits either of the notified Chapter 27, or of the subsequent changes Mr Bryce proposed to us. We queried counsel for the Council on this aspect when she opened the hearing and were told that Council did not have the information to undertake such an analysis. None of the submitters who appeared before us provided us with quantitative evidence of costs and benefits of the amendments they proposed either. When we discussed with Ms Baker-Galloway whether her clients would be able to provide us with such evidence, she advised that any information they could provide would necessarily be limited to their own sites and therefore too confined to be useful.

29. We have accordingly approached the application of section 32(2) on the basis that a quantitative evaluation of costs and benefits of the different alternatives put to us is not practicable.

1.7 Scope Issue – Activity Status of Residential Subdivision and Development within ONLs and ONFs

30. The submissions and evidence of Mr Julian Haworth at the hearing on behalf of UCES sought that residential subdivision and/or development within ONLs and ONFs should be ascribed non-complying activity status. We discussed with Mr Haworth during his appearance whether we had jurisdiction to entertain his request given the terms on which the submission filed by UCES on the PDP had been framed. Mr Haworth's subsequent Memorandum of 18 August drew our attention to the potential relevance of a further submission made by UCES (on a submission by Darby Planning LP) to this issue.

31. In the legal submissions in reply on behalf of the Council, it was submitted that there was no scope for us to consider the UCES request in this regard.

32. Mr Haworth requested that we make a decision specifically on this point. In summary, we have concluded that counsel for the Council is correct and we have no jurisdiction to entertain Mr Haworth's request on behalf of UCES. Our reasons follow.

33. The legal submissions on behalf of counsel for the Council in reply summarised the legal principles relevant to determining the scope of our inquiry[51].

34. In summary, a two stage inquiry is required:
    a. What do submissions on the PDP provisions seek? and
    b. Is what submissions on the PDP seek itself within the scope of the inquiry – put colloquially, are they "*on"* the PDP?

35. The second point arises in relation to proposed plans that are limited by subject matter or by geography. Here, there is no doubt that Chapter 27 provides rules that govern residential subdivision within ONLs and ONFs as defined by other provisions in the PDP and so, subject to possible issues arising from the interpretation of the High Court decision in *Palmerston North City Council v Motor Machinists Limited*[52]*,* the UCES request would not fail a jurisdictional inquiry on that ground.

36. The larger issue turns on what it is that are sought by submissions. In determining this question, the cases establish a series of interpretative principles summarised by counsel for the Council as follows:

    a. *The paramount test is whether or not amendments [sought to a Proposed Plan] are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP. This would usually be a question of degree to be judged by the terms of the PDP and the content of submissions*[53]*.*

    b. *Another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought in a submission; the scope to change a Plan is not limited by the words of the submission*[54]*;*

    c. *Ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter*[55]*."*

37. Thus far, we agree that counsel for the Council's submissions accurately summarised the relevant legal principles. Those submissions, however, go on to discuss whether a submitter may rely on the relief sought by another submitter, on whose submission they have not made a further submission, in order to provide scope for their request. The Hearing Panel has previously received submissions on this point in both the Stream 1 and Stream 2 hearings from counsel for the Council. Counsel's Stream 4 reply submissions cross referenced the legal submissions in reply in the Stream 2 hearing and submitted that:

    "To the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief, it is submitted that the submitter could not advance relief."

38. This is contrary to the position previously put to the Hearing Panel by counsel for the Council. Those previous submissions said that while a submitter cannot derive standing to appeal decisions on a Proposed Plan by virtue of the submissions of a third party that they have not

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51 Refer Council Reply legal submissions at 13.2-13.4

52 [2014] NZRMA 519

53 *Countdown Properties (Northland) Limited v Dunedin City Council* [1994] NZRMA 145, and 166

54 *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556, and 574-575

55 Ibid*,* at 574

lodged a further submission on, if a submitter advances submissions and/or evidence before the Hearing Panel in relation to relief sought by a second submitter, the Hearing Panel can properly consider those submissions/evidence. This is based on the fact that the Hearing Panel's jurisdiction to make recommendations is circumscribed by the limits of all of the submissions that have been made on the Proposed Plan. In a subsequent hearing (on Stream 10), counsel for the Council confirmed that her position was correctly stated in the Stream 1 and 2 hearings.

39. It follows that if any submission, properly construed, would permit us to alter the status of residential subdivision and development within ONLs and ONFs to non-complying, we should consider Mr Haworth's submissions and evidence on that point, although we accept that if jurisdiction to consider the point depends on a submission other than that of UCES, and on which UCES made no further submission, that might go to the weight we ascribe to Mr Haworth's submissions and evidence (a related submission made by counsel for the Council).

40. As the Hearing Panel noted in its Report 3, we do not need to consider whether, if we conclude some third party's submission provides jurisdiction, UCES will have jurisdiction to appeal our decision on the point, that being a matter properly for the Environment Court, if and when the issue arises.

41. Focussing then on the provisions of the notified PDP as the starting point, the activity status of subdivisions was governed by Rules 27.4.1-27.4.3 inclusive.

42. Rule 27.4.1. was a catchall rule providing that all subdivision activities are discretionary activities, except otherwise as stated.

43. Rule 27.4.2 specified a number of subdivision activities that were non-complying activities. Residential subdivision within ONLs and ONFs may have been deemed to be non-complying under one of the subparts of Rule 27.4.2 (e.g. because it involved the subdivision of a building platform), but not generally so.

44. Rule 27.4.3 provided that subdivision undertaken in accordance with a structure plan or spatial layout plan identified in the District Plan had restricted discretionary activity status. The structure plans and special layout plans identified in the District Plan are of limited areas in the District. Clearly, they do not cover all of the ONLs and ONFs as mapped in the notified PDP.

45. It follows that as notified, residential subdivisions within ONLs and ONFs would usually fall within the default classification provided by Rule 27.4.1 and be considered as discretionary activities.

46. UCES did not make a submission seeking amendment to any of Rules 27.4.1-27.4.3 inclusive. The submission that Mr Haworth referred us to focusses on the section 32 reports supporting the PDP. Paraphrasing the reasons for the UCES submission in this regard, they noted:
    a. The section 32 reports do not refer to non-complying status in relation to residential subdivision and development;
    b. A March 2015 draft of the PDP proposed to make residential subdivision and development non-complying within ONLs and ONFs;
    c. A 2009 monitoring report referred to non-complying status within ONLs and ONFs as an option;
    d. Failure to discuss the issue is a critical flaw in the section 32 analysis.

47. The relief sought by UCES in relation to this submission was worded as follows:

"The Society, seeks that the S.32 Landscape Evaluation Report be re-written containing discussion of the costs and benefits associated with the option of residential subdivision and development becoming non-complying versus the option of it being discretionary, as required by S.32 of the Act and especially S.32(2).

The S.32 Landscape Evaluation Report, once rewritten, should then be publicly notified.
The Society seeks that the 40 working day submission period should apply to the rural part of the Proposed District Plan from the date of renotification of the rewritten S.32 Landscape Evaluation Report."

48. In the summary of submissions publicly notified by the Council, the UCES submission was listed as a submission on Rule 27.4.1. The summary of submission read:

"Expresses concern regarding the Discretionary Activity status within Outstanding Natural Landscapes and Outstanding Natural Features; and the change from a proposed non-complying activity status which was indicated in the March 2015 Draft District Plan. The Society seeks that the s32 Landscape Evaluation Report be re-written containing discussion of the costs and benefits associated with the option of residential subdivision and development becoming non-complying versus discretionary. The s.32 Landscape Evaluation Report should then be publicly notified with a 40 working day submission period."

49. Against this background, counsel for the Council submitted that amendment to the activity status of subdivision in the manner sought by UCES was not a reasonably foreseeable consequence of the UCES submissions and relief. In particular, it was argued that other submitters could not have identified that non-complying status was a likely or even possible consequence of the relief and, as such, could be prejudiced by the outcome now sought by UCES.

50. Counsel did not, however, explain how her submission could be reconciled against the fact that there were two further submissions[56] that state the further submitters' opposition to the UCES position that subdivision in ONLs and ONFs be non-complying. We note also that a third further submission[57] opposed the relief described within the summary of submissions, while stating that this was not part of the package of relief sought in UCES's submission.

51. We think that the last further submission (from Darby Planning LP) made a valid point. The summary of submissions recorded a position being taken in the UCES submission that, at best, is implicit. The further submitters similarly seem to have read between the lines in the summary of submissions, inferring where the argument might go, rather than reading what the submission actually said. It should not be necessary for interested parties to guess where a submission might be taken. While submissions are not to be read literally or legalistically, the substance of what is sought should be reasonably clear.

52. Stepping back and looking at the submission, we think it was misconceived from the outset. While a submission may attack the way in which a section 32 evaluation has been carried out, as we observed to Mr Howarth at the hearing, this is only a means to an end. The reason for attacking the section 32 evaluation is to form the basis of a challenge to the objective, policy, rule or other method supposedly supported by the section 32 evaluation. The link between

[56] Further Submissions 1029 and 1097
[57] Further Submission 1313

the two is illustrated by section 32A of the Act which states that a challenge to a plan provision on the basis that the section 32 evaluation is flawed may only be made in a submission **on the Plan**[58]. The section 32 analysis is not part of the PDP.

53. The solution to a flawed section 32 evaluation is to reassess the Plan provision sought to be changed, not to renotify the section 32 evaluation and to give the general public another opportunity to make submissions on the Plan.

54. Counsel for the Council also pointed out that the UCES submission referred only to the potential that on such renotification, submissions would be invited on the rural provisions of the Plan. While technically correct, we do not think that that is decisive.

55. The point that we are more concerned about is that on a fair and reasonable reading of the UCES submission (and indeed the summary of that submission), the public would have thought that at worst there would be another opportunity to make submissions before the activity status of residential submissions in ONLs and ONFs was changed to be more restrictive.

56. Given the advice we have received on the extent of the District currently mapped as ONL or ONF (nearly 97%), the relief now sought by UCES is a highly significant change. There is in our view considerable potential that interested parties would not have been as assiduous in reading 'between the lines' of the UCES submission as the further submitters referred to above and would be prejudiced by our embarking on a consideration of the merits of non-complying status applying to subdivision and development for residential purposes within ONLs and ONFs.

57. We have considered Mr Howarth's alternative point, made in his 18 August memorandum, which relies on a UCES further submission on Darby Planning LP's submission in relation to Rule 27.4.1.

58. The Darby Planning submission sought that Rule 27.4.1 be amended so that the default status for subdivisions is a controlled status unless otherwise stated. The submission suggested a number of areas of control as consequential changes to the proposed change of status.

59. The UCES further submission stated in relation to aspects of the Darby Planning submission related to subdivision and development:

"The Society opposes the entire submission in paragraphs 23-29, and in particular the request that rural subdivisions and development become a controlled activity. The Society seeks that this part of the submission is entirely disallowed."

60. The further submission went on, however, to note the potential significance of proposed legislative changes which, if adopted, would have the result that discretionary activity subdivisions would not be publicly notified[59], and stated:

"The Society is changing its position from that in its Primary Submission and it now seeks that all rural zone subdivision and development becomes non-complying."

61. The first thing to note is that UCES viewed this as a change from its primary submission. Clearly, the Society did not regard its submission as already raising this relief.

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58 See clause 6 of the First Schedule to the Act. Emphasis added.

59 The provision in question was Clause 125 of the Resource Legislation Amendment Bill 2015

62. Addressing the ability of a further submission to provide a jurisdictional basis for the relief sought, a further submission is not an appropriate vehicle to advise of substantive changes of position. This point is considered in greater detail in the Hearing Panel's Report 3, but in summary, clause 8(2) of the First Schedule to the Act states that a further submission must be limited to a matter in support of or in opposition to the relevant submission.

63. Clearly this particular further submission was in opposition to the relevant submission. It sought that the relevant submission be disallowed. If the Darby Planning LP submission was disallowed, the end result would be that Rule 27.4.1 would remain as notified, that is to say that unless otherwise stated, subdivision activities in ONLs and ONFs would be discretionary activities. A further submission cannot found jurisdiction in the manner that Mr Haworth sought.

64. We have considered, given the discussion above, whether any other submissions might provide jurisdiction for the relief now sought by UCES. There were a very large number of submissions seeking that Rule 27.4.1 be amended. The vast majority of those submissions sought, like Darby Planning LP, that the default status for subdivisions in the District be controlled activity status. Clearly those submissions do not provide jurisdiction for the relief UCES sought. They sought to move the rule in the opposite direction to that which UCES sought.

65. There are a number of more general submissions that sought that the entire Chapter 27 of the PDP be deleted and replaced with Chapter 15 of the ODP[60]. Under Chapter 15 of the ODP, the only non-complying subdivision activities are those falling within Rule 15.2.3.4. That rule related to a series of specific situations and does not support the UCES relief either.

66. Having reviewed all of the submissions on these Rules, none that we can identify provide jurisdictional support for the relief now sought by UCES.

67. We have therefore concluded that the altered relief now sought by UCES is outside the scope of any submission and cannot be considered further as the basis for any recommendation we might make on the final form of Chapter 27.

68. Before leaving the point, we should observe that had we identified any jurisdictional basis for Mr Haworth's submissions, there is considerable merit in the point he sought to make.

69. The Hearing Panel's Report 3 canvassed the material relevant to the strategic objectives and policies governing activities within and affecting ONLs and ONFs and concluded that the appropriate response would provide a high level of protection to those landscapes and features.

70. Against that background, discretionary activity status for subdivision and development associated with new residential activities being established in ONL's and ONFs appears somewhat incongruous. The Environment Court identified in relation to the ODP that discretionary activity status was an issue and sought to make it clear that that status had been applied in that context to activities in ONLs and ONFs because those activities are

60 E.g. Submissions 497, 512, 513, 515, 520, 522, 523, 525, 527, 529, 530, 531, 532, 534, 535, 536, 537, 608

inappropriate in almost all locations within the zone[61]. As the Court noted[62], it was necessary to displace the inferences that would otherwise follow from discretionary activity status. The Court also observed that if it had not been able to make clear that discretionary activity status was being used in that manner, non-complying status would have been appropriate.

71. In our view, it would be more consistent with the policy framework we have recommended, and arguably more transparent, if subdivision and development for the purposes of residential activities in ONLs and ONFs was a non-complying activity. Had we had jurisdiction, we would likely have recommended non-complying status for residential subdivision and development in ONLs and ONFs for this reason.

72. Mr Haworth drew our attention to another reason why, in our view, Council should consider this issue further.

73. At the time of our hearing, Parliament had before it the Resource Legislation Amendment Bill 2015. Among the amendments proposed was a change to the notification provisions that, as Mr Haworth observed, would mean that other than in special circumstances applications for subdivision consents would not be publicly notified unless they were non-complying activities. Mr Haworth expressed concern that this result would apply to residential development within the ONLs and ONFs. As noted above, this foreshadowed legislative change prompted a change in position from UCES.

74. The Resource Legislation Amendment Bill was enacted[63] in April 2017. As we read them, the notification provisions would have the same effect as those of the Bill that Mr Haworth drew to our attention.

75. We infer that this legislative change reflects the usual implications to be drawn from discretionary activity status discussed by the Environment Court in its 2001 decision, rather than the special meaning in the ODP, which has effectively been rolled over into the PDP.

76. We do not regard it as satisfactory that other than in exceptional circumstances, residential subdivision and development in ONLs and ONFs is considered on a non-notified basis given the national interest[64]in their protection and the intent underlying discretionary activity status in this situation. We recommend that Council initiate a variation to the PDP to alter the rule status of this activity to non-complying.

1.8 General Matters

77. There are a number of general submissions that we should consider at the outset. The first are the submissions that sought that Chapter 27 be deleted and replaced with Chapter 15 of the ODP. We have already noted the submissions in question in the context of our discussion of the UCES scope issue.

78. The equivalent rule to rule 27.4.1 in the ODP is Rule 15.2.8.1 which provides that the default status for subdivision is controlled activity status. This was at the heart of the huge bulk of submissions that we have considered on Chapter 27 and, indeed, much of the evidence and submissions we heard; namely that the default status under the ODP should not be changed.

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61 ODP 1.5.3(iii)(iii)

62 Lakes District Landowners Society Inc v QLDC C75/2001 at [43-46]

63 As the Resource Legislation Amendment Act 2017

64 Section 6, of course, identifies it as being a matter of national interest

79. The broad relief sought in a number of submissions (that Chapter 27 revert to Chapter 15 of the ODP) necessarily includes the narrower point (as to the default status of subdivision activities). We will consider the broad point first, and address the narrower point in the next section.

80. The other set of general submissions that we should address at the outset are those that sought that the structure of the Chapter 27 be amended so it is consistent with other zones, including using tables, and ensuring that all objectives and policies are located at the beginning of the section[65].

81. Other general submissions worthy of note are submissions 693 and 702, which suggested that the objectives and policies in Chapter 27 be reordered to make it clear which are solely applicable to urban areas, and submission 696, which sought that that the number of objectives and policies in Chapter 27 be reduced.

82. Submission 817 sought that objectives D1 and D4 of the National Policy Statement for Freshwater Management 2014 be implemented in Chapter 27.

83. Lastly Submission115 sought general but more substantive relief – related to provision for cycleways and pathways, and reserves.

84. Looking first at the question as to whether Chapter 27 should simply be deleted and Chapter 15 of the ODP substituted, the evidential foundation for this submission is contained in the evidence of Messrs Brown, Ferguson and Farrell. Mr Goldsmith summarised their evidence as being that the "ODP CA [standing for Controlled Activity] regime is not complex and works well."

85. That might be contrasted with the view set out in the section 32 report underpinning Chapter 27 which stated[66] that the ODP subdivision chapter is complicated and unwieldy. Mr Bryce, who gave planning evidence for the Council, noted the section 32 analysis, but focused his evidence more on the substance of the ODP Chapter 15 provisions that we will come to shortly.

86. Mr Goldsmith likewise sought to distinguish between the format of Chapter 15 and the substance. He accepted that the format of Chapter 15 could be improved and described[67] that aspect of the matter as follows:

> *"Format refers to the structure of the existing ODP Chapter 15 which follows the 'sieve' structure of the rest of the ODP. The 'sieve' structure is the approach which does not detail activity status in the likes of a Table, but requires activity status to be determined by reviewing a considerable number of plan provisions to see which layer of the multi-layered 'sieve' (each layer containing different size holes) catches the activity in question. This is a somewhat complex and counter-intuitive approach. It is acknowledged that the alternative PDP approach, classifying activities by reference to Tables, is clearer, more easily understood, and preferable. That is not challenged."*

87. As against that somewhat negative viewpoint, Mr Goldsmith suggested to us[68] that one of the virtues of the ODP Chapter 15 is that "*it is easy to find and apply the relevant Chapter 15*

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65 See Submissions 632, 636, 643, 688, 693, and 702. Submission 632 was the subject of a number of further submissions, but they do not appear to relate to this aspect of the submission.

66 Section 32 Evaluation at page 8

67 Legal submissions for GW Stalker Family Trust and others at page 3.

68 Ibid at page 4

objectives and policies. It is rarely necessary to have recourse outside Chapter 15 to the land use Residential, RR and RL Zones." At least in that regard, the broader structure of the PDP needs to be acknowledged. Unlike the ODP, the PDP seeks to provide strategic direction in its early chapters which guides the implementation of more detailed chapters of the PDP like Chapter 27. In Report 3, the Hearing Panel for that Stream recommended that submissions seeking that the strategic chapters be deleted and the PDP revert to the ODP approach be rejected.

88. The corollary of that recommendation is that Chapter 27 cannot operate as a code entirely separated from the balance of the PDP. Broader strategic objectives and policies need to be taken into account.

89. Further, if the subdivision chapter were to revert to the format of Chapter 15, that would be out of step with the chapters of the PDP governing specific zones which take a similar approach to Chapter 27 (indeed, some general submissions noted already seek that the format of Chapter 27 be moved even more closely into line with those other chapters).

90. Lastly, when considering the merits of the way in which Chapter 15 is constructed, we note that the final form of Chapter 15 was the subject of extensive negotiations as part of the resolution of the Environment Court appeals on the ODP. The Court confirmed the final form of Chapter 15 in a consent order, but commented[69]:

"The amendments to Section 15 have been the subject of a somewhat circuitous process of assessment, reassessment and finally confirmation by the parties. Having considered the amended Section 15 now confirmed by the parties, I find that it achieves the aim of consistency with Section 5 of the plan in substance, even if its form still appears somewhat incongruous and unwieldy when compared with the rest of the Plan."

91. This is hardly a ringing endorsement, such as would prompt us to reconsider the wisdom of a different format to the PDP approach that the parties we heard from appeared to accept is clearer and more easily understood, as well as being more consistent with the way the balance of the PDP is structured.

92. In summary, we recommend that the general submissions that sought Chapter 15 of the ODP be substituted for Chapter 27 be rejected. We emphasise that that is not the same thing as rejecting the submissions that sought incorporation of key elements of the existing ODP approach (in particular the controlled activity status for subdivisions generally). As Mr Goldsmith aptly put it, this is an issue of substance that needs to be distinguished from the format of the provisions.

93. Turning to the general submissions already noted, which sought that the structure of Chapter 27 be amended so that it has all objectives and policies together and utilises tables, those submissions were a response to the notified Chapter 27 which exhibited the following features:
    a. It separated general objectives and policies (in section 27.2) from location-specific objectives and policies (in section 27.7);
    b. Consequential on that division, the standards for subdivision activities were separated in a similar manner, with general standards in section 27.5 and location-specific standards in section 27.8;
    c. The general standards in section 27.5 are a mixture of text and tabulated standards.

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69 *Wakatipu Environmental Society Inc & Others v Queenstown Lakes District Council* C89/2005 at [8]

94. In each of these respects, Chapter 27 is out of step with the detailed chapters in the balance of the PDP and Mr Bryce recommended that it be reformatted, as suggested by the submitters.

95. While consistency in formatting of the PDP is desirable, we also consider that the altered format suggested by Mr Bryce is both more logical and easier to follow. Accordingly, we agree with Mr Bryce and recommend that those submissions be accepted.

96. One consequence of such a significant reorganisation of the chapter is that it becomes difficult to track substantive changes sought in submissions, because of course, the submissions relate to the numbering in the notified chapter. In our discussion of submissions following, we will refer principally to the provision number in the submission (which in turn reflects the notified chapter), but provide in brackets the number of the comparable provision in our reformatted and revised version attached in Appendix 1.

97. The remaining general submissions noted above can be addressed more briefly.

98. As regards the submissions that sought that objectives and policies be reordered and labelled to make it clear which are solely applicable to urban areas, we formed the view during the course of the hearing that there is an undesirable degree of uncertainty as to when particular policies related just to the urban environment, given that this appeared to be the intention. We asked Mr Bryce to consider the merits of separating the district-wide objectives and policies into urban and rural sections[70]. Section 3 of Mr Bryce's reply evidence canvassed the point. Mr Bryce's opinion was that while there was some merit in a separation of objectives and policies into rural and urban sections, a number of the objectives and policies apply to both, making such separation problematic. We accept Mr Bryce's point, that a complete separation is not feasible, but we think that much more clarity is required for those objectives and policies that do not apply to both rural and urban environments, as to what it is that they do apply to.

99. In summary, therefore, we recommend acceptance in part of the general submissions we have noted. We do not think a further reordering is required or desirable, but we accept that a number of the objectives and policies need to be amended to remove the ambiguity that currently exists. We will discuss the exact amendments we propose as we work through the provisions of Chapter 27.

100. While we accept the desirability of keeping the number of objectives and policies to a minimum, the Millbrook submission seeking that the number be reduced is framed too generally to be of assistance. RCL Queenstown Pty Ltd[71] provided more targeted relief, listing the objectives and policies it thought should be deleted. However, Mr Wells, who gave evidence for both Millbrook and RCL, expressed broad satisfaction with the amendments Mr Bryce had recommended. While he expressed the views that further refinement might be made, he did not advance that point further, discussing specific provisions. It follows that while we have kept an eye on the potential for further culling of the objectives and policies beyond Mr Bryce's recommendations, so to minimise duplication, we have no evidential basis on which we could recommend a substantial reduction in the number of objectives and policies in Chapter 27.

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70 Following the precedent set by the Independent Hearing Panel on the Proposed Auckland Unitary Plan

71 Submission 632

101. As regards Submission 817, the submission is non-specific as to what changes might appropriately be made to Chapter 27 and the submitter did not provide us with any evidence that would assist further. Mr Bryce recommended an amendment to Policy 27.2.5.12 to provide greater linkage between subdivision management and water quality in part to address this submission. We accept that suggested change. Having reviewed the point afresh, we have not identified any other respects in which the Chapter would be amended to properly give effect to the provisions of the National Policy Statement identified by the submitter.

102. Lastly, addressing Submission 115 Mr Bryce recommended its rejection. We concur. Provision for cycleways, pathways and reserves is a point of detail to be assessed on a case by case basis under the framework of the objectives and policies of Chapter 27.

2. DEFAULT ACTIVITY STATUS

2.1 Controlled Activity?

103. A logical analysis of the submissions on Chapter 27 would start with the objectives, move to the policies, and then consider the rules to implement those policies. In this case, however, the default activity status for subdivisions dominated the submissions and was almost the sole issue in contention at the hearing. Accordingly, although it may appear counter-intuitive, we have decided to address this issue first.

104. As already noted, Rule 27.4.1 of the notified subdivision chapter provided that all subdivision activities would be discretionary activities, except as otherwise stated.

105. Although Rules 27.4.2 and 27.4.3 provided for non-complying and restricted discretionary activities respectively, these rules addressed a series of specific situations that, with one exception, were likely to be a small subset of subdivision applications. The exception was the provision in Rule 27.4.2 that subdivision not complying with the standards in sections 27.5 and 27.8 should be non-complying (other than in the Jacks Point Zone).

106. It follows that on the basis of the PDP as notified, the overwhelming majority of subdivisions that met the Chapter 27 standards would be considered as discretionary activities. One submitter supported the notified provisions[72]. Two other submissions[73] supported discretionary activity status for subdivision in the low density residential zone. A very large number of submitters opposed Rule 27.4.1[74]. Most of those submitters sought that the default activity status be 'controlled'. Many submitters either proffered consequential changes such as suggested matters to which Council's control might be limited or sought consequential changes both to the rule and to the objectives and policies of Chapter 27 more generally.

107. Many submissions sought controlled activity status on a more targeted basis. Submission 591 sought controlled activity status for all subdivisions in the urban zones. Other submitters[75] sought controlled activity status in one or more of the urban zones. Another group of submissions focussed on the rural zones seeking that subdivision in the Rural Residential

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72 Refer Submission 21

73 Submissions 406 and 427: Opposed in FS1262

74 The tabulated summary of the submissions and further submissions either on Rules 27.4.1-3 generally or specifically on Rule 27.4.1 occupied some 25 pages of Appendix 2 to Mr Bryce's Section 42A Report.

75 E.g. Submissions 249, 336, 395,399, 485, 488: Supported in FS1029, FS1061 and FS1270

8. SECTION 27.5 - RULES –STANDARDS FOR SUBDIVISION ACTIVITIES

8.1 Rule 27.5.1 – Minimum Lot Sizes

732. A large number of submissions were made on notified Section 27.5.1 (renumbered 27.6.1), which set out the minimum lot area in specified zones. Most of these submissions were transferred for consideration in the relevant zone hearings given the obvious linkages between minimum densities and the outcomes sought to be achieved in each zone. This was not possible in relation to the parts of Rule 27.5.1 (as notified) specifying minimum densities in the Rural, Rural Lifestyle, Rural Residential and Gibbston Character Zone because, by the time that decision was made, the hearings of submissions on those zone provisions had already occurred. Submissions related to densities in the Rural Lifestyle Zone were, however, deferred as a result of the Council's decision to undertake a structure planning process in the Wakatipu Basin[266].

733. The Chair's direction provoked a degree of confusion on the part of submitters. Mr Ben Farrell gave evidence, and Mr Goldsmith made submissions for a group of submitter parties on the minimum average lot size in the Rural Lifestyle Zone in case that particular aspect had not been deferred along with the minimum lot size.

734. The minimum average density applied in the Rural Lifestyle Zone is inextricably connected to the minimum lot size. As we observed to Mr Goldsmith, it is necessary to know what the minimum lot size is before considering the minimum average, because the minimum average must necessarily be greater than the minimum if it is to serve any purpose. Accordingly, we think there is no value of entering into a discussion of the minimum average lot size separate from the minimum lot size and have proceeded on the basis that both should be deferred until the results of the Wakatipu Basin Structure Plan process are able to be considered.

735. The Stage 2 Variations now proposes rezoning of the Wakatipu Basin, with the result that there is no Rural Lifestyle Zoned land in that area. Accordingly, any consideration of minimum densities (and minimum average densities) within Rural Lifestyle Zoned land in the Wakatipu Basin will only need to be considered as a consequence of the decisions on the Stage 2 Variations altering that position.

736. As above[267], no submitter sought to be heard in relation to Rural Lifestyle Zone Minimum lot density requirements outside the Wakatipu Basin, and we thus have no evidence to contradict the Council position that the notified minimum densities are appropriate in the balance of the District.

737. Notified Rule 27.5.1 stated minimum lot areas for a number of zones that we had understood (based on advice from counsel for the Council) would be the subject of a subsequent stage of the District Plan review process – specifically the Township, Industrial A and B, Riverside and Hydro Generation Zone.

738. In his Section 42A Report, Mr Bryce recommended that those references be deleted. When we discussed the point with him, however, he could not identify for us any submission seeking that relief and in the legal submissions in reply for the Council, it was submitted that there was no jurisdiction to do so. The fact that some provisions of the PDP purport to apply to land not

266 Refer the Chair's procedural direction of 4 July 2016 discussed earlier

267 Refer Section 1.4 above

forming part of Stage 1 of the PDP review is problematic, to say the least. The key issues were canvassed in the Chair's Minute to the Council dated 12 June 2017[268] albeit in the context of notations on the planning maps.

739. The point of particular concern to us is whether members of the public would have thought to go past advice that Stage 2 zones were not part of the PDP process, looking for standards for those zones buried in Chapter 27. The fact that it appears the sole submission on the minimum lot standards in section 27.5.1 for the Stage 2 zones is by the Council itself tends to reinforce that concern. It is also somewhat ironic that the staff recommendation is that the Council's own submission be rejected as being out of scope as not being within Stage 1 of the PDP.

740. In a subsequent hearing, relating to Chapters 30, 35 and 36 (Stream 5), the Council submitted that it would be appropriate to transfer provisions purporting to set noise limits for zones not within Stage 1 of the PDP to Stage 2. The Stream 5 Hearing Panel noted a number of reasons why it did not agree with that course of action. It concluded that reference to non-Stage 1 zones in the relevant rule was in error and that those references could and should be deleted under Clause 16(2)[269]. We have come to the same conclusion. In summary, if the zones are not part of Stage 1, they remain part of the ODP, and nothing in the PDP can change the provisions of the ODP. Their removal is not a substantive change to the PDP.

741. As a result, a relatively small number of submissions on notified Rule 27.5.1 require consideration at this point.

742. Following the order in which submissions are discussed in the Section 42A Report, the first zone Mr Bryce discussed was the Rural Residential Zone. He noted a submission[270] seeking reinstatement of the ODP provisions governing any Rural Residential land at the north of Lake Hayes, which would require an 8000m² lot average. Mr Bryce recommended acceptance of that submission, but the land in question is proposed to be rezoned as part of the Stage 2 Variations. The submission will need to be reconsidered in that process.

743. The second zone discussed by Mr Bryce was the Rural Zone (mislabelled Rural General in the Section 42A Report). Mr Bryce noted two submissions[271] seeking a minimum lot size be specified for subdivisions within the Rural Zone and the Gibbston Character Zone and a minimum allotment size of 5 acres (2 hectares) in the Rural Zone respectively.

744. Mr Bryce recommended rejection of both submissions, referring to the reasoning of the section 32 evaluation to the effect that the absence of a minimum lot size prevents any '*development right*' arising in these zones and emphasising the desirability of maintaining the existing approach, based on landscape considerations.

745. We note that Mr MacColl did not seek to support NZTA's submission on this point and submitter 38 did not appear at the hearing to provide us with evidence that would cause us to reconsider the approach in the Section 32 Report supported by Mr Bryce.

746. Accordingly, we agree with Mr Bryce's recommendation that these submissions should be rejected.

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268 Minute Concerning Annotations on Maps 12 June 2017

269 Report 8 at Section 18.1

270 Submission 26

271 Submissions 719 and 38: Supported in FS1109; Opposed in FS1097 and FS1155

747. The next zone Mr Bryce discussed was the Jacks Point Zone. He noted Submission 762[272] seeking that the final specified '*minimum lot area*' should be referenced to "*all other activity areas"*.

748. Mr Bryce recommended this amendment be made in aid of efficient and effective plan administration.

749. The Stream 9 Hearing Panel has, however, identified broader issues with these provisions. Specifically, neither FP area will exist following revision of the Jacks Point Structure Plan, and the cross reference to Rule 41.5.8 should apply to subdivision in Residential Activity Areas, rather than 'other' areas. Our recommended table shows these amendments.

750. Mr Bryce also noted[273] two submissions[274] seeking amendment to the activity table in notified Rule 27.5.1 so that LDRZ land within the Queenstown Airport Outer Control Noise Boundary should have a minimum lot area of 600m². Mr Bryce recommended that these submissions be accepted in order to maintain the status quo established by ODP Plan Change 35 and thereby protect the operation of an item of regionally significant infrastructure. We note specifically the emphasis given by the Proposed RPS in that regard.

751. We agree with Mr Bryce's recommendation with the result that in that part of the table related to the renamed Lower Density Suburban Residential Zone, additional text is inserted as follows:

"Within the Queenstown Airport Air Noise Boundary and Outer Control Boundary: 600m²."

752. We note that the Hearing Panel hearing submissions on the residential zones (Stream 6) has recommended[275] that the Large Lot Residential Zone be separated into two zones (Large Lot Residential Zone A and B respectively) and that the minimum densities in these zones be 2000m² and 4000m² respectively. We recommend consequential amendment of Rule 27.6.1 accordingly. Insertion of the Coneburn Industrial Zone and special provisions for the Rural Residential Zone at Camp Hill, as recommended by the Stream 13 Hearing Panel, has likewise created a need for consequential amendments to insert minimum lot sizes for those areas. The Stream 13 Panel has also recommended deletion of the Queenstown Heights Sub-Zone, and so minimum lot sizes are no longer required for that area.

753. Finally, a consequence of the Stream 8 Hearing Panel rezoning Wanaka Airport from Rural to Airport Zone and the recommendation of that Panel that the subdivision provisions applying to the Airport Zone at Wanaka mirror those applying to the Rural Zone[276], is that the reference to "Airport Mixed Use" needs to be changed to "Airport Zone". We have not had any recommendations for other changes to the minimum lot areas in other zones from Hearing Panels considering those matters.

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272 Opposed in FS1217, FS1219, FS1252, FS1277, FS1283 and FS1316

273 Section 42A Report at 16.1

274 Submissions 271 and 433: Opposed in FS1097 and FS1117

275 Refer Report 9A at Section 16.1

276 Refer Report 11 at Section 61.1

754. Lastly, we record that the Stage 2 Variations have proposed deletion of some line items in renumbered section 27.6 (and addition of others). Our recommended Chapter 27 greys out the existing provisions proposed to be changed.

755. More generally, the format of (now) Rule 27.6.1 was the subject of criticism[277]. It was suggested that it be redrafted to be clearer. We agree with Mr Bryce's view that the table of minimum lot sizes is clear (or in reality, as clear as it is possible to be, given the need for district-wide provisions in this area). However, we recommend both a minor change to the description of average net site area in the opening words of the rule, and an Advice note referring the reader to the rules governing non-compliance with the minimum site areas to assist readability.

756. Notified Section 27.5.1 had 7 sub-rules followed by two further rules governing subdivision associated with infill development and subdivision associated with residential development on small sites in the (now) Lower Density Suburban Residential Zone. As part of the reorganisation of the chapter recommended by Mr Bryce, these provisions have been shifted either into our renumbered Section 27.5 or into the zone and location specific rules in renumbered Section 27.7. We agree that with one exception, they are more appropriately grouped with these other provisions and we will consider them in that context. The exception is notified Rule 27.5.1.3 which related to minimum size requirements (for access lots, utilities, roads and reserves) and which more properly should remain with renumbered 27.6.1.

757. This provision was the subject of a submission[278] that sought that it also state that lots created for the specified purposes shall not be required to identify a building platform. Mr Bryce recommended rejection of this submission on the basis that the requirement for a building platform (refer renumbered Rule 27.7.8) stated that it relates to allotments created for the purposes of containing residential activity. As Mr Bryce observed, the suggested addition is therefore unnecessary and we likewise recommend rejection of the submission.

758. The end result is, however, that a renumbered Section 27.6 is limited to minimum lot area standards and we recommend that the heading of the section be amended to reflect that, and therefore to read:

"Rules – Standards for Minimum Lot Areas."

759. We record that having considered the alternatives open to us on the few matters the subject of submission in renumbered 27.6.1, we believe that the recommended provisions represent the most appropriate way to achieve the Chapter 27 objectives, and the most appropriate way to implement the policies relevant to those objectives.

8.2 Zone and Location Specific Rules

760. In his Section 42A Report, Mr Bryce noted three submissions[279] that sought that subdivision undertaken in accordance with a Structure Plan or Spatial Layout Plan identified in the PDP be a controlled activity. Notified Rule 27.4.3 provided that it is was restricted discretionary activity. Mr Bryce supported controlled activity status on the basis that a Structure Plan/Spatial Layout Plan provides a level of certainty to both proponents and decision-makers

[277] Submission 631

[278] Submission 635

[279] Submissions 456, 632 and 696: Supported in FS1097; Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

as to what is expected in terms of subdivision design, and the fact that the Structure Plan/Spatial Layout Plan has been identified through a Plan Change process means that opportunities, constraints and effects of the future subdivision and land use activities have already been identified.

761. We agree that where a Structure Plan or similar document has been incorporated in the PDP there are good grounds for taking a less restricted regulatory approach to subdivision that is consistent with the Structure Plan.

762. Mr Bryce suggested a number of matters of control to accompany a new controlled activity rule in his Section 42A Report, that were further refined in his reply evidence. We have no issue in principle with the matters of control other than that the language should largely, parallel that discussed in Section 2.1, but we consider that the initial description of the activity recommended by Mr Bryce needs amendment in three respects. First, Mr Bryce suggested that the cross reference to a Structure Plan should test whether subdivision is undertaken "*in accordance with"* the document. We consider that requiring consistency with the document would be a better test given that Mr Bryce proposes that in each of the following rules dealing with areas that are currently the subject of a Structure Plan or like document, consistency with the document is a suggested matter of control.

763. Secondly, the suggested rule refers to Structure Plans, Spatial Layout Plans and Concept Development Plans, reflecting the range of different documents that are already identified and included in the District Plan. We think it would be more efficient if the term "*Structure Plan"* were defined to include documents that fulfil a similar function. Ideally, a new definition would also outline the minimum requirements for a 'Structure Plan' to be included in the PDP, but as discussed earlier, the policy gap in this regard will need to be filled by a variation.

764. Thirdly, we consider that it is not sufficient that a Structure Plan is "*identified"* in the PDP. We believe it should be "*included"* within the PDP so the key aspects of subdivision design are apparent to the readers of the Plan, and there can be no doubt as to whether the requirements for controlled activity status are met. As discussed shortly, there is also a technical problem with the approach in the notified PDP because Structure Plans do not meet the tests for incorporation by reference in Clause 30 of the First Schedule.

765. In summary, therefore, we recommend inclusion of a new controlled activity rule numbered 27.7.1, to replace notified Rule 27.4.3 that reads as follows:

"Subdivision consistent with a Structure Plan that is included in the District Plan.
Control is restricted to:

a. *subdivision design, and any consequential effects on the layout of lots and on lot sizes and dimensions*
b. *internal roading design and provision, and any consequential effects on the layout of lots, and on lot sizes and dimensions;*
c. *property access and roading;*
d. *esplanade provision;*
e. *the adequacy of on site measures to address the risk of natural and other hazards on land within the subdivision;*
f. *fire fighting water supply;*
g. *water supply;*
h. *stormwater design and disposal;*
i. *sewage treatment and disposal;*

j. energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks;
k. open space and recreation;
l. ecological and natural values;
m. historic heritage;
n. easements;
o. any additional matters relevant to achievement of the objectives and policies in part 27.3 of this Chapter.

766. Associated with this Rule we recommend to the Stream 10 Hearing Panel that a new definition be inserted in Section 2 of the PDP worded as follows:

"Structure Plan means a plan included in the District Plan, and includes Spatial Development Plans, Concept Development Plans and other similarly titled documents."

767. Notified Section 27.7.3 is headed "*Kirimoko Structure Plan – Matters of Discretion for Restricted Discretionary Activities".*

768. Submission 656 sought enlargement of the discretion provided over earthworks and greater specification of aspects of subdivision design the subject of discretion.

769. Initially, Mr Bryce recommended acceptance of the submission[280].

770. By his reply evidence, Mr Bryce had come to the view that the specific matters of control needing to be considered in relation to the Kirimoko could be substantially reduced. Mr Bryce did not discuss in his reply evidence his reasons for coming to this conclusion, but we infer that some of the matters were considered redundant in the light of other recommended PDP provisions (particularly the matters of assessment Mr Bryce recommended be introduced as part of his reply evidence).

771. We agree with that and we think that Mr Bryce's recommended rule might be further pruned to remove duplication. In particular, given our recommendation that consistency with a structure plan should be a precondition to Rule 27.7.1, it is not necessary to refer to such consistency as an additional matter of control in this rule. Similarly, given that subdivision design is a matter of control under Rule 27.7.1, further reference to it is not required in this rule.

772. We also consider that some amendment of the language is required to reflect the fact that the rule is specifying matters of control rather than (as was the case for notified Section 27.7.3) matters of discretion, to which particular regard had to be had.

773. In summary, therefore, we recommend that section 27.7.3 be renumbered 27.7.2 and revised to read:

"In addition to those matters of control under Rule 27.7.1, any subdivision of the land shown on the Kirimoko Structure Plan included in Part 27.13, the following shall be additional matters of control:
a. *roading layout;*
b. *the provision and location of walkways in the green network;*
c. *the protection of native species as identified on the Structure Plan as green network."*

280 Section 42A Report at 22.12

774. Because this section of the PDP contains other provisions related to Kirimoko, we think it would be clearer if all of those provisions were collected under a single heading. We have therefore numbered the rule above 27.7.2.1 under the heading "27.7.2 – Kirimoko". We will discuss the balance of provisions under that heading shortly.

775. Rule 27.7.3.1 in Mr Bryce's revision of Chapter 27 (relocated from notified Policy 27.7.6.1) related to the Ferry Hill area. The Stage 2 Variations propose deletion of these provisions and so we need say no more about them

776. Mr Bryce recommended that the next provision in his reformatted section 27.7 relate to the Jacks Point Zone. By his reply evidence, Mr Bryce had recommended that the sole additional matter of control that needed to be referenced, consequential on other provisions he had recommended, was consistency with the Jacks Point Zone Structure Plan. For the reasons discussed above in relation to the Kirimoko area, it is not necessary to provide another rule solely for that purpose we do not therefore recommend inclusion of the rule suggested by Mr Bryce.

777. The next two rules Mr Bryce suggested in this part of the revised Chapter 27 related to the Peninsula Bay area and were derived from notified Section 27.8.2.1. As notified, that provision read:

"No subdivision or development shall take place within the Low Density Residential Zone at Peninsula Bay unless it is consistent with an Outline Development Master Plan that has been lodged with and approved by the Council."

778. The sole primary submission on Section 27.8.2.1 supported its continued inclusion[281]. While two further submissions[282] opposed that submission, given the permissible ambit of further submissions discussed in the Hearing Panel's Report 3, these further submissions do not take the matter further.

779. This rule needs to be read together with heading of Section 27.8 and Section 27.8.1 that preceded it.

780. The heading of Section 27.8 as notified was:

"Rules – Location Specific Standards."

781. Section 27.8.1 contained a general provision stating that activities not meeting the standards specified in Section 27.8 should be non-complying activities, unless otherwise specified.

782. Mr Bryce recommended that consequential on his recommended revision of the format of Chapter 27, Section 27.8.2.1 should be converted to two rules, one a controlled activity rule (for subdivision or development consistent with the Outline Development Master Plan) and the second, a non-complying rule (for development which is inconsistent with the Outline Development Master Plan).

783. Unlike the rules that we have been discussing however, the Outline Development Master Plan for Peninsula Bay is not contained in the PDP.

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281 Submission 378

282 FS1049 and FS1095

784. Nor is it even clear whether this is an existing document or one that might be "*approved"* by the Council in future. The way that notified Section 27.8.2.1 is framed, however, suggests that even if an Outline Development Master Plan has already been approved, there might yet be a successor. Be that as it may, the reference in the notified PDP to this Outline Development Master Plan, and the suggestion that the activity status of future subdivision and development should be dependent on whether there is such a plan (and whether the subdivision or development in question is consistent with it), raises questions as to whether this is permissible in the light of the Environment Court decisions on declarations sought in relation to the use of framework plans in the context of the Proposed Auckland Unitary Plan[283] discussed in our Report 1.

785. Given the conclusions reached by the Hearing Panel in Report 1, this then requires us to determine what we can and should do with Section 27.8.2.1 of the notified PDP given that the only submission on it specifically seeks its retention.

786. Section 27.8.2.1 is framed in directive terms rather than as a standard in the ordinary sense of that term. From that point of view, it does not sit easily within the notified section 27.8.

787. Nor is it altogether clear to us what the rule status is intended to be for subdivision or development that is consistent with an approved Outline Development Master Plan. Mr Bryce has treated the Peninsula Bay "*Outline Development Master Plan"* as a Structure Plan, which might suggest that under the notified PDP, it fell within Rule 27.4.3. If that were the case, it would be a restricted discretionary activity with discretion restricted to matters specified in Part 27.7. Rule 27.4.3 referred, however, to a structure plan or spatial layout plan, which does not suggest an intention that the rule apply to all plans that might be considered to fall within a generic reference to structure plans. In addition, the only matters specified in Part 27.7 related to Peninsula Bay refer to provision of public access and are not framed as matters of discretion, so it would not seem to have been intended that Rule 27.4.3 would apply to the Peninsula Bay area on that ground also.

788. The end result therefore, is that we consider that under the notified PDP, subdivisions would fall within the default discretionary activity rule if consistent with an approved Outline Development Master Plan, and if not, then as non-complying activities.

789. Given our conclusion that subdivisions in most zones might appropriately be dealt with as restricted discretionary activities, we consider that the best outcome in the light of the Environment Court's guidance in the Auckland framework plan cases is that Section 27.8.2.1 be deleted as a consequential amendment to our acceptance (in part) of submissions seeking that all subdivision activities be controlled activities, and Mr Bryce's recommendation of two rules to be inserted in substitution in revised section 27.7 not be accepted. That will leave subdivision in the Peninsula Bay area as a restricted discretionary activity under our recommended Rule 27.5.7. If, in the future, the Council and/or the Peninsula Bay JV wish that further subdivision be considered as a controlled activity, then the Outline Development Master Plan applying to that area will need to be incorporated in the PDP by way of variation or plan change. Because, however, the end result is beneficial to the submitter, compared to the relief sought, we have classified the submission as 'Accepted in Part'.

790. The next provision recommended by Mr Bryce related to the Kirimoko area. The provisions Mr Bryce recommended are derived from notified Section 27.8.3.

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283 *Re Application for declarations by Auckland Council* [2016] NZ EnvC 056 and [2016] NZ EnvC 65

791. Those provisions were the subject of a specific submission[284] that sought inclusion of an additional standard related to post development stormwater runoff (that would require that during a 1 in 100year event stormwater runoff is no greater than the pre-development situation).

792. Mr Bryce recommended rejection of that submission on the basis of the Council's engineering evidence (initially Mr Glasner, but adopted by Mr Wallace) that the Council's Code of Practice requires that post development stormwater runoff be no greater than pre-development runoff up to and including in a 1 in 20-year event. Mr Wallace's evidence was that designing stormwater runoff management systems for a 1 in 100 year event would create a significant level of over-design which would in turn add significantly to the Council's maintenance costs.

793. The submitter in question did not appear to support its submission with evidence that would contradict that provided by Council. On this basis, we agree with Mr Bryce's recommendation.

794. Mr Bryce therefore suggested only grammatical changes to frame the notified provisions more clearly as standards or conditions, failure to comply with which would properly cause the activity to default to non-complying status.

795. We agree with the suggested changes. The only additional change we recommend is to correct a typographical error (referring to the Rural General Zone), to amend the cross reference to the Structure Plan to be consistent with the language of 27.7.2.1 and (as discussed above) to relocate the rule to follow Rule 27.7.2.1. Accordingly, we recommend inclusion of new **Non-Complying** Rules 27.7.2.2-4 text, reading:
"Any subdivision that does not comply with the principal roading layout and reserve network depicted in the Kirimoko Structure Plan included in Part 27.13 including the creation of additional roads, and/or the creation of accessways for more than 2 properties.

Any subdivision of land zoned Rural proposed to create a block entirely within the Rural Zone to be held in a separate Certificate of Title;

Any subdivision of land described as Lots 3 to 7 and Lot 9 DP300734, and Lot 1 DP304817 (and any title derived therefrom) that creates more than one lot that has been included in its legal boundary land zoned Rural."

796. The next rule recommended by Mr Bryce related to the Bob's Cove Rural Residential Sub-Zone and was derived from notified Sections 27.8.5.1 and 27.8.5.2. Those provisions were not the subject of specific submission by any party and Mr Bryce recommended that they be reproduced unchanged save for the formatting necessary to express them more clearly as standards/conditions. We agree, and our recommended revised Chapter 27 includes Mr Bryce's provisions in a new Rule 27.7.3.

797. The next rule recommended by Mr Bryce related to the Ferry Hill Rural Residential Sub-Zone and was derived from notified Sections 27.8.6.1-8 inclusive. These provisions are proposed to be deleted in the Stage 2 Variations and so we need not consider them further.

798. The next rule recommended by Mr Bryce related to Ladies Mile and derived from notified Section 27.8.7.1. There were no specific submissions seeking change to these provisions and

284 Submission 656

Mr Bryce recommended that they be amended only to express them more clearly as standards or conditions, failure to comply with which might prompt a shift to non-complying status.

799. We agree, and our revised Chapter 27 shows these provisions as recommended Rule 27.7.4.

800. The next rule recommended by Mr Bryce related to Jacks Point and derived from notified Sections 27.8.9.1 and 27.8.9.2.

801. These provisions were the subject of two submissions. The first[285] sought minor changes to 27.8.9.2 by way of clarification rather than substantive change. Mr Bryce recommended acceptance in part with the suggestions made by the submitter, that were in practice subsumed within the reformatting that Mr Bryce recommended.

802. The second submission[286] sought that Rule 27.8.9.2 make provision, where discretion was restricted to traffic and access, to also include the ability to provide and support public transport services, infrastructure, and connections. Mr Bryce recommended rejection of this submission on the basis that as the rule in question relates to the Jacks Point Zone conservation lots, within the identified Farm Preservation Activity Area, the matters sought to be referenced by the submitter were not applicable.

803. Mr Bryce recommended retention of the existing provisions with consequential amendments reflecting the reformatting exercise he had undertaken in response to more general submissions discussed earlier.

804. Mr Bryce also recommended specific recognition of the Hanley Downs part of Jacks Point, accepting in this regard, Mr Wells evidence discussed earlier in the context of recommended Rule 27.5.17.

805. We largely agree with Mr Bryce's recommendations. Notified rule 27.8.9.2 is, however, no longer required following deletion of the FP1 Activity Area from the Jacks Point Structure Plan. It should be deleted as a consequential change. In addition, as well as consequential renumbering and reformatting, we recommend expanding the matters of discretion so that they are consistent with our recommendations in relation to Rule 27.7.1, and address the matters made relevant by recommended Policies 27.3.7.4 and 27.3.7.7. We also suggest amending the text to refer to the Jacks Point Structure Plan as being contained in Part 27.13 and insert a new Rule 27.7.5.3, reflecting a recommendation we have received from the Stream 13 Hearing Panel[287].

806. Mr Bryce next recommended a rule to govern subdivision within the Millbrook Resort Zone that is inconsistent with the Millbrook Resort Zone Structure Plan, reflecting his observation that there does not appear to be any rule governing non-compliance with that Structure Plan. Mr Bryce recommended that subdivision in this case be a discretionary activity. Given that operation of notified Rule 27.4.1 would have had that effect in any event, this is not a substantive change. We agree with Mr Bryce that it is helpful, however, to be specific in this case. Accordingly, we recommend inclusion of a new Rule 27.7.6 along the lines suggested by Mr Bryce. The only amendments we would suggest would be that the rule cross reference the Millbrook Resort Zone Structure Plan as located in Chapter 27 and correction of a minor typographical error.

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285 Submission 762: Opposed in FS1217, FS1219, FS1252, FS1277, FS1283 and FS1316

286 Submission 798

287 Refer Report 17-8Part I

807. We should note that we recommend inclusion of three additional site/zone specific rules under this heading, the first two related to the Coneburn Industrial Zone and the Frankton North area and numbered 27.7.7 and 27.7.9 respectively, consequential on the recommendations of the Stream 13 Hearing Panel, and the last related to the West Meadows Drive area and numbered 27.7.8, reflecting recommendations from the Stream 12 Hearing Panel.

808. Lastly, and more generally, we note that many of the site-specific standards in this part of Chapter 27 do not fit easily into the structure we recommend on Mr Bryce's advice. We suspect they may be legacy provisions rolled over from the ODP. Renumbered Rule 27.7.4.1 a. for instance, was notified as a standard governing subdivision on Ladies Mile. It does not read as a standard and it would be difficult to apply as such. There were no submissions on it, and hence Mr Bryce (understandably) did not focus on it. Even if there had been a submission giving us some scope to amend (or delete) it, we were unsure what role it was intended to have. We recommend that the Council review the provisions in this section to identify any that are past there 'use-by' date, or that need reframing to meet their intended purpose.

8.3 Building Platform and Lot Dimensions

809. Mr Bryce next recommended inclusion of rules relocated from notified Rule 27.5.1.1 (related to building platforms) and 27.5.1.2 (related to site dimensions).

810. Addressing first notified Rule 27.5.1.1, this was the subject of one submission[288] seeking that the maximum dimensions of a building platform in the Rural Lifestyle Zone be specified to be 600m² (rather than 1000m²) as at present. Mr Bryce recommended rejection of that submission on the basis that flexibility as to building platform size is often required.

811. In our discussion of the restricted discretionary activity rule we have proposed for subdivision within the Rural Lifestyle Zone (27.5.8), we have recommended retention of a discretion over the size of building platforms. We regard that as a more appropriate solution than arbitrarily reducing the maximum building platform size in the Rural Lifestyle Zone, particularly given that the submitter did not appear to provide us with evidence that would have given us confidence that a reduced maximum building platform size would be appropriate in every instance.

812. Accordingly, we agree with Mr Bryce's recommendation that notified Rule 27.5.1.1 might be retained unamended, save only for relocating it in Section 27.7, and numbering it 27.7.10.

813. Turning to notified Rule 27.5.1.2, the only submissions on this provision[289] supported retention of particular aspects of the rule.

814. Mr Bryce recommended, however, deletion of specific reference to the Township Zone on the basis that it was not part of Stage 1 of the PDP. For the reasons discussed earlier, in relation to revised section 27.6, we agree that this is the appropriate outcome. The only other amendment to notified provision 27.5.1.2 recommended Is to insert the word *"lots"* rather than *"sites"* for clarity and to renumber it 27.7.11.

815. Before going on the next rule Mr Bryce recommended, we need to address the position if either of renumbered rules 27.7.8 and 27.7.9 are not complied with. Under the notified plan, this fell within Rule 27.4.2 as a non-complying activity.

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288 Submission 367: Opposed in FS1150 and FS1325

289 Submission 208, 596, 775, 803

816. We have not identified any submission seeking to change that position. We therefore recommend a new Rule 27.7.12 be inserted as follows:

"Subdivision applications not complying with either Rule 27.7.10 or Rule 27.7.11 shall be non-complying activities."

8.4 Infill subdivision

817. The next rule Mr Bryce discussed related to subdivision associated with infill development which he recommended be relocated from notified Rule 27.5.2.

818. This rule was the subject of a number of submissions. Several submissions[290] sought that the definition of an established residential unit should turn on whether construction has reached the point of roof installation rather than whether a Building Code of Compliance certificate has been issued.

819. In addition, Submission 275 sought to amend 27.5.2 so that in the High Density Residential Zone the minimum lot size need not apply to any lots being created which contain a residential unit, provided that any vacant lots also being created do meet the minimum lot size. Lastly, Submissions 208 and 433[291] sought deletion of the rule.

820. In his Section 42A Report, Mr Bryce acknowledged that the submitters opposing recognition of a Building Code of Compliance Certificate as the sole determinant of whether a residential unit has been established had a point, given that the concept of Building Code of Compliance Certificates dates only from 1992, and therefore a large number of "*established"* residential units will not have such a certificate. He recommended that the rule be made more explicit that completion of construction to not less than the installation of the roof be an alternative to issue of a Building Code of Compliance Certificate as a means to define an established residential unit for the purposes of this rule. We agree with his recommendation in that regard.

821. Mr Bryce did not explicitly discuss Submission 275 in his Section 42A Report and the submitter did not appear to elaborate on the submission.

822. Reading the submission in context, it appears to us that the submission on this point is associated with a broader request for relief related to (and reducing) the minimum lot areas for the High Density Residential Zone[292]. We think that that is the appropriate context for consideration of the merits of the submission rather than broadening the ambit of this particular rule, which essentially sought to recognise the reality of existing lawful residential developments and provide that title boundaries might be brought into line with those developments.

823. The breadth of Submission 169 is also difficult to address in this context – particularly in the absence of any evidence from the submitter that might satisfy us that the effects of infill development can be addressed by conditions in all locations (and identifying appropriate areas of control).

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290 Submissions 166, 169, 389 and 391

291 Opposed in FS1097 and FS1117

292 Submission 169 also appears to be linked to more wide-ranging relief, seeking controlled activity status for a single infill unit subdivision in any zone.

824. Deletion of the rule sought in Submission 433 was also part of broader relief; in this case, which sought to carry over the provisions of ODP Plan Change 35 into the PDP and thereby protect the ongoing operations of Queenstown Airport. As we will discuss shortly, Mr Bryce recommended an amendment to the following rule to address the submission. When the representatives of the QAC appeared before us, Ms O'Sullivan giving planning evidence for the submitter, supported that relief and did not provide evidence suggesting why it should be broadened to this particular rule. This accorded with our understanding of QAC's position which sought to avoid intensification of residential activities within the defined Airport noise boundaries. Given that this particular rule relies on dwellings already having been established, aligning the title position with the existing pattern of development would appear to have no effect on the airport's operations.

825. The reasons for Submission 208 indicated that the concern of that submitter was for maintenance of amenity in the High Density Residential Zone. Mr Bryce did not discuss the submission specifically and the submitter did not provide evidence to support its submission. In the absence of an evidential basis for the submission, we do not recommend deletion of this provision.

826. In summary, therefore, we accept Mr Bryce's recommended rule which is numbered 27.7.13 in our revised Chapter 27, save only for correction of internal cross reference numbering and amending the reference to the former Low Density Residential Zone.

827. The revised rule we recommended is therefore worded:

"The specified minimum allotment size in Rule 27.6.1, and minimum dimensions in Rule 27.7.9 shall not apply in the High Density Residential Zone, Medium Density Residential Zone and Lower Density Suburban Residential Zone where each allotment to be created, and the original allotment, all contain at least one established residential unit (established meaning a Building Code of Compliance Certificate has been issued or alternatively where a Building Code of Compliance Certificate has not been issued, construction shall be completed to not less than the installation of the roof)."

828. The next rule Mr Bryce discussed was derived from notified Rule 27.5.3.1 and related to circumstances where the minimum allotment size in the (now) Lower Density Suburban Residential Zone does not apply.

829. Submissions on it sought variously clarification of the interrelationship with Rule 27.5.2[293] (now 27.7.11), deletion and a more enabling approach generally[294], deletion[295], and revision to make the rule "*more practical"*[296].

830. Mr Bryce did not discuss the apparent overlap between Rules 27.5.2 and 27.5.3 (to the extent both applied to the Lower Density Suburban Residential Zone). We think there is a logic to the distinction between the rules given that Rule 27.5.2 applied in the three specified zones and addressed the situation where residential units actually exist, whereas Rule 27.5.3 was limited to the (now) Lower Density Suburban Residential Zone and addressed the situation where residential units were consented but not constructed.

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293 Submission 169

294 Submission 166

295 Submission 433: Opposed in FS1097 and FS1117

296 Submission 453

831. We do not recommend acceptance of Submission 166. The submitter did not appear to amplify their submission and we consider that we have addressed the more general issues it poses elsewhere in this report.

832. The request for deletion by Submission 433 was addressed by Mr Bryce's recommendation that the rule not apply within the Airport noise boundaries defined in the Plan.

833. We agree with that approach although we consider it needs to be clearer that any reference to the Air Noise Boundary and Outer Control Boundary should be as defined in the planning maps.

834. Lastly, Mr Duncan White gave evidence in support the submissions of Patterson Pitts Partners (Wanaka) Limited[297]. He explained that the reference to more practical provisions related to the changes to the land transfer system (including the establishment of electronic titles for land) and the interrelationship of section 221 registrations with certification under section 224(c). For our part, we were grateful for the assistance provided by Mr White and his colleague Mr Botting on these matters. Mr Bryce recommended acceptance of the suggestions in the submission and we concur. Mr White raised other issues of the practical application of this rule. In particular, he queried whether it was appropriate for District Plan requirements like the maximum building height and the limitation of one residential unit per lot to be locked in by consent notices. He also noted the potential issues posed by changes of design requiring a cancellation or variation of the consent notice with consequent costs on the landowner. Lastly, Mr White queried the position if a consent or certificate of compliance has lapsed. Mr Bryce did not recommend additional changes to address these issues. In his reply evidence[298], he expressed his view that any additional costs associated with the need to vary a consent notice were outweighed by the benefits derived from investment certainty.

835. Many of the points about which Mr White expressed concern are in landowners' own hands to address. Certificates of compliance and land use consents might be granted for generic designs. How specifically or how widely an application for either is framed is a matter for a landowner. Similarly, if a landowner has a certificate of compliance or land use consent that is in danger of lapsing, they can apply to extend the lapse period under section 125 of the Act.

836. While Mr White had a point regarding the desirability of using consent notices only to bind the subdivider to planning requirements that require compliance on an ongoing basis, these particular requirements (building height and number of lots) are key to the effects of residential development on an ongoing basis. We therefore agree with Mr Bryce's recommendation in this regard.

837. The only additional amendments we recommend are a minor grammatical change (to refer to '*the'* residential unit(s), consistent with the first part of the rule) amendment of the zone name consequential on the Stream 6 Hearing Panel's Report, a clarification of the type of resource consent required, and some internal renumbering and reformatting for consistency.

838. In summary, therefore, we recommend that notified Rule 27.5.3 be renumbered 27.7.14 and amended to read:

"Subdivision associated with residential development on sites less than 450m² in the Lower Density Suburban Residential Zone.

297 Submission 453

298 N Bryce, Reply Statement at 10.4

27.7.14.1 In the Lower Density Suburban Residential Zone, the specified minimum allotment size in Rule 27.6.1 shall not apply in cases where the residential units are not established, providing:

a. *a certificate of compliance is issued for the residential unit(s) or,*
b. *a land use consent has been granted for the residential unit(s).*

In addition to any other relevant matters, pursuant to s221 of the Act, the consent holder shall register on the Computer Freehold Register of the applicable allotments:

a. that the construction of any residential unit shall be undertaken in accordance with the applicable certificate of compliance or land use consent (applies to the additional undeveloped lot to be created);
b. the maximum building height shall be 5.5m (applies to the additional undeveloped lot to be created);
c. there shall be not more than one residential unit per lot (applies to all lots).

27.7.14.2 Rule 27.7.14.1 shall not apply to the Lower Density Suburban Residential Zone within the Queenstown Airport Air Noise Boundary and Outer Control Boundary as shown on the planning maps."

8.5 Servicing and Infrastructure Requirements

839. The next rule Mr Bryce discussed are a series of provisions contained in notified Section 27.5.4 which was entitled "*Standards relating to servicing and infrastructure",* but which are in fact limited to water supplies. These provisions were the subject of submissions from the telecommunication companies[299] seeking insertion of a new standard regarding telecommunication reticulation and, in one case, electricity connections. Putting those matters aside for the moment, the only submissions on the existing provisions related to water supply supported them[300], although Submission 166 did seek clarification as to the Council's intention regarding what capacity potable water supply should be available to lots where no communal owned and operated water supply exists. The submission observed that the rule appeared to be at variance from current Council standards.

840. Mr Wallace provided the answer to that question: the current Council Code of Practice requires provision for 2100 litres per day, which covers both potable and irrigation water supply, and is designed for a reticulated system. Mr Wallace advised that where a reticulated system is not available, the minimum requirement is 1000 litres per day (as per the notified rule) with the subdivider needing to identify what supply will be available for irrigation separately.

841. Mr Bryce however recommended that provisions in the notified Rule 27.5.4.1 referring to zones not covered by Stage 1 of the PDP process be deleted. For the reasons already discussed, we concur and recommend those references be deleted pursuant to Clause 16(2). In the case of the reference to the Corner Shopping Centre Zone, this should be corrected to the Local Shopping Centre Zone on the same basis, as should the reference to the Airport Mixed Use Zone be changed to Airport Zone - Queenstown.

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299 Submissions 179, 191, 421 and 781: Supported in FS1132; Opposed in FS1097, FS1117 and FS1164

300 Submissions 453, 586, 775 and 803

842. Apart from a minor grammatical change in the opening words of what was notified Rule 27.5.4.1, and some internal renumbering for consistency, the only substantive amendments we recommend are to make the first rule (providing that all lots must be connected to a reticulated water supply) subject to the third rule (which provides the position where no reticulated water supply exists) and to correct the references to the Millbrook Resort and Waterfall Park Zones.

843. In summary, therefore, we recommend that notified Rules 27.5.4.1-3 be renumbered 27.7.15.1-3 and amended to read:

> *"27.7.15.1 Subject to Rule 27.7.15.3, all lots, other than lots for access, roads, utilities and reserves except where irrigation is required, must be provided with a connection to a reticulated water supply laid to the boundary of the net area of the lot, as follows:*
>
> *To a Council or community owned and operated reticulated water supply:*
> *a. Residential, Business, Town Centre, Local Shopping Centre Zones and Airport Zone - Queenstown;*
> *b. Rural-Residential Zones at Wanaka, Lake Hawea, Albert Town, Luggate and Lake Hayes;*
> *c. Millbrook Resort Zone and Waterfall Park Zone.*
>
> *27.7.15.2 Where any reticulation for any of the above water supplies crosses private land, it should be accessible by way of easement to the nearest point of supply.*
>
> *27.7.15.3 Where no communal owned and operated water supply exists, all lots other than lots for access, roads, utilities and reserves, shall be provided with a potable water supply of at least 1000 litres per day per lot."*

844. Turning to infrastructure services other than water supplies, Mr Bryce drew our attention in his Section 42A Report to the interrelationship with renumbered Policy 27.2.5 which indicates an intention to generally require connections to electricity supply and telecommunication systems at the boundary of lots. He recommended a new standard related to provision of telecommunication reticulation to allotments in new subdivisions.

845. We discussed with Mr Bryce whether the suggested standard was consistent with the policy emphasis in recommended Policy 27.2.5.16 on providing flexibility to cater for advances in telecommunication and computer media technology. Mr Bryce's view was that it was broadly consistent. Mr Bryce also agreed with our suggestion that it was desirable to include an equivalent rule/requirement related to electricity.

846. The submissions from telecommunications companies sought to introduce an emphasis on telecommunication reticulation meeting the requirements of the network provider. We also note further submissions on this point seeking to emphasise the commercial nature of the arrangements between landowners and telecommunication service providers and the potential, given changing technology, for self-sufficiency[301].

847. In some ways, electricity supply is rather easier to address than telecommunications. Unless a property is '*off-grid',* there must be an electricity line to the boundary, and in our view, this should be a subdivision standard.

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[301] Further submissions 1097, 1132, 1117 and 1164

848. With telecommunication technology increasingly offering connection options not involving hard wiring, this is somewhat more problematic. We are also wary of recommending rules that enable the telecommunication companies to leverage the position for their commercial advantage.

849. We have come to the view that while subdivision standards might legitimately provide for hard-wired telecommunication reticulation in urban environments and Rural Residential zoned land, in Rural Lifestyle, Gibbston Character and Rural zoned areas, greater flexibility is required.

850. In summary, we recommend amendments to the new rule suggested by Mr Bryce to split it into three under a new heading "*Telecommunications/Electricity",* numbered 27.7.15.4-6, and worded as follows:

"Electricity reticulation must be provided to all allotments in new subdivisions (other than lots for access, roads, utilities and reserves).

Telecommunication services must be available to all allotments in new subdivisions in the Rural Zone, Gibbston Character Zone and Rural Lifestyle Zone (other than lots for access, roads, utilities and reserves).

Telecommunication reticulation must be provided to all allotments in new subdivisions in zones other than the Rural Zone, Gibbston Character Zone and Rural Lifestyle Zone (other than lots for access, roads, utilities and reserves)."

851. Before leaving revised Section 27.7, we should address the heading for the whole section. Mr Bryce recommended that it be headed "*Rules – Zone and Location Specific Standards".* Many of the provisions in this section are not 'standards' in the ordinary sense of the word. We recommend that the heading be amended to "Zone and Location Specific Rules".

8.6 Exemptions

852. In Mr Bryce's recommended revised Chapter 27, the next section (numbered 27.8) was entitled "Rules – *Exemptions"* which was then amplified with a statement (numbered 27.8.1):

"The following activities are permitted and shall not require resource consent."

853. This initial statement was derived from notified Section 27.6.1. Consequent on Mr Bryce's recommendation (that we support) that Rule 27.6.1.1 be transferred into the rule table in Section 27.5, the only remaining provision from what was Section 27.6 related to the provision of esplanade reserves or strips.

854. The only submissions on Rule 27.6.1.2 supported the rule in its current form[302], but Submission 453 queried whether the rule should have its own heading.

855. While Mr Bryce did not feel the need to amend what was 26.6.1, we consider that the submission made a valid point. Notified Rule 27.6.1.2 did not describe a permitted activity not requiring a resource consent. What it did was identify exemptions from the requirement to provide an esplanade reserve or strip, and the heading of the rule should say that. The more

[302] See Submissions 453, 635 and 719

general heading might also usefully be clarified given that the section now identifies only one exemption.

856. Secondly, the language of notified Rule 27.6.1.2 was quite convoluted. Paraphrasing section 230(3) of the Act, it stated that unless provided otherwise in a rule of a District Plan, where any allotment of less than 4 hectares is created by a subdivision, an esplanade reserve is normally required to be set aside. The purpose of Rule 27.6.1.2 was clearly to make such provision and we consider that that might be stated much more clearly than it is at present. In addition, the cross reference to activities under former Rule 27.6.1.1 needs to be changed to refer to activities provided for in renumbered Rule 27.5.2.

857. In summary, therefore, we recommend that revised section 27.8 of the PDP be worded as follows:

"27.8 Rules – Esplanade Reserve Exemption

27.8.1 Esplanade reserves or strips shall not be required where a proposed subdivision arises solely due to the land being acquired or a lot being created for a road designation, utility or reserve, or in the case of activities authorised by Rule 27.5.2."

858. In Mr Bryce's revised recommended Chapter 27, two other provisions were suggested to be inserted within section 27.8 worded as follows:

"27.8.2 Industrial B Zone;
a. Reserved for Stage 2 of the District Plan review.

27.8.3 Riverside Stage 6 – Albert Town:
a. Reserved for Stage 2 of the District Plan review."

859. We suspect that these provisions were left in Mr Bryce's recommended Chapter 27 in error. Clearly they do not fit the suggested heading to Section 27.8 (Rules – Exemptions).

860. Nor do they actually say anything. At most they are placeholders. As such, we do not recommend they be included.

8.7 Assessment Criteria

861. The following section (27.9 in Mr Bryce's suggested revised Chapter 27) is a new section entitled "*Assessment Matters for Resource Consents"*.

862. The background to this particular part of the subdivision chapter was discussed in section 5 of Mr Bryce's reply evidence. As Mr Bryce noted, one of the legal submissions made by Mr Goldsmith[303] was to query whether Chapter 27 as notified created legal issues as a result of the extensive use of objectives and policies as the basis for assessment of subdivision applications, as opposed to using assessment criteria (as is the case under the ODP). Mr Bryce's reply evidence also recorded that Mr Goldsmith highlighted concerns that a number of the "*matters of discretion"* were framed in fact as assessment criteria.

863. We discussed with Mr Goldsmith the potential to employ the structure used within the Proposed Auckland Unitary Plan, which included assessment matters for controlled activity

[303] On behalf of GW Stalker Family Trust and Others (Submissions 430, 515, 523, 525, 530, 531, 535 and 537, FS1256)

and restricted discretionary activity rules within both urban and rural subdivision chapters as a means to supplement the objectives and policies. Mr Goldsmith thought that we might use the wording of that Plan, subject to confirming scope.

864. We asked Mr Bryce to consider these matters and to advise us whether, in his opinion, the understanding and implementation of Chapter 27 would be improved with insertion of appropriate assessment criteria. His conclusion was that this would be the case and he provided us with draft provisions which we might consider recommending. Given the time pressures Mr Bryce was under, this was a significant undertaking, and we express our thanks for his work on this aspect of his reply evidence, which we have found of particular assistance.

865. Mr Bryce noted that the suggested assessment criteria responded to requests in submissions both for clear guidance for Council planning officers processing applications[304] and to the large number of submissions seeking inclusion of the provisions of the ODP Chapter 15 in whole or in part that we have already discussed[305].

866. We also consider that inclusion of assessment criteria is consequential on our recommendation to accept Mr Bryce's recommendation and provide a more permissive rule regime for subdivisions than in the notified PDP (responding in that regard to the very large number of submissions seeking that outcome).

867. As Mr Bryce recorded, his recommended assessment criteria did not seek to reintroduce significant volumes of assessment matters reflective of those within the ODP, but rather sought to achieve an appropriate balance between effective guidance to plan users and administrators, while still seeking to ensure that the PDP is streamlined[306].

868. Mr Bryce also recommended adoption of an approach advanced within the Proposed Auckland Unitary Plan whereby relevant policies are cross referenced within the assessment matters. We agree with Mr Bryce that this approach is advantageous, because it provides an effective link between the policies and supporting methods.

869. Lastly, we note that inclusion of assessment criteria properly so called has enabled Mr Bryce to remove an unsatisfactory feature of the notified Chapter 27 commented on by Mr Goldsmith: *"assessment criteria"* which are mislabelled as matters of discretion or like provisions.

870. We do not intend to review all of the assessment criteria recommended by Mr Bryce in detail, but rather to identify where, in our view, Mr Bryce's recommendations need to be amended and/or supplemented.

871. The first point that we would note is that we consider it necessary to revise the headings Mr Bryce had suggested in order that the new Section 27.9 might have its own numbering system, albeit cross referenced to the rules to which each set of assessment criteria relate.

872. The second general set of amendments that we recommend is to amend the assessment criteria where necessary, to express each point more clearly as a question or issue to which Council staff should direct themselves.

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304 Submission 370

305 Mr Goldsmith also directed us to those submissions as providing a jurisdictional basis for adopting the same approach as the Proposed Auckland Unitary Plan.

306 N Bryce Reply Statement at 5.8

873. In our renumbered Sections 27.9.3.1 and 27.9.3.2 (related to revised Rules 27.5.7 and 27.5.8 respectively) we have added assessment criteria as a consequential change reflecting the additional changes we have recommended to those rules to insert a discretion related to reverse sensitivity effects on infrastructure.

874. Similarly, we recommend amendment to delete assessment criteria recommended by Mr Bryce related to activities affecting electricity sub-transmission lines, reflecting our recommendation as above, that this not be the subject of a separate rule. We have made other more minor amendments to Mr Bryce's recommended assessment criteria to cross reference our recommended revisions to the policies and rules.

875. We consider that Mr Bryce's recommended assessment criteria for the Jacks Point Zone need amendment to reflect deletion of the rule related to subdivisions in the FP-1 area. As discussed in section 5.10 above, we recommend that most of the 'assessment criteria' recommended by Mr Bryce be returned to what is now section 27.3.7.

876. We also recommend use of the defined term "*Structure Plan"* that we have suggested to the Stream 10 Hearing Panel rather than seeking to describe all of the various plans of similar ilk.

877. Where we have recommended deletion of location-specific rules as above (or where they have been deleted by the Stage 2 Variations), we have not included assessment criteria Mr Bryce has suggested related to those rules.

878. Lastly, we have inserted a new set of assessment criteria recommended by the Stream 12 Hearing Panel in relation to the new Controlled Activity rule discussed above, applying to the West Meadows Drive area.

879. The end result, however, is that recommended Section 27.9 contains a set of assessment criteria that in our view will assist implementation of the objectives and policies and is the best way to implement those policies.

8.8 Notification

880. Turning to notification issues, this was dealt with in notified Section 27.9. As a result of the reorganisation of the Chapter, the parallel provisions are in Section 27.10 of our recommended version of the Chapter.

881. Relevant submissions included:
   a. A request that all subdivisions in the Lake Hawea area be notified[307];
   b. Deletion of provision creating potential for notification where an application site adjoins a state highway[308];
   c. Insertion of a requirement for restricted discretionary and discretionary subdivisions in the (now) Lower Density Suburban Residential Zone to be supported with affected party approval before they are considered on a non-notified basis[309];
   d. Addition of the Ski Area Sub-Zone as an additional category of non-notified applications[310];

307 Submission 272
308 Submission 275
309 Submission 427 and 406: Opposed in FS1261
310 Submissions 613 and 610

e. Addition of subdivision of sites within the Queenstown or Wanaka Airport air noise boundaries within the category of applications that are potentially notified[311];
f. Provision for notification where there is a need to assess natural hazard risk[312].

882. Mr Bryce recommended that consequent on his recommended amendments to the rules, the scope of applications that are directed not to be notified or limited–notified should be revised and limited to controlled activity boundary adjustments and to controlled and restricted discretionary activities, but that otherwise, the submissions on this part of the Chapter should be rejected.

883. Addressing the specific points of submission, Mr Bryce recommended rejection of Submission 272 on the basis that in cases to which renumbered Section 27.10.1 did not apply, notification would be addressed on a case by case basis[313]. We agree with Mr Bryce's recommendation. While, as the submission notes, public notification provides a public consultation process, the presumption in favour of notification has been removed from the Act and we have seen no evidence that would suggest that the costs of notification in every case, irrespective of the nature and scale of any environmental effects, is matched by the benefits of doing so.

884. As regards Submission 275, Mr Bryce recommended rejection of the submission, noting that it perpetuated an existing provision under the ODP and had the effect only of ensuring notification would be assessed on a case by case basis where sites adjoin or have access to a state highway. We agree with Mr Bryce's reasoning. Given the policy provisions related to reverse sensitivity effects on regionally significant infrastructure, we consider it is appropriate that notification decisions be assessed on their merits in this instance. However, the way in which these provisions have been reframed means that we categorise the submission as 'Accepted in Part'.

885. Mr Bryce recommended rejection of submissions 427 and 406 regarding subdivisions in the Low Density Residential Zone. In his view, a case by case assessment for subdivision applications not falling within the general provisions of renumbered Rule 27.10.1 was appropriate. We note also that Mr Bryce's recommended revisions to this section would have the result of accepting the submissions in part because discretionary applications within the (now) Lower Density Suburban Residential Zone would not fall within the general no notification rule. The submitters in this case did not appear to provide evidence as to why the renamed Lower Density Suburban Residential Zone should be treated differently to the balance of zones in the Plan, or to provide us with evidence as to the balance of costs and benefits were their relief to be accepted. In these circumstances, we agree with Mr Bryce's recommendation and recommend that the submissions be rejected.

886. Mr Bryce discussed the submissions seeking an exemption for subdivisions within the Ski Area Sub-Zones in somewhat greater detail in his Section 42A Report[314]. In his view, there is the potential for subdivision within the Ski Area Sub-Zones to create arbitrary lines within sensitive landscape settings and accordingly, a need for the effects of subdivision in the Sub-Zone to be considered on a case by case basis.

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311 Submission 433: Opposed in FS1097 and FS1117

312 Submission 798

313 While this has changed since the hearing (with effect from 18 October 2017) with enactment of the Resource Legislation Amendment Act 2017, the transition provisions (refer section 12 of Schedule 12 of the Act) direct that the PDP First Schedule process must be completed as if the 2017 Amendment Act had not been enacted.

314 Section 42A Report at 23.4

887. Mr Ferguson gave planning evidence on behalf of the submitters. He noted that Mr Bryce's position appeared to be related to the issues surrounding the status of a subdivision within the Ski Area Sub-Zones. As already noted, Mr Ferguson gave evidence supporting controlled activity status for such subdivisions which, if accepted, would have had the effect of bringing such subdivisions within the ambit of the non-notification rule.

888. Mr Ferguson did not explore the position should we recommend (as we have done) that discretionary status for subdivisions within the Sub-Zone be retained.

889. We agree that there is a linkage between these matters. The same considerations that have prompted us to recommend rejection of the broader submissions on the status of subdivisions within Ski Area Sub-Zones suggest to us that notification decisions should be assessed on a case by case basis rather than being predetermined through operation of a non-notification rule.

890. In summary, we agree with Mr Bryce's recommendation and we recommend rejection of these submissions.

891. Mr Bryce also recommended rejection of the submission by Queenstown Airport Corporation seeking an exception for activities within the defined noise boundaries around Queenstown and Wanaka Airports.

892. In his opinion, the amendments to the PDP recommended to address potential reverse sensitivity effects on the Airport meant that those issues were already appropriately addressed. Mr Bryce noted in this regard that subdivisions in the vicinity of Wanaka Airport would in most circumstances be a discretionary activity anyway and accordingly could be notified on that basis. He invited QAC to respond to this matter at the hearing[315]. When QAC appeared before us, its Counsel advised that Ms O'Sullivan (the submitter's planning adviser) agreed that the relief sought was unnecessary and that the submitter no longer pursued the submission. Accordingly, we need take that particular point no further.

893. As regards the submission of Otago Regional Council[316], this poses a practical difficulty given that (as discussed in greater detail in Report 14) virtually every property in the District is subject to some level of natural hazard. We therefore have difficulty understanding how the submission could be granted other than by requiring notification of every application the Council receives. This would have obvious cost implications. ORC did not appear to suggest how its submission could practically be addressed and provided no section 32AA analysis upon which we could rely. Accordingly, we recommend the Regional Council's submission be rejected.

894. Considering the detail of Mr Bryce's recommendations, we consider that his recommended Rule 27.10.1 requires further amendment to be clear that boundary adjustments falling within Rule 27.5.4 fall outside the non-notification rule (presumably the reason why he suggested that specific reference be made to controlled activity boundary adjustments).

895. In addition, we do not think it is necessary to make specific reference in 27.10.2 to archaeological sites or listed heritage items, or to discretionary activities within the Jacks Point Zone. Consequent on Mr Bryce's recommended focus of the non-notification rule on

315 Refer Section 42A Report at 23.5.

316 Submission 798

controlled and restricted discretionary activities, those activities automatically fall outside the rule in any event.

896. We also think that the reference to the National Grid Line might be simplified, just to cross reference Rule 27.5.10.

897. Lastly, the existing reference to the Makarora Rural Lifestyle Zone can be deleted, consequent on the Stream 12 Hearing Panel's recommendation to rezone that land Rural.

898. More generally, while improved by Mr Bryce, we found the drafting of these provisions to be quite convoluted, with an initial rule, followed by two separate sets of exceptions. We think it can be simplified further.

899. In summary, we recommend that notified Section 27.9 be renumbered 27.10 and amended to read:

"Applications for all controlled and restricted discretionary activities shall not require the written approval of other persons and shall not be notified or limited notified except:

a. where the site adjoins or has access onto a State Highway;
b. where the Council is required to undertake statutory consultation with iwi;
c. where the application falls within the ambit of Rule 27.5.4;
d. where the application falls within the ambit of Rule 27.5.10 and the written approval of Transpower New Zealand Limited has not been obtained to the application.

8.9 Section 27.10 – Rules – General Provisions

900. Notified Section 27.10 was entitled "*Rules – General Provisions"*. The first such provision related to subdivisions with access onto State Highways. NZTA[317] made some technical suggestions as to how this rule should be framed that Mr Bryce recommended be accepted. We concur. The only additional amendment that we would recommend relates to the cross reference to the Designations Chapter. We consider that this should, for clarity, record that the designations chapter notes sections of State Highways that are limited access roads as at the date of notification of the PDP (August 2015).

901. The second general provision relates to "*esplanades".* The only submission on it[318] suggested correction of an internal cross reference. Mr Bryce recommended that that submission be accepted.

902. For our part, in addition to that correction, we think that both the heading and text of this rule would more correctly refer to esplanade reserves and strips rather than "*esplanades"*. We regard this as a minor matter falling within Clause 16(2).

903. Thirdly, consequent on the concern expressed to us by representatives of Aurora Energy Limited that the general public are not familiar with the legal obligations arising under the New Zealand Electrical Code of Practice for electrical safe distances, we consider it would be helpful if the existence of this Code of Practice were noted at this location.

904. Lastly, we consider that the heading of this section is incorrect. Mr Bryce agreed that they are not rules and suggested that the title might better be "G*eneral Provisions"*. For our part, we consider that "A*dvice Notes"* better captures the character of the provisions in question given

317 Submission 719
318 Submission 809

that they are in the nature of advice and are not intended to have independent regulatory effect.

905. In summary, therefore, we recommend that notified Section 27.10 be renumbered 27.11 and amended to read:

"Advice Notes

27.11.1 State Highways
Attention is drawn to the need to obtain a Section 93 notice from New Zealand Transport Agency for subdivisions with access onto State Highways that are declared Limited Access Roads (LAR). Refer to the Designations Chapter of the District Plan for sections of State Highways that are LAR as at August 2015. Where a designation will change the use, intensity or location of the access on the State Highway, subdividers should consult with the New Zealand Transport Agency.

27.11.2 Esplanade Reserves and Strips
The opportunities for the creation of esplanade reserves or strips are outlined in the objective and policies in Section 27.2.6. Unless otherwise stated, section 230 of the Act applies to the standards and process for creation of esplanade reserves and strips.

27.11.3 New Zealand Electrical Code of Practice for Electrical Safe Distances
Compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001) is mandatory under the Electricity Act 1992. All activities regulated by NZECP34:2001 including any activities that are otherwise permitted by the District Plan must comply with this legislation."

8.10 Section 27.12 – Financial Contributions

906. Notified Section 27.12 related to financial contributions. The only submissions on it supported the existing provisions, although Submission 166 queried the title. Mr Bryce did not recommend any change to it other than to alter the heading to read:

"Development and Financial Contributions"

907. We agree with that suggestion.

8.11 Section 27.13 – Structure Plans

908. Notified Section 27.13 contained the Ferry Hill Rural Residential Subzone Concept Development Plan and the Kirimoko Block Structure Plan. The only submissions on it supported the existing provisions. The Stage 2 Variations propose deletion of the Ferry Hill document. For our part, for the reasons discussed earlier, we consider that a copy of the other "*Structure Plans"* contained in the PDP and referenced in the objectives, policies and rules of Chapter 27 should be contained here. Accordingly, we recommend that the Structure Plans for the Jacks Point, Waterfall Park, Millbrook Resort, Coneburn Industrial Zones and West Meadows Drive (the latter two consequential on recommendations from the Stream 13 and Stream 12 Hearing Panels respectively) be inserted in this section of the Chapter.

909. We also recommend the section be labelled "Structure Plans".

8.12 Conclusions on Rules

910. Having considered all of the rules and other provisions of the PDP discussed above, we are of the belief that individually and collectively, the rules and other provisions recommended are the most appropriate provisions to implement the policies of Chapter 27 and thereby achieve the objectives both of Chapter 27 and, to the extent they are relevant, the objectives of the strategic chapters of the PDP.

9. SUMMARY OF RECOMMENDATIONS TO OTHER HEARING STREAMS

911. We also record that during the course of our deliberations, we determined that it would assist implementation of Chapter 27 if the definitions in Chapter 2 were amended in two respects:

a. Deletion of the existing definition of "*community facilities"* (refer Section 4.3 above)

b. Inclusion of a new definition of the term "Structure Plan" as follows:

"Structure Plan means a plan included in the District Plan, and includes Spatial Development Plans, Concept Development Plans and other similarly titled documents." (refer the discussion at Section 8.7 above).

912. These are matters for the Hearing Panel considering submissions on the definitions (Stream 10) to consider.

10. SUMMARY OF RECOMMENDATIONS

913. As already noted, we have attached our recommended version of Chapter 27 as a clean document in Appendix 1.

914. Appendix 2 contains our recommendations in respect of submissions in tabular form.

915. In addition, in the course of this Report, we have made a number of other recommendations for consideration of the Council. These are detailed in Appendix 3.

For the Hearing Panel

Denis Nugent, Chair
Dated: 4 April 2018

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on the Proposed District Plan

Report 16.18

Report and Recommendations of Independent Commissioners
Regarding Upper Clutha Planning Maps
East Luggate (Willowridge)

Commissioners
Trevor Robinson (Chair)
Calum MacLeod
Ian Munro

CONTENTS

WILLOWRIDGE DEVELOPMENTS LIMITED (249) (WILLOWRIDGE)

1. SUMMARY OF RECOMMENDATIONS

1.1. Overall Recommendation

1. We recommend the submission seeking rezoning of land at the eastern edge of Luggate variously as Rural Residential and Low Density Residential be rejected.

1.2. Summary of Reasons for Recommendation

2. We had insufficient evidence to satisfy us either that the proposed rezoning would adequately capture the key elements of the consents that had already been granted, or that, to the extent rezoning would enable denser development that is already consented, this would be appropriate.

2. PRELIMINARY MATTERS

2.1. Subject of Submission

3. This submission relates to Lot 1, DP 462959 and Lot 501 DP 375230, a 50.6 hectare area of land located at the eastern edge of Luggate with frontage onto State Highway 6.

2.2. Outline of Relief Sought

4. Submission 249 sought the rezoning of most of the land, currently shown as Rural on Map 11 and 11a, as Low Density Residential. It proposed that part of the land on an upper terrace overlooking the Clutha River be rezoned Rural Residential. These areas were referred to as Stage 2A and 2B respectively.

2.3. Description of the Site and Environs

5. The site is located on the eastern side of the Luggate township as shown in Figure 1 below, copied from Mr Barr's section 42A report.

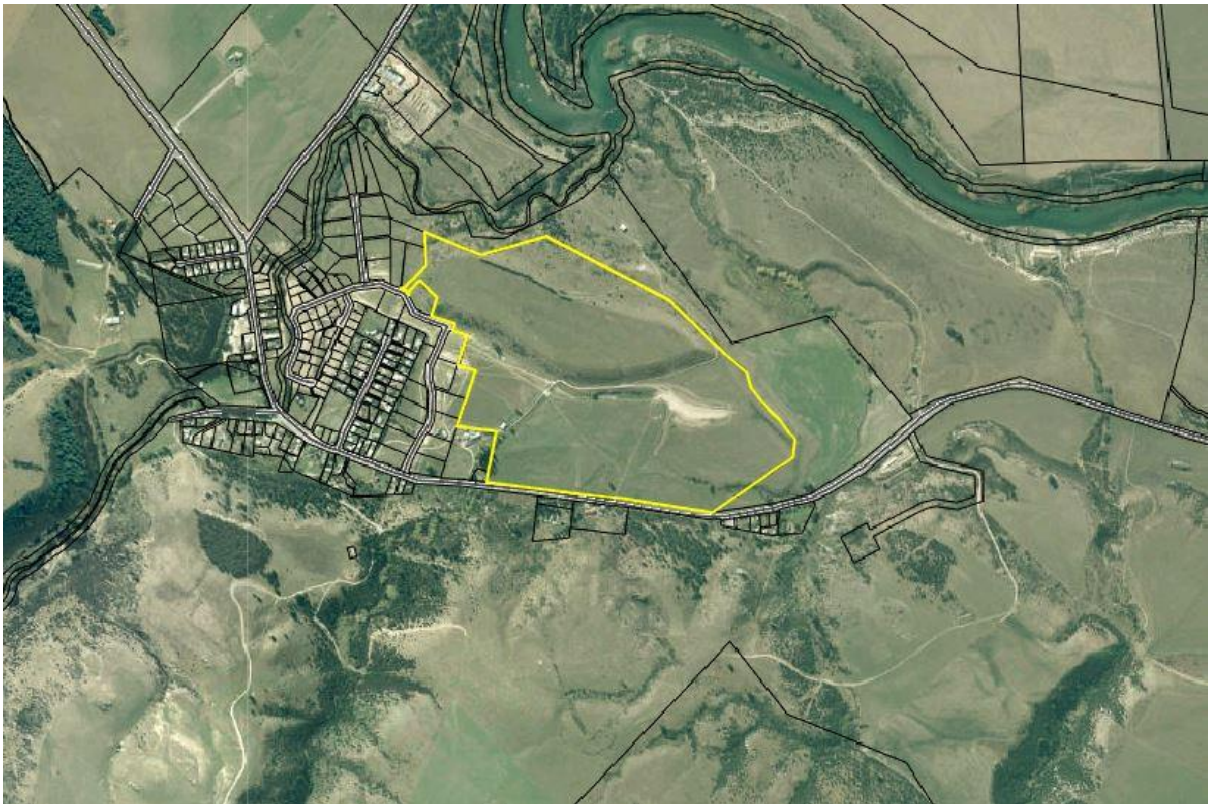

Figure 1 Aerial photograph of the subject site outlined in yellow.

6. Luggate township straddles both sides of the State Highway and has an operative Township zoning (excluded from both Stage 1 and the recently notified Stage 2 of the PDP). Within the township area, there is a small commercial precinct east of Kingan Road, with residential development around the edges. The Upper Clutha Transport depot and Ballance Fertiliser site occupies a large area of flat land on the western side of SH 6, beyond which (to the west) is a pine and willow plantation. South of the plantation is a large Council Domain and walkway along Luggate Creek.

7. To the north and east of the township on the opposite side of SH 6 is an extensive area of Rural Residential development fronting Church Road, Alice Burn Drive and Pisa Road. A smaller area of fully developed Rural Residential zoning applies to sites on the western side of the highway and northwest of the Township Zone up to the south side of Atkins Road. In our Report 16.9, we have recommended that the Rural Residential zone be extended to the west of Atkins Road and wrap around the Township zoned land as far as Luggate Creek.

8. The area sought to be rezoned Rural Residential is on a higher terrace overlooking the township of Luggate (to the south west) and the Clutha River (to the north) that is clearly visible on Figure 1. When we visited the site in early Map 2017, development of the land was already underway, with heavy earthmoving equipment on site.

9. The area sought to be rezoned Low Density Residential is a flat area of land running parallel to State Highway 6, adjoining existing Rural Residential land (to the west) that has been developed. When we visited the site, development of the site was underway (pursuant to resource consents granted in 2007 that we discuss further below), with a number of sites already pegged out.

2.4. The Case for Rezoning

10. Willowridge's submission stated that the land the subject of submission was already consented for development and sought rezoning "in order to make the zoning consistent with the intended land use".

11. At the hearing, no expert evidence was called for the submitter, but Mr Alan Dippie, Director of Willowridge Developments Ltd, and Ms Alison Devlin, In-house planning adviser, addressed us on a number of different sites the company submitted on, including the Luggate site. Mr Dippie advised that the main benefit of rezoning from his perspective was to enable increased density of development on the Stage 2A land. He advised that 138 lots were already consented and emphasised the desirability of a denser more efficient use of land, enabling in turn, more affordable 600m2 sites to be developed. Mr Dippie discussed infrastructure, landscape and traffic issues discussed in the Council's section 42A report and the supporting evidence. He confirmed Mr Barr's advice to us that expansion and upgrade of infrastructure services to Luggate was the subject of active discussion. Lastly, Mr Dippie drew our attention to the imposition on residents of an effectively urban area caused by their needing to seek consents (e.g. for garden sheds) within a Rural Zone framework.

12. As regards the Stage 2B land, Mr Dippie advised that from his perspective, the zoning of the land was not a material issue because there was no additional land to subdivide and quite tight controls on what was done on the land.

13. Mr Barr recommended that the submission not be accepted in his s42A report. He noted concern expressed by Ms Mellsop regarding potential landscape effects, because rezoning would enable additional adverse effects beyond those consented, by Ms Banks because of the lack of information on the effects of rezoning from a traffic perspective, and by Mr Glasner, opposing the rezoning on the basis of the lack of infrastructure capacity and the lack of certainty if and how upgrades will occur.

14. As regards the Stage 2B land, Mr Barr considered the consented development outcome to be more sympathetic than could be envisaged under a Rural Residential zoning. He did not consider the elevated terrace suitable Rural Residential zoning.

15. In his reply evidence, Mr Barr provided us with feedback on Mr Dippie's evidence, and further information for our consideration. In particular, Mr Barr provided us with a copy of the consent decision on the Stage 2A subdivision. He drew to our attention the range of mitigation requirements within the conditions for that consent. While Mr Barr agreed with Mr Dippie that rezoning the lower (Stage 2A) land would both facilitate more affordable housing and be more efficient in terms of resource consent applications made subsequently by individual lot owners, he pointed to the lack of evidence on the effects of development under a Low Density Residential zoning.

16. Responding specifically at our request to Mr Dippie's suggestion that Council was being inconsistent in the messages it was sending regarding the importance of affordable housing, Mr Barr accepted the desirability, in principle, of providing for more affordable homes, but drew to our attention that housing density was canvassed in the 2007 consent process, and that the Commissioners hearing the application appeared to accept that the density should not be reduced, in order to maintain the character and feel of Luggate. He was of the view that rezoning would create more problems than it would solve, and did not support increasing the development yield if it would detract from the mitigation provided through the existing consent, or create unexpected infrastructure servicing issues.

17. Mr Barr did, however, suggest that development efficiencies (and therefore affordability improvements) might be gained through a series of consent condition variations that he itemised.[1]

2.5. Discussion of the Planning Framework

18. Mr Barr did not identify any specific aspects of the planning background relevant to this submission, and the submitter provided no expert planning evidence for our consideration.

19. In our Report 16, we summarised the key background provisions in the PDP, as recommended by the Hearing Panel. For the purposes of our discussion here, we take that discussion as read, although we note that the effect of proposed policy 3.3.15, given the absence of an Urban Growth Boundary for Luggate, is that we have a broader discretion than would be the case for a similar proposal on the margins of Wanaka, for instance.

20. We also observe that while proposed objective 3.2.2.1 promotes access to housing that is more affordable, it also references the importance of an integrated urban form, building on historic settlement patterns. Integration with existing and planned future infrastructure is also an issue under this objective.

3. ISSUES

21. Given the background discussed above, the issue we have to address for each area of land is whether the developments occurring on the land are more appropriately managed under the proposed new zoning, or under the existing consents overlaid on a Rural zoning.

4. DISCUSSION OF THE ISSUES AND CONCLUSION

22. The existence of resource consents permitting a level of development, and the fact that those consents are, from our observation, in the process of being implemented means, in our view, that the provisions noted in Report 16 regarding retention of rural character on both areas of land need to applied with that fact in mind. We discuss the extent to which principles related to the 'existing environment' apply to a rezoning proposal in Report 16.16. Applying the principles discussed in that report, we consider that the effects of the consented development form part of the existing environment, and therefore that Mr Barr correctly focussed on the incremental effects the proposed rezoning would have relative to what has been consented.

23. Looking first at the Stage 2B land, we consider that this can be addressed relatively quickly. Mr Dippie was at best ambivalent as to whether rezoning the land Rural Residential was either necessary or desirable. Given Mr Barr's clear recommendation that Rural Residential zoning would not be appropriate, we have no basis to recommend rezoning.

24. The case for rezoning the Stage 2A land cannot be dismissed quite so easily.

25. On one hand, the lack of confirmed infrastructure capacity, in particular for wastewater, might be considered decisive, given the cases discussed in Report 16. However, the evidence of Mr Glasner, confirmed by Mr Barr, indicates that Council is clearly working on an infrastructure solution for Luggate. This is not a situation where Council has decided not to provide

[1] Refer C Barr Reply evidence at 28.13

infrastructure services to a particular area. Accordingly, while relevant to our decision, we do not think it appropriate to rest our decision on infrastructure grounds.

26. More significant though, Mr Barr, Ms Mellsop and Ms Banks identified the potential for additional adverse effects to result from rezoning the Stage 2A land. Mr Dippie presented no expert evidence to contradict the Council's evidence. As regards traffic issues, Mr Dippie rather tended to confirm there were unresolved issues when he advised us that he was in discussions with NZTA.

27. We also place some weight on the Commissioners' considered rejection of a denser pattern of development on the Stage 2A land.2 While the strategic direction provided by proposed objective 3.2.2.1 means that the desirability of providing for denser and therefore more affordable development might well be given greater weight relative to the desirability of preserving the character of Luggate than was the case in 2007, the same objective indicates the existing pattern of development (with Rural Residential development between the site and the Township zoned land further west) remains an important consideration. More generally, to reach the conclusion that a Low Density Residential zoning was the more appropriate outcome, we would need to understand the extent to which the mitigation provisions felt necessary in 2007 would be eroded (or even lost) as a result of rezoning. The submitter, however, provided us with no analysis of the effect of rezoning on the conditions to contradict that of Mr Barr beyond Mr Dippie's somewhat enigmatic comment that the conditions of consent were both tight and "interesting".

28. We record Mr Barr's acceptance that a Low Density Residential zoning would impose less cost on the future owners of the Stage 2A land, and would be the more efficient zoning from other perspectives, but we find that we do not have a proper basis to conclude that the countervailing costs in terms of additional adverse effects (relative to the consented development) are outweighed by those benefits and therefore to find that the Low Density Residential zone is the most appropriate way to achieve the objectives of the PDP.

29. While it is not for us to proffer an assessment of their substantive merits, it does appear to us that the suggestions in Mr Barr's reply evidence as to how (by targeted consent condition changes), development of the Stage 2A land might proceed more efficiently deserve further consideration by the submitter as an alternative option to rezoning.

5. OVERALL CONCLUSIONS AND RECOMMENDATIONS

30. In summary, the lack of evidence to support the requested relief and overcome the adverse effects identified in the Council evidence is the decisive point. We accept the recommendation in the Council evidence that the land the subject of this submission not be rezoned.

[2] Refer paragraph 20 of their decision dated 13 September 2007

31. Given we are recommending maintenance of the status quo, no further analysis in terms of section 32AA of the Act is required.

For the Hearing Panel

Trevor Robinson, Chair
Dated: 27 March 2018

Central Otago District

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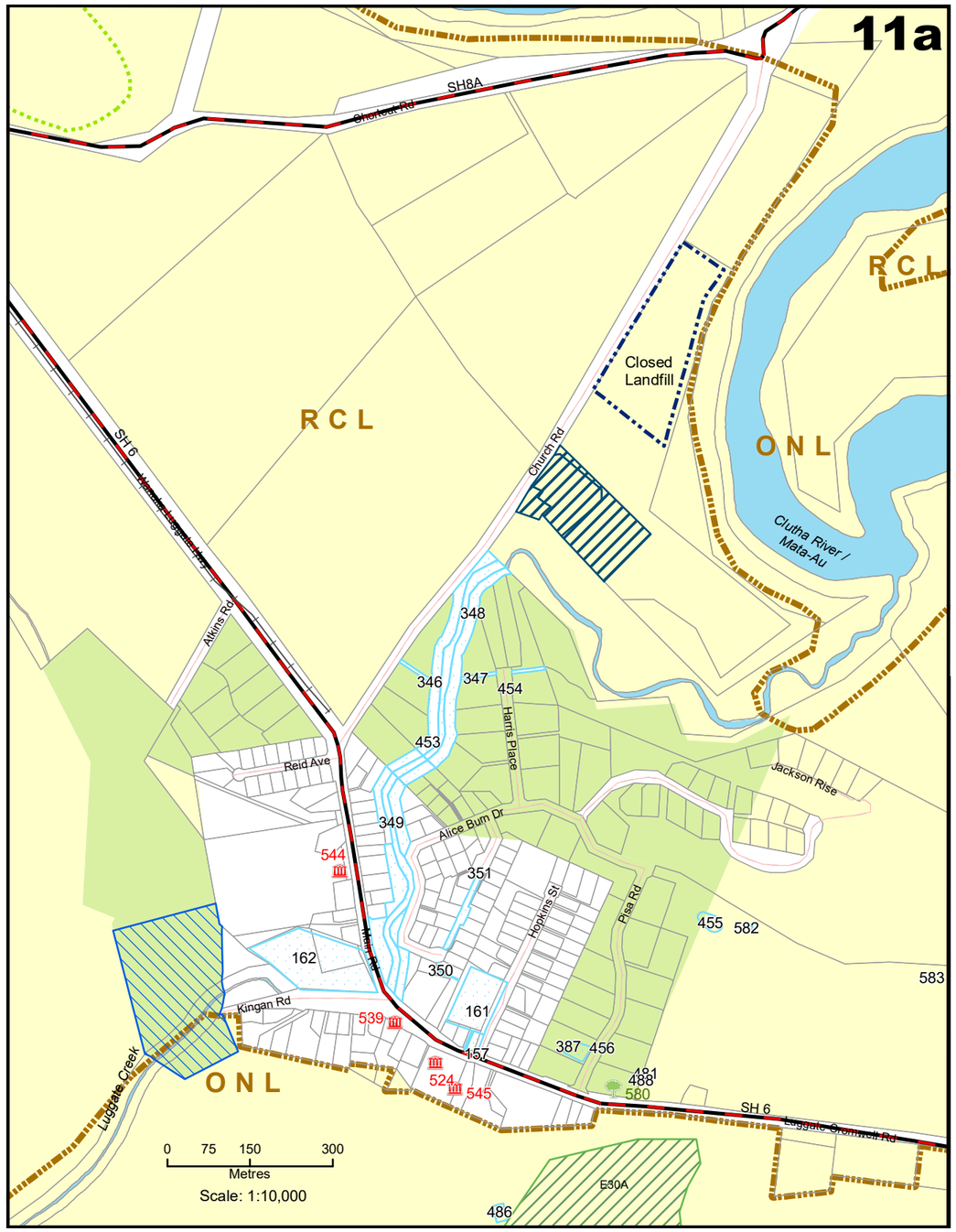
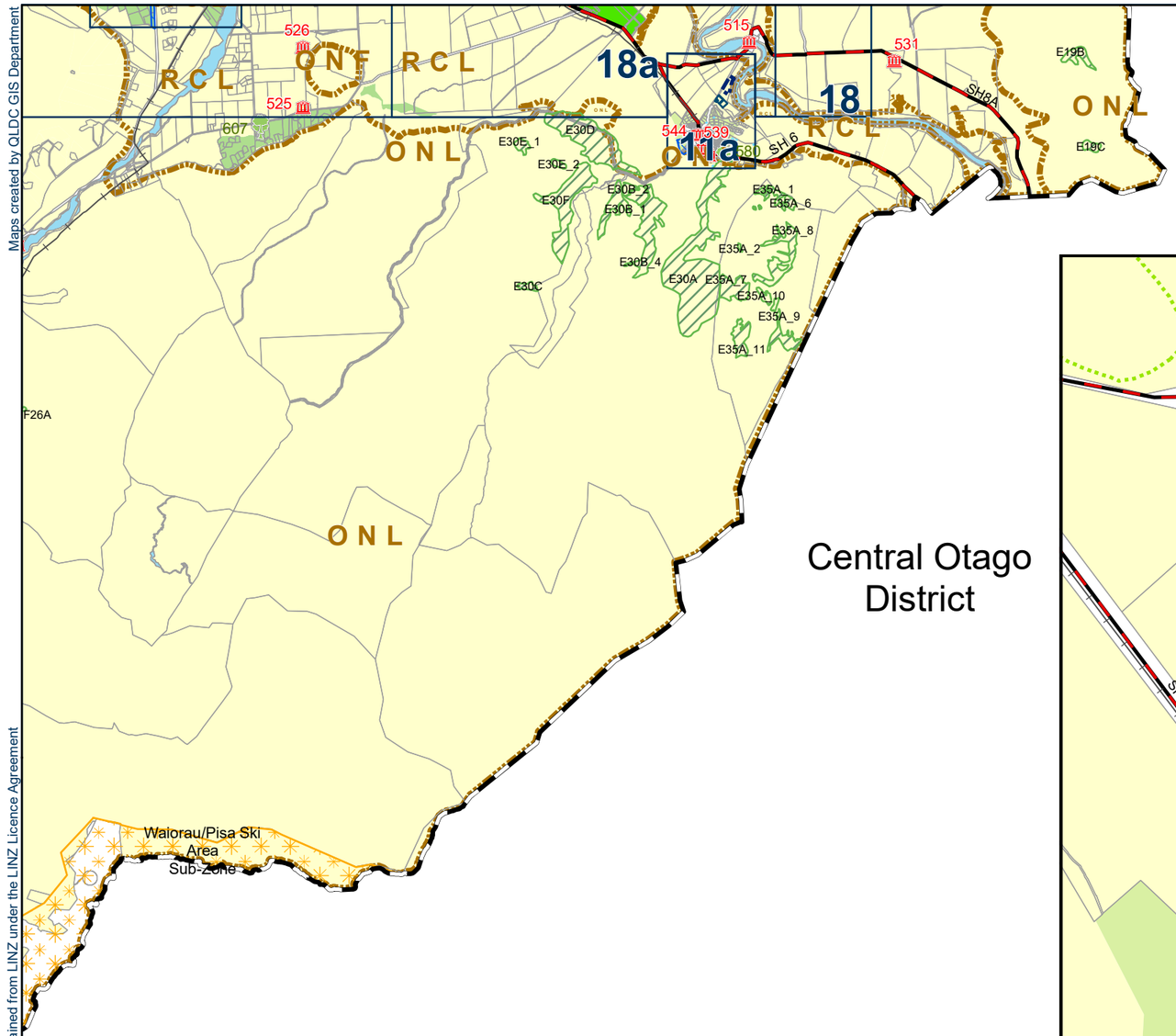
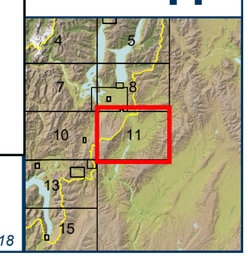




Legend

- Historic Heritage Features
- Protected Tree
- Aurora Distribution Lines – For Information Only
- State Highway
- Parcel/Road Boundary
- Closed Landfill
- Landscape Classification (ONF,ONL,RCL)
- Territorial Authority Boundary
- Significant Natural Area
- Unformed Roads
- Designated Areas
- Building Restriction
- Ski Area Sub-Zone
- Rural Industrial Sub-Zone
- Closed Landfill
- Airport Zone
- Rural
- Rural Residential
- Rural Lifestyle
- Water (zoned Rural unless otherwise shown)



QUEENSTOWN LAKES DISTRICT COUNCIL

PDP Decisions Version Map 11 - Mt Pisa, Luggate (Inset)

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Date Published: 22-May-18

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan
Report 3
Report and Recommendations of Independent Commissioners Regarding
Chapter 3, Chapter 4 and Chapter 6

Commissioners
Denis Nugent (Chair)
Lyal Cocks
Cath Gilmour
Trevor Robinson
Mark St Clair

CONTENTS

PART A - INTRODUCTORY MATTERS

1. PRELIMINARY MATTERS

1.1. Terminology in this Report

Throughout this report, we use the following abbreviations:

Act	Resource Management Act 1991 as it was prior to the enactment of the Resource Legislation Amendment Act 2017
Clause 16(2)	Clause 16(2) of the First Schedule to the Act
Council	Queenstown Lakes District Council
NPSET 2008	National Policy Statement for Electricity Transmission 2008
NPSFM 2011	National Policy Statement for Freshwater Management 2011
NPSFM 2014	National Policy Statement for Freshwater Management 2014
NPSREG 2011	National Policy Statement for Renewable Electricity Generation 2011
NZIA	NZIA and Architecture+Women Southern
ODP	The Operative District Plan for the Queenstown Lakes District as at the date of this report
ONF	Outstanding Natural Feature(s)
ONL	Outstanding Natural Landscape(s)
PDP	Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
Proposed RPS	The Proposed Regional Policy Statement for the Otago Region Decisions Version dated 1 October 2016, unless otherwise stated
QAC	Queenstown Airport Corporation
RMA	Resource Management Act 1991 as it was prior to the enactment of the Resource Legislation Amendment Act 2017
RPS	The Operative Regional Policy Statement for the Otago Region dated October 1998
UCES	Upper Clutha Environmental Society

UGB	Urban Growth Boundary
Stage 2 Variations	The variations, including variations to the existing text of the PDP, notified by the Council on 23 November 2017

1.2. Topics Considered

1. The subject matter of this hearing was Chapters 3, 4 and 6 of the PDP (Hearing Stream 1B). These chapters, along with Chapter 5, provide the overall strategic direction to the District Plan. As discussed below Chapter 5 was heard by a differently constituted Hearing Panel (see Report 2).

2. Chapter 3 seeks to set out the high-level strategic direction for the PDP as a whole. As notified, it consisted an initial statement of purpose (Section 3.1) and then seven subsections (3.2.1-3.2.7 inclusive). Each subsection was developed under a separate goal with objectives related to the goal and in most but not all cases, policies specific to achievement of each objective.

3. Chapter 4 seeks to set out objectives and policies for managing the spatial location and layout of urban development within the District. It seeks to flesh out provisions in Chapter 3 related to these matters and effectively sits between the high-level strategic direction on urban development in Chapter 3 and the much more detailed provisions in Part Three of the PDP[1], and in Part Five[2], to the extent that its provisions relate to development in urban areas.

4. Chapter 6 relates to landscapes and fulfils a similar role to Chapter 4, fleshing out strategic matters related to landscape in Chapter 3, but still at a level of detail sitting above the Zone provisions in Part Four of the PDP[3].

1.3. Hearing Arrangements

5. Hearing of Stream 1B overlapped with the hearing of Stream 1A (Chapters 1 and Chapters 5, and Section 3.2.7). Stream 1A was heard by a differently constituted panel of commissioners and is the subject of a separate report. That report discusses the submissions specifically related to the wording of Section 3.2.7. To the extent that more general submissions relating to aspects of Chapter 3 as a whole affect Section 3.2.7, they are addressed in this report.

6. Stream 1B matters were heard on 7-9 March 2016 inclusive in Queenstown, on 10 March 2016 in Wanaka and then on 15-17 March, 21-23 March and 31 March 2016 in Queenstown.

7. The parties heard from on Stream 1B matters were:

Council

- James Winchester and Sarah Scott (Counsel)
- Clinton Bird

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1 Part Three comprises Chapters 7-17 inclusive, dealing with the Low, Medium and High Density Resident Zones, the Arrowtown Residential Historic Management Zone, the Large Lot Residential Zone, Queenstown, Wanaka and Arrowtown Town Centre Zones, the Local Shopping Centre Zone, the Business and Airport Mixed Use Zones.

2 Part Five comprises Chapters 26-37 inclusive dealing with Historic Heritage, Subdivision and Development, Natural Hazards, Energy and Unities, Protected Trees, Indigenous Vegetation and Temporary Activities and Relocated Buildings, Noise and Designations.

3 Part Four comprises Chapters 21-23 inclusive, dealing with the Rural Zone, the Rural Residential and Rural Lifestyle Zones, and the Gibbston Character Zone.

- Fraser Colegrave
- Dr Marion Read
- Dr Phil McDermott
- Craig Barr
- Matthew Paetz

UCES[4]
- Julian Haworth

New Zealand Transport Agency[5]
- Tony MacColl

John Walker[6]

Simon Jackson and Lorna Gillespie[7]
- Simon Jackson

Orchard Road Holdings Limited[8] **and Willowridge Developments Limited**[9]
- Allan Dippie

Just One Life Limited[10] **and Longview Environmental Trust**[11]
- Johannes (John) May
- Scott Edgar

Allenby Farms Limited[12]**, Crosshill Farms Limited**[13] **and Mount Cardrona Station Limited**[14]
- Warwick Goldsmith and Rosie Hill (Counsel)
- Duncan White (for Allenby Farms Limited and Crosshill Farms Limited)
- Jeff Brown (for Mt Cardrona Station Limited)

Ayrburn Farm Estate Limited[15]**, Bridesdale Farm Developments Limited**[16] **and Shotover Park Limited**[17]
- Warwick Goldsmith and Rosie Hill (Counsel)
- Jeff Brown

Trojan Helmet Limited[18]
- Rebecca Wolt (Counsel)

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4 Submission 145/Further Submission 1034
5 Submission 719/Further Submission 1092
6 Submission 292
7 Further Submission 1017
8 Submission 91/Further Submission 1013
9 Submission 249/Further Submission 1012
10 Further Submission 1320
11 Submission 659/Further Submission 1282
12 Submission 502/Further Submission 1254
13 Submission 531
14 Submission 407/Further Submission 1153
15 Submission 430
16 Submission 655/Further Submission 1261
17 Submission 808/Further Submission 1164
18 Submissions 443/Further Submission 1157

- Jeff Brown

Hogan Gully Farming Limited[19]
- Jeff Brown

QAC[20]
- Rebecca Wolt (Counsel)
- Mark Edghill
- John Kyle
- Kirsty O'Sullivan

GH & S Hensman, B Robertson, Scope Resources Limited, N Van Wichen and Trojan Holdings Limited[21]
- Alyson Hutton

Bobs Cove Development Limited[22]**, Glentui Heights Limited**[23]**, Scott Crawford**[24]
- Ben Farrell

Queenstown Lakes Community Housing Trust[25]
- David Cole

Millbrook Country Club Limited[26]
- Ian Gordon (Counsel)
- Dan Wells (also for Bridesdale Farm Developments Limited[27] and Winton Partners Fund Management No 2 Limited[28])

New Zealand Fire Service Commission[29]
- Emma Manohar (Counsel)
- Donald McIntosh
- Ainsley McLeod

Transpower New Zealand Limited[30]
- Natasha Garvan (Counsel)
- Andrew Renton
- Aileen Craw

Royal Forest and Bird Protection Society[31]
- Susan Maturin

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19 Submission 456/Further Submission 1154
20 Submission 433/Further Submission 1340
21 Submission 361
22 Submission 712
23 Submission 694
24 Submission 842
25 Submission 88
26 Submission 696
27 Submission 655/Further Submission 1261
28 Submission 653
29 Submission 438
30 Submission 805/Further Submission 1301
31 Submission 706/Further Submission 1040

Keri & Roland Lemaire-Sicre[32]
- Keri Lemaire-Sicre

Aurora Energy Limited[33]
- Joanne Dowd

Slopehill Properties Ltd[34]**, D&M Columb**[35]
- Denis Columb
- Locky Columb
- Ben Farrell

Sanderson Group Limited[36]
- Fraser Sanderson
- Donna Sanderson
- Ben Farrell

G W Stalker Family Trust, Mike Henry, Mark Tylden, Wayne French, Dave Finlin, Sam Strain[37]**, Wakatipu Equities Limited**[38]**, Cook Adam Trustees Limited, C & M Burgess**[39]**, Slopehill Properties Limited**[40]**, FS Mee Developments Limited**[41]
- Warwick Goldsmith (Counsel)
- Patrick (Paddy) Baxter
- Ben Farrell

Darby Planning LP[42]**, Soho Ski Area Limited**[43]**, Treble Cone Investments Limited**[44]
- Maree Baker-Galloway and Rosie Hill (Counsel)
- Chris Ferguson

Hansen Family Partnership[45]
- Rosie Hill (Counsel)
- Chris Ferguson

Contact Energy Limited[46]
- Daniel Druce

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32 Further Submission 1068
33 Submission 635
34 Submission 854
35 Submission 624
36 Submission 404
37 Submission 535
38 Submission 515
39 Submission 669
40 Submission 854
41 Submission 525
42 Submission 608/Further Submission 1013
43 Submission 610/1329
44 Submission 613/Further Submission 1330
45 Submission 751/Further Submission 1270
46 Submission 480/Further Submission 1085

Dame Elizabeth and Murray Hanan[47]

- Dame Elizabeth Hanan
- Jack Hanan

Pounamu Body Corporate Committee[48]

- Josh Leckie (Counsel)

Clark Fortune McDonald & Associates Limited[49]

- Nick Geddes

Skyline Enterprises Limited[50]**, Totally Tourism Limited**[51]**, Barnhill Corporate Trustee Limited & DE, ME Bunn & LA Green**[52]**, AK and RB Robins & Robins Farm Limited**[53]**, Slopehill Joint Venture**[54]

- Vanessa Robb (Counsel)
- Tim Williams

NZIA[55]

- Gillian Macleod
- Peter Richie
- Juliette Pope
- Erin Taylor

Phillip Bunn[56]**, Steven Bunn**[57]**, Carol Bunn**[58]**, Debbie MacColl**[59]

- Phillip Bunn
- Steven Bunn
- Debbie MacColl

X-Ray Trust Limited[60]

- Louise Taylor

Federated Farmers of New Zealand[61]

- David Cooper

New Zealand Tungsten Mining Limited[62]

- Rosie Hill (Counsel)

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47 Further Submission 1004
48 Submission 208
49 Submission 414
50 Submission 574
51 Submission 571
52 Submission 626
53 Submission 594
54 Submission 537
55 Submission 238
56 Submission 265
57 Submission 294
58 Submission 423
59 Submission 285
60 Submission 356/Further Submission 1349
61 Submission 600/Further Submission 1132
62 Submission 519/Further Submission 1287

- Carey Vivian (also Cabo Limited)[63]

TJ and EJ Cassells, Bulling Family, Bennett Family and M Lynch[64], Friends of Wakatipu Gardens and Reserves[65]
- Rosie Hill (Counsel)

Peninsula Bay Joint Venture[66]
- Monique Thomas (Counsel)
- Louise Taylor

Kawarau Jet Services Holdings Limited[67]
- James Gardiner-Hopkins (Counsel)

Skydive Queenstown Limited[68]
- Tim Sinclair (Counsel)
- Clark Scott
- Anthony Ritter

Matukituki Trust[69]
- James Gardner-Hopkins (Counsel)
- Louise Taylor

Queenstown Rafting Limited[70]
- Tim Sinclair (counsel)
- Robin Boyd

Hawea Community Association[71]
- Paul Cunningham
- Dennis Hughes

Real Journeys Limited[72] and Te Anau Developments Limited[73]
- Fiona Black
- Erik Barnes
- Ben Farrell

Ngai Tahu Tourism Limited[74]
- John Edmonds

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63 Further Submission 1356
64 Submission 503
65 Submission 506
66 Submission 378/Further Submission 1336
67 Submission 307/Further Submission 1152
68 Submission 122/Further Submission 1345
69 Submission 355
70 Further Submission 1333
71 Submission 771
72 Submission 621/Further Submission 1341
73 Submission 607/Further Submission 1342
74 Submission 716

Remarkables Park Limited[75], Queenstown Park Limited[76] and Shotover Park Limited[77] and Queenstown Wharves GP Limited[78]

- Rebecca Davidson (Counsel)

Straterra[79]

- Bernie Napp

8. In addition, the following parties tabled evidence but did not appear at the hearing:
   - Ministry of Education[80]
   - Powernet Limited[81]
   - Vodafone New Zealand Limited[82], Chorus New Zealand Limited[83], Spark New Zealand Trading Limited[84]
   - New Zealand Defence Force[85]
   - Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited[86]
   - Garry Strange[87]
   - Director-General of Conservation[88]

9. Evidence was also pre-circulated by Ulrich Glasner for Council and Tim Walsh for Pounamu Body Corporate Committee[89], and Greg Turner for Hogan's Gully Farming Ltd[90].

10. Messrs Glasner and Walsh were excused from attending the hearing due to illness and domestic commitments respectively. In lieu of attendance, we provided the respective parties with written questions for the witness concerned. Mr Glasner's answers were provided in a Memorandum of Counsel for the Council dated 16 March 2016. Mr Walsh's answers were provided under cover of a Memorandum of Counsel for Pounamu Body Corporate Committee dated 23 March 2016. Mr Turner's evidence was taken as read and we excused him from attending the hearing.

11. During the course of the hearing, we requested experts with an interest in the PDP provisions related to Queenstown Airport to conference. A Conference Statement dated 22 March was filed signed by Matthew Paetz (for Council), John Kyle and Kirsty O'Sullivan (for QAC) and Chris Ferguson (for Hansen Family Partnership) under cover of a Memorandum of Counsel for QAC of the same date.

12. Also during the course of the hearing, we requested further information:

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75 Submission 807/Further Submission 1117
76 Submission 806/Further Submission 1097
77 Submission 808/Further Submission 1164
78 Submission 766/Further Submission 1115
79 Submission 598/Further Submission 1015
80 Submission 524
81 Submission 251/Further Submission 1159
82 Submission 179/Further Submission 1208
83 Submission 781/Further Submission 1106
84 Submission 191/Further Submission 1253
85 Submission 1365/Further Submission 1211
86 Submission 768
87 Submission 168
88 Submission 373/Further Submission 1080
89 Submission 208/Further Submission 1148
90 Submission 456/Further Submission 1154

a. Relating to the development capacity enabled by the Proposed District Plan (PDP) including details of how the population projections, infrastructure planning and provision, land availability, constraint mapping, commercial industrial growth projections, and the planning period applied were used in the formulation of the UGB policies and consequently the UGB lines on the planning maps;
b. For each area contained within an UGB, a table showing the estimated existing dwelling and population numbers, and the total potential dwelling and population (at the same household size as at present) enabled by the PDP; and
c. Again, for the Rural Zone and Rural Lifestyle Zoned land within the Wakatipu Basin and Upper Clutha area, a table showing the number of consented building platforms and/or consented but as yet unimplemented resource consents for dwellings.

13. The information was supplied under cover of a Memorandum of Counsel for the Council dated 18 March 2016. We likewise invited input from any interested party on this information.

14. Lastly, during the course of the hearing, we requested Council staff giving evidence to consider as to how the Objectives in Chapters 3, 4 and 6 might be reframed in order that they specified an environmental outcome (refer further discussion of this point below). Suggested amended objectives were filed under cover of a Memorandum of Counsel for the Council dated 18 March 2016.

15. We invited any parties with comments on the Conferencing Statement, or the additional information or amended objectives provided by Council at our request to provide same. A number of parties who had already been heard did so. In addition, the following parties who had not previously been heard or submitted evidence provided written comments:
a. Board of Airline Representatives of New Zealand Incorporated[91]
b. Peter and Margaret Arnott[92].

1.4. Procedural Steps and Issues

16. The hearing of Stream 1B proceeded on the basis of the general pre-hearing directions made in the memoranda summarised in the Introductory Report. We would particularly wish to express our appreciation that almost all of the Counsel appearing for submitters supplied us with a synopsis of their legal submissions in advance (as requested), thereby enabling us to better understand the arguments being advanced.

17. In addition to the Directions noted above, arising out of the filing of the Expert Conference Statement in relation to Queenstown Airport matters and the provision of additional information and amended objectives by the Council, specific directions relevant to Stream 1B were made by the Chair waiving the late filing of a supplementary brief of evidence by Jeff Brown[93] dated 10 March 2016 (on 11 March 2016) and declining an application made by Queenstown Park Limited on 17 March 2016 seeking leave to file a further late brief of evidence (on 18 March 2016).

18. Lastly, a number of submitters were given the opportunity to supply further comment and/or evidence on matters raised during the course of their appearance before us. In this way, we received additional material as follows:

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91 Submission 271/Further Submission 1077

92 Submission 399/Further Submission 1167

93 On behalf of Trojan Helmet Limited, Mount Cardrona Station Limited, Hogan Gully Farming Limited, Ayrburn Farm Estate Limited, Remarkables Park Limited, Queenstown Park Limited, Shotover Park Limited and Queenstown Wharves Limited

a. A Memorandum of Counsel for New Zealand Fire Service Commission dated 24 March 2016 regarding amended relief;
b. A letter from Ms Dowd dated 22 March 2016 providing further feedback on those parts of Aurora Energy's Line Network that might be considered regionally significant infrastructure;
c. Additional legal submissions dated 21 March 2016 on behalf of Transpower New Zealand Limited in relation to the implementation of the NPSET 2008;
d. Combined and updated section 32AA assessments by Louise Taylor on behalf of X-Ray Trust Limited, the Matukituki Trust Limited, Peninsula Bay Joint Venture dated 23 March 2016;
e. A Memorandum of Counsel for Matukituki Trust dated 30 March 2016 providing feedback on the obligation to give effect to the Regional Policy Statement and on the meaning of the term "*most appropriate"* in the context of section 32(1)(b).
f. Comment from Mr Farrell on behalf of Real Journeys Limited and Te Anau Developments Limited in relation to Policy 6.3.1.8.

1.5. Collective Scope

19. During the course of the Stream 1B hearing, counsel for Allenby Farms Limited, Crosshill Farm Limited and Mount Cardrona Station Limited (Mr Goldsmith) submitted to us, on the authority of the High Court's decision in *Simons Hill Station Limited v Royal Forest and Bird Protection Society*[94], that it was open to his clients to make submissions on the basis that the relief available to them was determined by the full range of submissions, not just their own submissions and further submissions (described colloquially as 'collective scope').

20. Subsequently, counsel for a number of other parties presented their case to us on the same basis. It is fair to say that we found this a novel proposition. Mr Goldsmith for his part, accepted that he could provide us with no specific authority applying the *Simons Hill* decision to a District Plan process at first instance, but argued that it was a logical consequence of the High Court's decision in that case.

21. We requested that counsel for the Council address this point in their written reply. Their advice to us is that there is no legal constraint on submitters presenting evidence or commenting on matters raised by other submitters, although the weight that could be attributed to such evidence or submissions would be questionable if it did not relate to the relief specified in their submissions or further submissions.

22. They went on to submit that the decision in *Simons Hill* did not have the effect of altering the position as to who has standing to appeal the Council's decision. We need not, however, canvass that aspect of the matter since standing to appeal the decisions made by Council on our recommendations will be a matter for the Environment Court to determine, if necessary.

23. Accepting the submissions for counsel for the Council, we have therefore determined that we should not ignore submissions and/or evidence on matters not raised by the submissions and further submissions of those parties, provided we can identify a submission that would have supported that position.

24. One unsatisfactory aspect of this approach to the hearing is that the counsel and/or witnesses for submitters relying on this approach to the hearing generally did not identify which

94 [2014] NZHC 1362

submissions they were in fact relying on to provide jurisdiction for the position they were taking.

25. We do not regard ourselves as being under any obligation to search through the relief sought by submitters to confirm (or otherwise) whether the submissions and evidence extending beyond the matters canvassed in the submissions and further submissions of the parties concerned in fact fell within some other submission(s) if that were not readily apparent to us.

26. Having said that, we accept the submission made by counsel for Darby Planning LP (Ms Baker-Galloway) that given that some submissions seek deletion of the strategic chapters of the Plan and in one case at least, reversion to a modified version of the ODP, the permissible scope for amendment of the PDP is broad.

1.6. Section 32

27. When counsel for the Council opened the hearing, we queried the absence in the case for Council of any quantitative analysis of the costs and benefits of provisions to implement the specified objectives as required (where practicable) by section 32(2) of the Act. Counsel's response was that quantitative analysis of costs and benefits of the strategic policies and other provisions in Chapters 3, 4 and 6 would be of limited or no benefit to us. Counsel did, however, accept the related point that the section 32 analysis underpinning Chapters 3, 4 and 6 did not explicitly evaluate the effects of the recommended provisions on employment.

28. We are inclined to agree that economic evidence attempting to assess the cost and benefits of high-level policy provisions such as those in Chapters 3, 4 and 6 would be of limited benefit. It was not as if any submitter put before us a quantitative analysis of costs and benefits of the provisions they sought either. Without exception, the evidence of submitters relied on a qualitative analysis of costs and benefits. It was, however, somewhat surprising that the impracticability of undertaking a quantitative analysis of costs and benefits was not canvassed in the section 32 reports.

29. Similarly, the absence of any commentary from the Council on a matter we are obliged by law to consider (employment) was not helpful. Fortunately perhaps, the effect of provisions in the PDP on employment is something that can be qualitatively assessed as an aspect of economic activity.

30. Counsel for Trojan Helmet Limited (Ms Wolt) made the related submission that section 32 exists primarily to ensure that any restrictions on the complete freedom to develop land are justified rather than the converse. She argued, relying on *Hodge v Christchurch City Council*[95], that it is the noes in the PDP which must be justified not the ayes. It followed in counsel's submission that while the submitters had not provided any quantitative costing of costs and benefits, they were under no obligation to do so.

31. We think that limited weight can be placed on the *Hodge* decision for two reasons:
    a. The Court itself said that while it was attracted to the reasoning Ms Wolt put to us, it declined to determine the matter finally;
    b. The version of section 32 in force at the time of the *Hodge* decision required consideration of the extent to which plan provisions were 'necessary' for achieving the purpose of the Act. Since 2003, the focus has been on the appropriateness of provisions under scrutiny, which suggests a broader inquiry than had previously been the case.

95 C1A/96

32. More recently again, the requirements of section 32AA have been added[96].

33. The requirement that the decision-maker (in this case the Council after considering our recommendations) undertake its own section 32 analysis of any changes it proposes means, we believe, that in practice if not in law[97], if a submitter wishes to convince us of the merits of the changes to the PDP which it seeks, it must put to us sufficient analysis that we can undertake that required evaluation because, without it, we would necessarily have to recommend that the Council reject the submission.

34. We record that where in our substantive consideration of the provisions of Chapters 3, 4 and 6, we have recommended changes to the notified version of those chapters, that recommendation has, in each case, reflected its evaluation of the suggested change in terms of section 32(1) - (4). The level of detail in which suggested changes have been considered similarly reflects, in each case, our assessment of the scale and significance of the recommended change.

35. We regard this approach[98] as more efficient than the alternative of preparing a separate evaluation report, given the number of provisions in respect of which changes have been recommended.

36. Lastly, in relation to section 32 issues, we sought assistance from a number of the counsel appearing before us as to how we should interpret and apply the guidance of the High Court that when assessing whether a particular method is the *'most appropriate'* way to achieve the objectives (for the purposes of s32(1)(b)), *'appropriate'* is to be read as synonymous with *'suitable'*, and it is not necessary to overlay that consideration with a requirement that it be superior[99]. Ms Wolt[100] accepted that it was not entirely clear, but submitted that the best interpretation is that we do not have to be satisfied that the option chosen is the most suitable available option. By contrast, Mr Gardner-Hopkins[101], initially suggested that we needed to be satisfied that the chosen option was not the worst. In a subsequent appearance[102], then expanded on in his helpful memorandum of 30 March 2016, Mr Gardiner-Hopkins argued that some meaning must to be given to the word *'most'* and that, accordingly, the enquiry might be as to whether the chosen option was the *'most suitable'* or better option[103].

37. We have approached the matter on the basis, as suggested by Mr Gardner-Hopkins, that we are looking for the optimum planning solution based on the submissions and evidence we have heard, but that this is not a precise science in which the appropriateness or suitability of particular formulations can be quantified so as to arrive at the best one by a process akin to mathematical calculation. Demonstrably, as Mr Gardner-Hopkins also suggested, we should not recommend options that we consider will result in poorer outcomes (in the context of

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96 By virtue of section 70 of the Resource Management Amendment Act 2013.

97 Counsel for the Council submitted in their reply submissions dated 7 April 2016, that the submitters were under a legal obligation to provide probative evidence or analysis that the alternative wording sought by them was more appropriate than that recommended by Council staff.

98 Provided for in s32AA(1)(d)(ii) of the Act

99 *Rational Transport Society Inc. v New Zealand Transport Agency* [2012] NZRMA 298 at [45]

100 Counsel for Trojan Helmet Ltd (Submissions 443, 453)

101 Counsel for Kawarau Jet (Submission 307)

102 On this occasion appearing for Matukituki Trust (Submission 755)

103 Although not noted in Mr Gardiner-Hopkins' memorandum, this submission appears consistent with the High Court's decision in *Shotover Park Ltd and Remarkables Park Ltd v QLDC* [2014] NZHC 1712 at [57] which described the obligation as being to select the option the decision-maker believes is the best.

methods to achieve objectives, methods less likely to achieve the objective), but beyond that, we have a degree of discretion to choose between options which are different but equally meritorious when viewed in a broad manner.

1.7. Further Submissions

38. A related issue which has emerged from our review of submissions and further submissions is the status of further submissions purporting to seek materially different relief from the submission they support or oppose.

39. Clause 8(2) of the Act states that a further submission must be limited to a matter in support of or in opposition to the primary submission. Established case law indicates that a further submission cannot extend the scope of the submission that it supports or opposes; it can only seek allowance or disallowance of the original submission in whole or in part[104].

40. What this means in practice is that if an original submission seeks to amend the notified plan provisions, a further submission on that submission is limited to seeking an outcome somewhere in the spectrum between the relief sought in the original submission and the status quo represented by the notified plan provisions. It cannot use the original submission as a springboard to seek materially different relief outside the bounds created by the original submission[105].

41. The position is the same where an original submission supports the notified plan provisions except that in that case, by definition, there is no difference between the outcome sought by the original submission and the notified plan provisions. A further submission cannot therefore seek relief other than retention of the notified plan provisions under the guise of opposing the original submission.

1.8. Statutory Considerations

42. The Hearing Panel's Report 1 contains a general discussion of the statutory framework within which submissions and further submissions on the PDP have to be considered, including matters that have to be taken into account, and the weight to be given to those matters. We have had regard to that report when approaching our consideration of submissions and further submissions on the matters before us.

43. While the legal obligations discussed in Report 1 are on the Council in its capacity as the decision maker on the final form of the PDP, we have put ourselves in the Council's shoes, as if we were subject to those same obligations, when determining what recommendations we should make to Council. Our report is framed on that basis, both for convenience, and to avoid confusion regarding the various roles the Council has in the process.

44. The Section 42A Reports provided us with a general overview of the matters of relevance to our deliberations, including summaries of the provisions of the RPS and the Proposed RPS.

45. The breadth of the matter covered in the Strategic Chapters we need to consider means that there is little value in our summarising the points of each document of relevance – such a summary would, for instance, necessarily have to encompass virtually all of the RPS and the Proposed RPS, as well as parts of each National Policy Statement.

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104 *Telecom NZ Ltd v Waikato DC* A074/97

105 As was held to be the case in the *Telecom* case

46. We have therefore adopted the approach of referring to the relevant documents in the context of our consideration of particular provisions of the Strategic Chapters.

1.9. Background to Strategic Chapters

47. The evidence for the Council[106] was that the District faces a range of challenges that are almost unique among territorial authorities in New Zealand because of the combination of:
    a. Strong population growth over the last ten years, which is projected to continue over the planning period, and well beyond, underpinned by a visitor industry that dominates the District's economy and is growing rapidly.[107]
    b. An extremely high quality environment with limited areas of relatively flat land available for residential land development if the quality of that environment is to be maintained.
    c. Rapidly increasing housing costs linked to a supply shortage (relative to demand) with accompanying affordability issues, that are predicted only to worsen.

48. The evidence for the Council[108] also drew attention to the desirability of the PDP providing greater direction as to how these key strategic issues will be addressed than the ODP does currently, and in a more readable, accessible manner than the ODP.

49. Mr Paetz put this in terms of a progression many councils are making from an initial focus (in first generation District Plans) on managing adverse effects on the environment to providing more direction as to desired outcomes that more explicitly considers economic and social wellbeing.

50. Mr Paetz explained that consistent with that approach, Chapter 3 sought to bring together the key issues the Council had identified and provide a policy framework addressing them. Mr Paetz suggested in his Section 42A Report[109] that including an overarching strategic chapter was good planning and resource management practice. Counsel for QAC provided to us a copy of the decision of the Independent Hearings Panel on the Christchurch Replacement District Plan regarding the section of that Plan dealing with strategic directions and strategic outcomes, which rather tends to illustrate Mr Paetz's point. Mr Paetz also advised that in addition to being utilised in the assessment of resource consent applications, the strategic direction provided in Chapter 3 would also provide a strategic context for consideration of any proposed plan changes and designations.

51. Mr Paetz described Chapter 3 as sitting at the top of a hierarchical structure over both the other chapters in Part 2, and over the PDP as a whole.

52. We accept Mr Paetz's broad characterisation of the trend of district planning in New Zealand over the life of the Act. The gradual movement from a focus on the management of effects to providing greater planning direction might be illustrated in relation to a district with some similarities (at least as regards demand for residential development in rural areas) to Queenstown Lakes District, by the Environment Court's decision in *Mapara Valley Preservation Society Inc v Taupo District Council*[110].

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106 See in particular the Section 42A Report on Chapters 3 and 4 at pages 8-12

107 The evidence of Mr Colegrave provided greater detail on population trends.

108 Section 42A Report at pages 13-14

109 Paragraph 8.1

110 A083/2007 at paragraphs 41-43

53. A number of parties who attended the hearing suggested to us that the PDP had moved too far away from managing effects and toward prescribing outcomes[111]. It was argued that this was inconsistent with the effects-based and/or enabling focus of the purpose of the Act. Counsel for Skyline Enterprises Ltd and others submitted to us both that section 5 is by its nature enabling[112] and that the premise of the Act is *"inherently and intentionally 'effects-based'"*[113]. Counsel did not cite any authority for these propositions[114] and agreed, when we discussed it with her, that the Act is only enabling if one includes consideration of enabling protection[115].

54. Accordingly, we do not accept that the approach of the PDP has inherent legal flaws on this kind of generalised basis. As we think counsel accepted, it is much more a question as to what specific provisions best satisfy the section 32 tests. In addition, of course, we also have to ensure the PDP satisfies the other statutory requirements discussed in greater detail in Report 1.

55. Submissions that the PDP was insufficiently effects-based or enabling were frequently combined with an argument that the PDP was flawed because it failed to use the language of the Act. Mr Jeff Brown, for instance, suggested to us that the use of the language of the Act is well understood by professionals and the public, and that the introduction of new terms would create uncertainty and potentially litigation. His view was that RMA language should be the default language of any district plan and that non-RMA language should be used sparingly[116]. In Mr Brown's view the wording of provisions needs to be very carefully chosen to offer as much precision as possible.

56. While we will discuss alternative wording formulations in the context of the objectives and policies of Chapters, 3, 4 and 6, the most common wording amendments suggested were to substitute "*avoid, remedy or mitigate"* for "*avoid", "recognise and provide for"* in the place of "*protect"* and to add the word "*inappropriate"* before "*subdivision, use and development"*.

57. The trouble with the wording of the Act in these instances is that while well-known and the subject of extensive judicial commentary, it does not necessarily provide any direction when used in this context.

58. Thus, while a policy using the word "*avoid"* is quite clear as to its meaning[117], adding "*remedy or mitigate"* to produce the combined phrase "*avoid, remedy or mitigate"* provides no

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111 That was the thrust for instance of the submissions made by Ms Baker-Galloway, counsel for Darby Planning LP

112 Paragraph 3.4 of counsel's submissions

113 Paragraph 4.9 of counsel's submissions

114 When we asked counsel for Darby Planning LP, who advanced a similar position, whether she could provide us with authority to support a submission that effects-based planning is the only premise of the Act, she could not do so.

115 The proposition we put to counsel is almost an oxymoron, but it acknowledges the emphasis given by the majority of the Supreme Court in *Environmental Defence Society v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 to the fact that the first part of section 5(2) talks of managing the "use, development and protection" of natural and physical resources. We note that without intending any disrespect to William Young J, we refer hereafter to the judgment of the majority delivered by Arnold J for brevity as the judgment of the Court

116 Evidence of Jeff Brown at 3.2-3.5.

117 Refer *Environmental Defence Society v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 at 96, while noting the acknowledgement by the Court that the term might vary in meaning according to context.

direction in the absence of clarification as to how much mitigation might be acceptable and/or what outcome needs to result. Similarly, while section 6 of the Act instructs decision makers to recognise and provide for a range of specified matters, if the PDP utilises the same language, it provides little or no guidance unless it says how a particular matter will be recognised and provided for, and with what end result. Lastly, inserting the word "*inappropriate",* so that a policy provides for protection (for example of an outstanding natural landscape) "*from inappropriate subdivision, use and development",* provides little or no clarification as to what is intended given the finding of the Supreme Court in the *King Salmon* litigation[118] that:

"… where the term "inappropriate" is used in the context of protecting areas from inappropriate subdivision, use or development, the natural meaning is that "inappropriateness" should be assessed by reference to what is sought to be protected".

59. Proving that if you wait long enough, history will indeed repeat itself, we note that the Environment Court faced similar arguments in the appeals on what ultimately became the ODP. Thus, in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*[119]*,* the Court recorded a submission on behalf of the appellant society that:

"Under the guise of 'enabling', policy is being reduced to general platitudes and repetition of phrases from the Act. Our view is that the Plan is to articulate the RMA in this district, not just repeat the Act…"

60. The Court commented as follows[120]:

"We have some sympathy for that submission. There is an observable trend from the notified plan to the revised plan, increasing in suggested solutions to us, which is to adopt a standard policy formula, parroting section 5(2)(c) of the RMA: to "avoid, remedy or mitigate the adverse effects of …". We consider that policies with more detail may be of more assistance in both determining the relative methods of implementation, and in applying the policies when the district plan is operating."

61. And then in a subsequent decision[121], the Court was considering a draft policy worded as follows:

"To avoid subdivision and development on the outstanding natural landscapes and features of the Wakatipu Basin."

62. The Court commented[122]:

"So Policy 3(a) needs to be changed. Is it then adequate to add "inappropriate"? We consider it is not: that addition merely repeats the language of the Act and gives it little or no guidance to anyone. We re-emphasise[123] that merely parroting the statutory formula is of little use."

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118 [2014] NZSC 38 at [101]. Ms Hill, counsel for Ayrburn Farm Estate Ltd, Bridesdale Farm Developments Ltd, Shotover Country Ltd and Mr Cardrona Station Ltd argued that *King Salmon* could be distinguished. We address her argument in the context of our discussion of Objective 3.2.5.1 below.

119 C180/99 ([2000] NZRMA 59). We refer to this decision throughout this report as C180/99 since that was generally the convention adopted by counsel before us.

120 At paragraph 150

121 C74/2000

122 At paragraph 10

123 Cross referencing paragraph 150 from its earlier decision, quoted above

63. The Court also provided us with some guidance regarding the submission made to us in a number of different contexts, with multiple variations, that the determination of particular matters should be left to a resource consent context. Thus, in its 1999 decision, the Court said:

"The latters' argument that the capacity of the landscape to absorb development should be assessed on a case by case basis does not impress us. While there are dangers in managing subjective matters rather than letting the market determine how the landscape should be developed and altered, those factors are outweighed when the appropriate management is the status quo and there is a statutory sanction for the protection of the outstanding natural landscape from inappropriate subdivision and development. Management under a Plan may avoid inconsistent decisions, and cumulative deterioration of the sort that has already occurred."[124]

64. Fortified by the guidance of the Environment Court in relation to the ODP, we take the view that use of the language of the Act is not a panacea, and alternative wording should be used where the wording of the Act gives little or no guidance to decision makers as to how the PDP should be implemented. We take the same view where the superior documents provide only very general guidance. The RPS in particular tends to reproduce the phraseology of the Act and thus raises the same issues in terms of the need for greater direction.

65. Having said that, we acknowledge a point made in the Hearing Panel's Report 1. Clear terms (like avoid) need to be used with care to ensure they do not have unintended effects; in that particular case, to preclude worthwhile and appropriate activities.

[124] See 180/99 at [137]. See also C74/2000 at [10]

PART D - CHAPTER 6

8. OVERVIEW

1107. The purpose of this chapter is to recognise the landscape as a significant resource to the District which requires protection from inappropriate activities that could degrade its qualities, character and values. General submissions on Chapter 6 included requests that the entire chapter, or alternatively the objectives and policies in the chapter, be deleted and either replaced with the provisions already in section 4.2 of the ODP or unspecified elements thereof[611].

1108. Some of these submissions made quite specific suggestions as to desired amendments to the existing section 4.2 of the ODP. Others were more generalised. A variation was in submissions such as submissions 693[612] and 702 asking that Chapter 6 be deleted, and parts amalgamated with the Rural Chapter Section.

1109. Collectively, these submissions provide a broad jurisdiction to amend Chapter 6.

1110. We have addressed at some length in the context of our discussion of submissions on Chapter 3 whether it is appropriate to revert to the approach taken in the ODP to landscape management and have concluded that while a number of aspects of the ODP remain both relevant and of considerable assistance, the changed circumstances some 17 years after the initial key decision of the Environment Court on the form of the ODP[613] mean that a more strategic, directive approach is required. The commentary provided by Mr Barr in his Section 42A Report on Chapter 6 provides additional support for this view.

1111. Accordingly, we do not recommend wholesale changes to Chapter 6 to bring it into line with the ODP. Nor do we recommend it be amalgamated into the rural chapters. We consider it provides valuable strategic direction, consistent with the general structure of the PDP, with separate 'strategic' chapters. At an overview level, though, we recommend that the title of the chapter be amended to "*Landscapes and Rural Character"* to more correctly describe its subject matter. We regard this as a minor non-substantive change.

1112. Another theme of submissions on landscape issues was that the PDP's provisions were too protective of landscape values and existing activities that contribute to those values[614]. In his evidence, Mr Jeff Brown put to us the proposition that growth will inevitably affect landscape values, that this needed to be accepted and that the focus of PDP needed to be on appropriate management of those effects[615]. Counsel for Skyline Enterprises Ltd and others, Ms Robb, put a similar proposition to us, submitting[616]:

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611 Submissions 145, 632, 636, 643, 669, 688, 693, 702: Opposed in FS1097, FS1162, FS1254 and FS1313

612 Supported in FS1097

613 C180/99

614 See e.g. Submission 806

615 J Brown, EiC at [2.2]

616 Summary of legal submissions for Skyline Enterprises Ltd, Totally Tourism Ltd, Barnhill Corporate Trustee Ltd, DE, ME Burn and LA Green, AK and RB Robins and Robins Farm Ltd and Slopehill JV at 6.1.-6.3

"The regime does not recognise the fundamental need for development to accommodate inevitable growth (both in the tourism and living sectors) or that certain development will contribute to people and communities' appreciation of the District.
The assumption to be gained from the PDP is that Council is trying to protect rural areas from any development (other than productive rural activity) when in fact that is not what the PDP should be striving to achieve, at all.

Overall the PDP does not strike an appropriate balance between the protection, use and development of all resources. Accordingly, it is not the most appropriate regime to achieve the purpose of the Act."

1113. Such submissions raise questions of the extent to which the PDP can and should provide for growth.

1114. We posed the question to Ms Black, who gave evidence on behalf of Real Journeys Ltd, whether it might be time to put out the *"full up"* sign at the entrance to Queenstown, rather than seek to cater for an ever-expanding influx of visitors to the District. Her initial reaction was one of surprise that one could contemplate such a position. Having reflected on the point, she suggested that it was very difficult to stop development. She drew our attention to the economic benefits to other districts from the number of visitors drawn to Queenstown and Wanaka, and also to the national objectives of the tourism industry.

1115. All of these matters are worthy of note, but Ms Black accepted also that there is a risk of too much development in the District *'killing the golden goose'*. Ms Black's opinion might also be contrasted with the view expressed by Mr Goldsmith[617] that Queenstown can't just keep growing.

1116. Overlaid on these considerations is now the NPSUDC 2016 which aims "*to ensure that planning decisions enable the supply of housing needed to meet demand"* while not anticipating *"development occurring with disregard to its effect"*[618].

1117. Ultimately, it is about arriving at the best balance we can between the use, development and protection of the District's natural and physical resources[619], while complying with the legal obligations the Act imposes.

1118. We have not considered submissions[620] that although nominally on Chapter 6, in fact raise issues outside the Council's jurisdiction.

1119. Lastly, we note that our consideration of submissions on Chapter 6 needs to take into account the variation of some of its provisions notified on 23 November 2017. At a purely practical level, to the extent that the Stage 2 Variations delete or amend parts of Chapter 6, we do not need to make recommendations on those parts and existing submissions on them have been automatically transferred to the variation hearing process, by virtue of Clause 16B(1) of the First Schedule to the Act.

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617 When giving submissions for Ayrburn Farms Ltd, Bridesdale Farm Ltd, Shotover Country Ltd and Mt Cardrona Station Ltd

618 NPSUDC 2016 Forward at pages 3 and 4

619 Noting that that was how Ms Robb concluded her submissions – putting her position in terms of how the PDP had struck that balance.

620 See Submission 380

1120. Our recommended version of Chapter 6 in Appendix 1 therefore shows the provisions of the notified Chapter the subject of the Stage 2 Variation greyed out, to differentiate them from the provisions we recommend.

8.1. Section 6.1 - Purpose

1121. This section provides a general outline of the Purpose of the chapter as whole.

1122. The only submission seeking specific amendments to it was that of NZIA[621] seeking that it also refer to urban landscapes.

1123. Mr Barr recommended only drafting changes in his Section 42A Report.

1124. The primary focus of Chapter 6 is on rural landscapes, and the visual amenity issues in urban areas are dealt with in Chapter 4, and the more detailed provisions of Part Three of the PDP. However, Chapter 6 is not solely on rural landscapes and we accept that some amendment to the Statement of Purpose in Section 6.1 is appropriate to recognise that.

1125. In addition, submissions on Chapter 3 discussed above[622] sought greater guidance on the relationship between Chapter 3 and the balance of the PDP. We have recommended an amendment to Section 3.1 to provide such guidance. As a consequential measure, we recommend that parallel changes should be made to Section 6.1.

1126. Lastly, the second paragraph of Section 6.1 requires amendment in various respects:
   a. It is something of an overstatement to say categorisation of landscapes will provide certainty of their importance to the District. We recommend inserting the word "*greater"* to make it clear that this is an issue of degree;
   b. The reference to regional legislation needs to be corrected. The relevant instruments are Regional Policy Statements;
   c. Saying that categorisation of landscapes has been undertaken "*to align with"* regional [policy] and national legislation is somewhat misleading. Certainly, categorisation of landscapes aligns with the Proposed RPS, but it would be more correct to say that categorisation of landscapes "*responds to*" regional policy and national legislation;
   d. The reference to the RMA at the end of the second paragraph appears an unnecessary duplication, as well as lacking clarity. Given the specific reference to ONLs and ONFs, this is shorthand for consideration of adverse effects.

1127. In summary, we recommend that the Statement of Purpose be amended to read as:

"The purpose of this chapter is to provide greater detail as to how the landscape, particularly outside urban settlements, will be managed in order to implement the strategic objectives and policies in Chapter 3. It needs to be read with particular reference to the objectives in Chapter 3, which identify the outcomes the policies in this chapter are seeking to achieve.

Landscapes have been categorised to provide greater certainty of their importance to the District, and to respond to regional policy and national legislation. Categorisations of landscapes will provide decision makers with a basis to consider the appropriateness of activities that have adverse effects on those landscapes."

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621 Submission 238: Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

622 Submissions 179, 191, 781: Supported in FS1121; Opposed in FS1132

8.2. Section 6.2 - Values

1128. Section 6.2 contains a general discussion of landscape values that provide the background to the objectives and policies that follow in the balance of the chapter.

1129. Submissions on Section 6.2 include:
   a. Requesting that it be more descriptive and acknowledge the inherent values of the District's rural landscapes, especially ONLs and ONFs[623];
   b. Requesting it acknowledge urban landscapes and their values, and that references to farmland, farms and farming activities be amended[624];
   c. Requesting it acknowledge the role of infrastructure and the locational constraints that activity has[625];
   d. Requesting that it note the form of landscape Council wishes to retain and plan for a variety of future housing in both urban and rural areas[626];
   e. Requesting it acknowledge the appropriateness of rural living, subject to specified preconditions[627];
   f. Requesting insertion of a broader acknowledgement of activities that might be enabled in rural locations[628];
   g. Support for its current text[629] or its intent[630].

1130. Mr Barr recommended an amendment to the text to acknowledge that there is some, albeit limited, capacity for rural living in appropriate locations in rural areas, but otherwise recommends only minor drafting changes.

1131. We also record that the Stage 2 Variations delete the final (eighth) paragraph of the notified Section 6.2. Our recommended version of Chapter 6 accordingly shows that paragraph as greyed out, and we have not addressed submissions on it.

1132. We accept NZIA's request that reference in the fourth paragraph to productive farmland be amended to "*rural land"*. While Dr Marion Read noted in her evidence the relationship of farming to rural character, its open character is not related to the productivity of the land. Otherwise, we do not recommend acceptance of the NZIA submissions, reflecting the fact that the primary focus of the chapter is on rural landscapes.

1133. We agree with Mr Barr that some acknowledgement of rural living is required. We take the view, however, that the amendments to the sixth paragraph of Section 6.2 need to be a little more extensive than Mr Barr suggests. If the discussion is going to acknowledge that rural living is appropriate in some locations, it needs to provide greater guidance as to where those locations might be (and equally where the locations are where such development would not be appropriate). We do not consider that the broader acknowledgement requested in submission 608 is required in an introductory discussion.

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623 Submission 110: Opposed in FS1097

624 Submission 238: Opposed in FS1107, FS1226, FS1234, FS1238, FS1241, FS1242, FS1248, FS1249 and FS1255

625 Submissions 251, 433, 805: Supported in FS1077, FS1092, FS1097, FS1115 and FS1117

626 Submission 442

627 Submissions 375, 430, 437, 456: Supported in FS1097; Opposed in FS1084, FS1087, FS1160 and FS1282

628 Submission 608: Supported in FS1097, FS1154 and FS1158; Opposed in FS1034

629 Submission 600: Opposed in FS1034

630 Submission 755

1134. Similarly, we do not recommend that specific reference be made to infrastructure requirements in this context. While these issues are important and need to be addressed in the policies of Chapter 6, this introductory discussion does not purport to discuss every matter addressed in the substantive provisions that follow, nor need it to do so.

1135. We acknowledge that landscapes have inherent values, and agree that such values might be acknowledged.

1136. Other submissions are expressed too generally for us to base substantive amendments on.

1137. The first paragraph of Section 6.2 uses the term '*environmental image'*. The same term was used in Section 4.1 and we have recommended that *"the natural and built environment*" be substituted in that context. For consistency, the same amendment should be made in this context.

1138. The fifth paragraph refers to rural areas closer to Queenstown and Wanaka town centres as having particular characteristics. It would be more accurate to refer to rural areas closer to Queenstown and Wanaka urban areas.

1139. In summary, we recommend the following changes to Section 6.2:
   a. Substitute *"the natural and built environment"* for "*environmental image"* at the end of the first paragraph and add a further sentence:

      "T*hose landscapes also have inherent values, particularly to tangata whenua."*

   b. Substitute "*rural land"* for "*productive farmland"* in the first line of the fourth paragraph;
   c. Substitute reference to "*urban areas"* for "*town centres"* in the fifth paragraph;
   d. Amend the sixth paragraph to read as follows:

      "While acknowledging these areas have established rural living and development, and a substantial amount of further subdivision and development has already been approved in these areas, the landscape values of these areas are vulnerable to degradation from further subdivision and development. Areas where rural living development is at or approaching the finite capacity of the landscape need to be identified if the District's distinctive rural landscape values are to be sustained. Areas where the landscape can accommodate sensitive and sympathetic rural living developments similarly need to be identified."

8.3. Section 6 Objectives

1140. A number of submissions have been made on the objectives of Chapter 6. Mr Barr recommended one objective be deleted and that amendments be made to the balance. We have taken a broader view of the matter.

1141. The objectives all overlap with the objectives of Chapter 3, insofar as the latter address landscape values and rural character. The submissions on the objectives, if accepted, would not materially alter this position[631]. The Chapter 3 objectives already specify the desired end result and our view is that Chapter 6 need only specify additional policies to assist achievement of those broad objectives.

631 Many submissions, if accepted, would make the objectives inconsistent with the direction provided in Chapter 3, or alternatively would make them generalised to the point where they provide no meaningful assistance in achieving the purpose of the Act.

1142. In summary, therefore, to avoid duplication[632] we recommend deletion of all of the objectives in Chapter 6 as being the most appropriate way to achieve the purpose of the Act, as it relates to landscape and rural character.

1143. We have generally classified the many submissions seeking to soften the effects of the objectives as notified in a multitude of different ways as 'Accepted in Part'.

1144. Some submitters have sought additional objectives be inserted into Chapter 6. In particular, NZIA[633] requests addition of a new objective framed:

"Recognise the importance of high quality town centre landscapes within the District's natural landscape."

1145. We do not recommend that this objective be inserted for the following reasons:
   a. It is not framed as an objective (an environmental end point) and it is difficult to discern how it could be redrafted in order to do so.
   b. The urban areas of the District are too small to constitute a landscape in their own right[634].
   c. As above, the principal focus of Chapter 6 is on rural landscapes.

1146. None of the other objectives suggested appeared to us to add value against the background of the provisions recommended in Chapter 3.

8.4. Policies – Categorising Rural Landscapes

1147. As notified, Policies 6.3.1.1.and 6.3.1.2 provided for identification of ONLs and ONFs on the planning maps and classification of Rural Zoned landscapes as ONL, ONF and Rural Landscape Classification.

1148. The only submissions specifically seeking changes to them, sought their deletion[635], identification of the balance of rural landscapes on the planning maps[636] and a change in the label for those rural landscapes[637].

1149. Policy 6.3.1.1 duplicated recommended Policy 3.3.29 and accordingly, we recommend that it be deleted.

1150. As regards Policy 6.3.1.2, the notified version of Chapter 6 has a number of other provisions relating to the landscape classifications: Policy 6.3.8.3 and 6.3.8.4 together with Rules 6.4.1.2-4. It is appropriate that those provisions be considered here, subject to the effect of the Stage 2 Variations.

1151. As notified, Policy 6.3.8.3 read:

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632 Consistent with Real Journeys Limited's submission (Submission 621)

633 Submission 238: Supported in FS1097; Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

634 See the discussion for example in *Lakes District Rural Landowners Society Inc and Ors v Queenstown Lakes District Council* C75/2001 at paragraph 7 on the need for a '*landscape'* to meet a minimum areal requirement.

635 Submission 806

636 Submission 761

637 Submissions 375 and 456: Opposed in FS1282

"Exclude identified Ski Area Sub-Zones from the landscape categories and full assessment of the landscape provisions while controlling the impact of the ski field structures and activities on the wider environment."

1152. Policy 6.3.8.4 read:

"Provide a separate regulatory regime for the Gibbston Valley, identified as the Gibbston Character Zone, in recognition of its contribution to tourism and viticulture while controlling the impact of buildings, earthworks and non-viticulture related activities on the wider environment."

1153. Lastly, Rules 6.4.1.2-4 read:

"6.4.1.2 The landscape categories apply only to the Rural Zone. The Landscape Chapter and Strategic Directions Chapter's objectives and policies are relevant and applicable in all zones where landscape values are in issue.

6.4.1.3 The landscape categories do not apply to the following within the Rural Zones:

a. *Ski Area Activities within the Ski Area Sub-Zones;*
b. *The area of the Frankton Arm located to the east of the Outstanding Natural Landscape Line as shown on the District Plan maps;*
c. *The Gibbston Character Zone;*
d. *The Rural Lifestyle Zone;*
e. *The Rural Residential Zone.*

6.4.1.4 The landscape categories apply to lakes and rivers. Except where otherwise stated or shown on the Planning Maps, lakes and rivers are categorised as Outstanding Natural Landscapes."

1154. The Stage 2 Variations have made amendments to both Rules 6.4.1.2 and 6.4.1.3, which will need to be considered as part of the hearing process for these variations. Specifically:
a. The first sentence of Rule 6.4.1.2 has been deleted;
b. The first line of Rule 6.4.1.3 has been amended to refer to landscape "*assessment* matters*"* rather than landscape "*categories"*;
c. Rules 6.4.1.3 c., d. and e. have been deleted.

1155. The submissions on the provisions quoted included:
a. Support for exclusion of the ski areas from landscape categories[638];
b. A request to extend the ski area exclusion to include access corridors, delete reference to environmental controls and add recognition of the importance of these areas[639];
c. A request to extend the ambit of Rule 6.4.1.2 to exclude Chapter 6 from having any application outside the Rural Zone[640];
d. A request for clarification as to whether landscape classification objectives and policies apply to special zones like Millbrook[641];
e. A request for clarification that landscape classification objectives and policies do not apply to the Rural Lifestyle Zone and the Rural Residential Zone[642];

638 Submissions 608, 610, 613: Opposed in FS1034
639 Submission 806: Supported in FS1229
640 Submissions 443 and 452
641 Submission 696
642 Submissions 669 and 694

f. A request to revise the drafting of Rule 6.4.1.2 and 6.4.1.3 to more clearly express what is included or excluded[643];
g. A request to add the Hydro Generation Zone as a further zone excluded from the landscape classifications[644];
h. A request to add reference to trails undertaken by the Queenstown Trail or Upper Clutha Tracks Trusts[645];
i. A request to delete Rule 6.4.1.4 or clarify the reference to ONLs[646].

1156. Mr Barr recommended deletion of Rules 6.4.1.2 and 6.4.1.4 and amendment of Rule 6.4.1.3 to refer to landscape assessment matters (rather than landscape categories) and to delete reference in the Rule to the Gibbston Character Zone, the Rural Lifestyle Zone and the Rural Residential Zone. Some of those recommendations have been overtaken by the Stage 2 Variations and do not need to be considered further. Mr Barr did not recommend amendment to the two policies noted above (which are not the subject of the Stage 2 Variations).

1157. We found these provisions collectively exceedingly confusing, overlapping, and, in part, contradictory. It is not surprising there were so many submissions seeking clarification of them.

1158. Mr Barr's recommendations did not materially assist and, in one view, confused the matter still further by implying that while the landscape assessment criteria apply only in the Rural Zone, the landscape categorisations as ONL, ONF and Rural Character Landscape (as relabelled) apply as shown on the planning maps, with the sole exceptions of the Ski Area Sub-Zones and the Gibbston Valley Character Zone (by virtue of Policies 6.3.8.3 and 6.3.8.4). That would mean all of the special zones, the Rural Lifestyle Zone and the Rural Residential zone are subject to the landscape categorisations. Inclusion of the special zones would in turn be inconsistent with Mr Barr's recommended revised Policy 6.3.1.1. (that like notified Policy 6.3.1.2) indicates that the intention is to classify the "*Rural Zoned Landscapes"*. On the face of the matter, land in the Rural Lifestyle Zone and the Rural Residential Zone would not qualify as "*Rural Zoned landscapes"* either (given it refers to "*Rural Zoned"* rather than "*rural zoned"* landscapes).

1159. The effect of the Stage 2 Variations is to remove the explicit statements in Section 6.2 and Rule 6.4.1.2 that the landscape categories apply only in the Rural Zone, but does not change notified Policy 6.3.1.2.

1160. Last, but not least, as some submitters pointed out at the hearing, the planning maps identify ONFs within special zones in Arrowtown and at Jacks Point. The Stage 2 Variations do not change that position either.

1161. Stepping back from the explicit and implicit statements in the PDP regarding application of the landscape categories, we make the following observations:
a. The Planning Maps do not clearly or consistently identify the boundaries of the areas denoted ONL, ONF and (particularly) RLC (now RCL) in all locations.
b. Land in the Rural Residential and Rural Lifestyle Zones has been identified as such either because it is already developed or because it has the capacity (in landscape terms) to absorb a greater density of development than the balance of rurally zoned areas. If more

643 Submission 836: Supported in FS1085
644 Submission 580: Opposed in FS1040
645 Submission 671
646 Submission 836

land is identified as appropriately having one or other of these zones applied to it following the mapping hearings, it will be for the same reasons. While the objectives and policies of Chapter 22 refer to the potential for such zones to be located in sensitive landscapes, and have provisions to address that situation, those provisions are not framed with reference to the landscape categories.

c. The Gibbston Character Zone has its own specific provisions to manage landscape character and there might similarly be considered to be a case for it to sit outside the categorisation process as a result;

d. The special zones are just that, "*special"*. They vary in nature, but a common feature is that landscape provisions have already been taken into account in identifying the land as subject to a special zone. In addition, to the extent that Mr Barr's recommended relief would or might have the effect that special zones are subject to the landscape classifications, we consider there is no scope to make that change. Submission 836 (that Mr Barr has relied upon), seeks only non- substantive drafting changes. As regards the specific request by Contact Energy Ltd to add specific reference to the Hydro Generation Zone, this is neither necessary nor appropriate. The Hydro Generation Zone is a *'special*' zone under the ODP. Assuming it retains that status in subsequent stages of the District Plan process, it will be excluded automatically. More to the point, if we were to list that particular zone, we would presumably have to list all the special zones, to avoid the implication that they were not excluded;

e. The Frankton Arm is not readily considered under a classification that seeks to retain its rural character. It is obviously not "*rural"*. As such, it might appropriately be excluded from the classification process entirely, having been identified as not outstanding. That raises questions in our minds as to the apparent classification of a large section of the Hawea River, and the lower section of the Cardrona River, above its confluence with the Clutha, as Rural Character Landscapes, but those rivers might be considered small enough that the policies related to that classification are still applicable;

f. The fact that the District Plan maps show parts of ONFs in Arrowtown and Jacks Point respectively as being within special zones is an anomaly if the intention is that all ONFs and ONLs be managed in accordance with the objectives and policies governing ONLs and ONFs. The special zone at Arrowtown will be considered as part of a subsequent stage of the District Plan review and we recommend the area occupied by the ONF be zoned Rural as part of that process. The Jacks Point Structure Plan already recognises the landscape values of the areas currently identified as ONF and ONL within the boundary of the zone, with provisions precluding development in those areas, reinforced by the recommended provisions of Chapter 41, and so there is not the same imperative to address it.

g. The fact that the PDP maps shows ONL and ONF lines as extending into residential zones appears to be an error, given the provisions of the PDP already noted. We discussed the incursion of the Mt Iron ONF line into the residential zoned land on the west side of the mountain with Mr Barr and he advised it was a mapping error. We will treat that (and the other examples we noted) as being something to be addressed in the mapping hearings, assuming there is jurisdiction and evidence to do so.

h. Although perpetuating the ODP in this regard, the exclusion for the Ski Area Sub-Zones is anomalous because it is contrary to case law[647] holding that the inquiry as to whether a landscape is outstanding is a discrete issue that needs to be resolved on landscape grounds, and that the planning provisions are a consequence of its categorisation as outstanding, not the reverse. Counsel for Darby Planning LP argued that the ski areas were properly excluded from the ONL classification because they are not *'natural'*. That may be the case (Darby Planning did not adduce expert evidence to support that contention), but the ski areas appear too small to constitute a separate *'landscape'* based

647 *Man O'War Station Limited v Auckland Council* [2015] NZHC 767: Affirmed [2017] NZCA 24

on the tests previously applied by the Environment Court. In any event, we have no submission that would give us jurisdiction to delete the exclusion for the ski area subzones in Policy 6.3.8.3[648] and thus we only note it as an anomaly. The Council should consider whether it is necessary to initiate a variation in this regard;

i. Given the *Man O'War* decisions (referred to above) though, the submissions for Queenstown Park Limited[649] and Queenstown Trails Trusts seeking additional exclusions from the consequences of classification as ONL (or ONF) cannot be accepted.

1162. We also note that it was not at all clear to us whether the contents of Section 6.4.1 are correctly described as "*rules".*

1163. While section 76(4) of the Act is silent as to what a rule in a District Plan may do, normally rules govern activities having an adverse effect on the environment. Rules 6.4.1.2-4 quoted above are (as the heading for Section 6.4.1 suggests) essentially explanations as to how policies should be interpreted and applied. Rule 6.4.1.1. is a clarification of the term "*subdivision and development".* Rule 6.4.1.5 is similarly a clarification as to the applicability of the objectives and policies of the landscape chapter to utilities. Mr Barr recommended, in any event, that it be deleted as it is not necessary.

1164. Mr Barr recommended in his reply evidence that Section 6.4 might more appropriately be headed Implementation Methods. That recommendation has now been overtaken by the Stage 2 Variations, meaning that Rules 6.4.1.2-3 must remain in Chapter 6, as amended, for future consideration. We consider, however, that the content of Rule 6.4.1.4 would more appropriately be addressed in policies in common with notified Policies 6.3.8.3 and 6.3.8.4. Rule 6.4.1.1 might appropriately be shifted to the definition section (Chapter 2). Currently that rule reads:

"The term 'subdivision and development' includes subdivision, identification of building platforms, any buildings and associated activities such as roading, earthworks, lighting, landscaping, planting and boundary fencing and access/gateway structures".

1165. A submission was made on this *'rule'* by PowerNet Limited[650] seeking that "*subdivision and development"* should not include "*infrastructure structures and activities that are not associated with the subdivision and development".*

1166. It is not clear whether the submitter seeks an exclusion from the policies in Chapter 6 for infrastructure that is associated with subdivision and development (read literally that would be the effect of the submission, if accepted). If that is the intention, we do not accept it. It is important that the effects of a subdivision be considered holistically. It would be unrealistic and undesirable if, for instance, the effects of a subdivision on landscape character were considered without taking into account the effects of the internal roading network necessitated by the subdivision. No amendment is necessary for infrastructure not associated with the subdivision and development because the existing rule only includes "*associated"* activities as it is.

1167. In summary, we recommend no change to the rule, but that it be shifted to Chapter 2. The end result will of course be the same.

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[648] The exclusion formerly in Rule 6.4.1.2(a) has been effectively removed by the Stage 2 Variations.

[649] Submission 806

[650] Submission 251: Supported in FS1092 and FS1097

1168. We agree with Mr Barr that Rule 6.4.1.5 is an unnecessary duplication and should be deleted.

1169. Turning then as to how Rule 6.4.1.4 might be amalgamated into the policies along with 6.3.8.3 and 6.3.8.4, we have no jurisdiction to expand notified Policy 6.3.1.2 to apply beyond the Rural Zone. Its deletion (as sought in Submission 806) would have the effect that the landscape categories would not have any policy support indicating where they apply. Given the deletions from the text of Chapter 6 accomplished by the Stage 2 Variations and the lack of consistency in the planning maps identifying their location, we do not regard that as a satisfactory outcome – the lack of clarity, legitimately the subject of a number of submissions, would be exacerbated.

1170. We do not regard retention of Policy 6.3.1.2 as inconsistent with the varied provisions notified in November 2017. While Rule 6.4.1.2, as revised by the Stage 2 Variations, states that the objectives and policies of Chapters 3 and 6 apply in all zones where landscape values are in issue, that application presumably must depend on the terms of the relevant objective or policy. Recommended Objective 3.2.5.1 for instance will not apply to landscapes that are not ONL's.

1171. In summary, therefore, we recommend that Policy 6.3.1.2 be renumbered 6.3.1, and refer to Rural Character Landscapes, but otherwise be retained unamended, and that two amended policies numbered 6.3.2 and 6.3.3 be inserted to follow it, building on existing policies as follows:

"Exclude identified Ski Area Sub-Zones and the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps from the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape landscape categories applied to the balance of the Rural Zone.

Provide a separate regulatory regime for the Gibbston Character Zone, Rural Residential Zone, Rural Lifestyle Zone and the Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape landscape categories, and the policies of this chapter related to those categories, do not apply unless otherwise stated."

1172. While the two policies have a similar end result and could potentially be collapsed together, we consider there is some value in differentiating the zones that have discrete chapters in the PDP outlining how they are to be managed, from the Ski Area Sub-Zones and the Frankton Arm that are part of the Rural Zone.

1173. We recommend that Rule 6.4.1.4 should be deleted, as a consequence.

1174. We consider that these policies, operating in conjunction with the policies of Chapter 3 related to categorisation of landscapes are the most appropriate way to achieve Objectives 3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.5.1 and 3.2.5.2 at a strategic level, having regard to the jurisdictional limitations on our consideration of these matters.

8.5. Policies – Managing Activities in the Rural Zones

1175. Consequential on the suggested deletion of the objectives in this chapter, there is a need to organise the policies flowing from categorisation of rural landscapes into a logical order. We recommend that this be done first by grouping the policies managing activities throughout the

rural zones (that is, within the Rural, Rural Residential, Rural Lifestyle and Gibbston Character Zones); secondly by gathering the policies that are specific to managing activities in ONLs and ONFs; thirdly by grouping together policies related to managing activities in RCLs; and lastly by grouping together the policies related to managing activities related to lakes and rivers. We recommend that this division be made clear by including suitable headings as follows:

a. *"Managing Activities in the Rural Zone, the Gibbston Character Zone, the Rural Residential Zone and the Rural Lifestyle Zone;*
b. *Managing Activities in Outstanding Natural Landscapes and on Outstanding Natural Features;*
c. *Managing Activities in Rural Character Landscapes;*
d. *Managing Activities on Lakes and Rivers".*

1176. Insertion of headings for the balance of the chapter requires a new heading for the three policies related to land categorisation that we have already recommended. We recommend the heading "*Rural Landscape Categorisation"* be inserted.

1177. Turning to the policies falling under the first bullet pointed heading above, the first that requires consideration is what was formerly numbered Policy 6.3.1.5, which read:

"Avoid urban subdivision and development in the rural zones."

1178. Submissions on this policy sought a wide range of relief from its deletion to significant amendments. Mr Barr recommended its amendment to read:

"Discourage urban subdivision and urban development in the rural zones."

1179. The substance of this policy has already been addressed in the context of our Chapter 3 report above and we have recommended that urban development outside the defined UGBs and existing settlements where UGBs have not been defined should be avoided. It follows that we recommend that all of the submissions on this policy (apart from the single submission seeking its retention) be rejected. The only amendment we recommend to the policy is to clarify what is meant by "*urban subdivision"*.

1180. Accordingly, we recommend that Policy 6.3.1.5 be renumbered 6.3.4 and amended to read:

"Avoid urban development and subdivision to urban densities in the rural zones".

1181. The second policy common to all of the rural zones is Policy 6.3.1.8 which as notified, read:

"Ensure that the location and direction of lights does not cause glare to other properties, roads, and public places or the night sky."

1182. Submissions on this policy sought variously its deletion[651], shifting provision for lighting into the rural chapter[652], carving out an exception for navigation and safety lighting[653], and generally to give greater prominence to the significance of the night sky as a key aspect of the District's natural environment[654].

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651 Submission 761
652 Submission 806
653 Submission 621: Supported in FS1097; Opposed in FS1282
654 Submission 340

1183. We also note a separate submission seeking recognition of the maintenance of the ability to view and appreciate the naturalness of the night sky and to avoid unnecessary light pollution in Chapter 3[655]. As discussed in Part C of our r report, while we do not consider that this passes the rigorous requirement for inclusion in Chapter 3, we have taken this submission into account in this context.

1184. Mr Barr recommended the policy be amended to read:

"Ensure that the location and direction of lights avoids degradation of the night sky, landscape character and sense of remoteness where it is an important part of that character."

1185. As Submission 568 (G Bisset) pointed out, the issue under this policy is views of the night sky (rather than degradation of the night sky per se). The night sky itself cannot be impacted by any actions taken on the ground.

1186. Second, we think that Real Journeys is correct, and provision needs to be made for navigation and safety lighting. We suggest that the policy refer to "*unnecessary*" degradation of views of the night sky. We also take on board a point made by Mr Ben Farrell in his evidence, that Mr Barr's recommendation omitted reference to glare, the minimisation of which is important to night-time navigation on Lake Wakatipu.

1187. Mr Barr's reasoning[656] was that zone provisions control glare. However, in our view, some reference to glare is required at broader policy level. Again though, it is not all glare that needs to be avoided.

1188. We also think that Mr Barr's suggested reformulation treats loss of remoteness as a discrete issue when (where applicable) it is an aspect of landscape character. It might also be seen to introduce some ambiguity as to what the qualifier (where it is an important part of that character) refers to. This can be avoided with a little redrafting.

1189. Accordingly, we recommend that Policy 6.3.1.8 be renumbered 6.3.5 and amended to read:

"Ensure that the location and direction of lights does not cause excessive glare and avoids unnecessary degradation of views of the night sky and landscape character, including of the sense of remoteness where it is an important part of that character."

1190. Policy 6.3.1.9 as notified read:

"Ensure the District's distinctive landscapes are not degraded by forestry and timber harvesting activities."

1191. One submission on this policy sought clarification of linkages with provisions related to indigenous vegetation and biodiversity and as to the extent of any limitations on timber harvesting[657]. Another submission sought that the policy be deleted in this context and shifted to the rural chapter[658].

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655 Submission 568

656 In the Section 42A Report at page 22

657 Submission 117

658 Submission 806

1192. We do not recommend the latter as this is a landscape issue common to all rural zones. We do recommend minor changes responding to Submission 117, to make it clear that this policy has no connection to indigenous vegetation or biodiversity provisions and to limit the breadth of the reference to timber harvesting (which might otherwise be seen as inconsistent with the policy focus on controlling wilding species). Accordingly, we recommend that Policy 6.3.1.9 be renumbered 6.3.6 and amended to read:

"Ensure the District's distinctive landscapes are not degraded by production forestry planting and harvesting activities."

1193. Policy 6.3.1.10, as notified, read:

"Recognise that low-intensity pastoral farming on large land holdings contributes to the District's landscape character."

1194. Submissions on this policy sought variously deletion of specific reference to pastoral farming and to the size of land holdings[659], deletion of the reference to the size of land holdings[660], deletion of the policy entirely or its amendment to recognise that it is the maintenance of landscape values that contributes to landscape character[661].

1195. Mr Barr did not recommend any change to his policy. Consequent with our recommendations in relation to notified Policy 3.2.5.5.1, we recommend that the focus of this policy should be enabling low intensity pastoral farming to continue its contribution to landscape character. While it is understandable that submitters take the view that many activities contribute to rural landscape character, large pastoral land holdings in the District have a particular role in this regard and we consider it is appropriate that they be recognised. We also consider no specific reference is required to more intensive farming[662], since the policy does not purport to enable that.

1196. In summary, we recommend that Policy 6.3.1.10 be renumbered 6.3.7 and amended to read:

"Enable continuation of the contribution low-intensity pastoral farming on large land holdings makes to the District's landscape character."

1197. Policy 6.3.7.2, as notified, read:

"Avoid indigenous vegetation clearance where it would significantly degrade the visual character and qualities of the District's distinctive landscapes."

1198. Submissions on this policy sought variously its deletion[663], its retention[664] or softening the policy to refer to avoiding, remedying or mitigating indigenous vegetation clearance[665] or

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659 Submission 238: Supported in FS1097; Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

660 Submission 600: Supported in FS1209; Opposed in FS1034 and FS1282

661 Submission 806

662 See e.g. Submission 110

663 Submission 806

664 Submission 600: Supported in FS1209; Opposed in FS1034

665 Submissions 519 and 598 (the latter in tandem with deletion of the word "*significantly")*: Supported in FS1015, FS1097 and FS1287; Opposed in FS1356

alternatively to significant ONFs and ONLs[666]. Mr Barr did not recommend any change to the policy as notified.

1199. Given that the focus of the policy is on significant degradation to visual character and landscape qualities, we take the view that an avoidance policy is appropriate. It could be amended to expand its focus (as Submission 598 suggests) but we see little value in an "*avoid, remedy or mitigate"* type policy in this context. We also consider that the policy has broader application than just indigenous vegetation in ONLs and on ONFs (that are significant by definition).

1200. Accordingly, we recommend no change to this policy, other than to renumber it 6.3.8.

1201. Policy 6.3.7.1, as notified, read:

"Encourage subdivision and development proposals to promote indigenous biodiversity protection and regeneration where the landscape and nature conservation values would be maintained or enhanced, particularly where the subdivision or development constitutes a change in the intensity in the land use or the retirement of productive farm land."

1202. Two submissions[667] sought amendment to this policy – that it refers to 'biodiversity' rather that 'nature conservation' values, and recognise that values might change over time. Mr Barr recommended that it remain as notified and, other than renumbering it 6.3.9, we concur. Given the revised definition of 'nature conservation values' we consider it an appropriate focus in this context. Similarly, we consider the policy already contemplates change.

1203. We also consider that this policy provides adequate support at a high level for offsetting, fleshed out by the provisions of Chapters 21 and 33. We therefore concur with Mr Barr's view that no new policy on the subject[668] is required.

1204. Policies 6.3.8.1 and 6.3.8.2 related to tourism infrastructure, commercial recreation and tourism related activities. Policy 6.3.8.1 provided for acknowledgement of tourism infrastructure. 6.3.8.2 involved recognition of the appropriateness of commercial recreation and tourism related activities. Most of the submissions on these policies were supportive, seeking amendments to extend their ambit.

1205. We have recommended that Policy 6.3.8.2 be shifted into the Strategic Chapter to better recognise the importance of these matters. We do not see Policy 6.3.8.1 as adding any value independently of 6.3.8.2 and accordingly both should be deleted from this chapter, as a consequential change.

1206. Policy 6.3.3.2 as notified read:

"Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Landscapes adjacent to Outstanding Natural Features would not degrade the landscape quality, character and visual amenity of Outstanding Natural Features."

666 Submission 378: Opposed in FS1049 and FS1282

667 Submissions 378 and 806: Opposed in FS1049 and FS1282

668 As sought in Submission 608: Supported in FS1097 and FS1117; Opposed in FS1015 and FS1034

1207. Submissions on this policy sought variously minor drafting changes[669], clarification that a significant degree of degradation is required[670] and its deletion[671].

1208. Mr Barr did not recommend any change to this policy.

1209. We have considered whether this policy should properly extend to subdivision and development in the Rural Residential, Rural Lifestyle and Gibbston Character Zones. While Mr Carey Vivian suggested an amendment that would have this effect, given the limited scope of submissions on this policy, an extension of its ambit would in our view be outside scope and require a variation. Having considered that possibility on its merits, we do not recommend such a variation be advanced. Land is zoned Rural Lifestyle, or Rural Residential in the knowledge that that zoning involves acceptance of a greater density of development than the Rural Zone. If land is adjacent to an ONF, that proximity, and the potential for adverse effects on the ONF should be considered at the point the land is zoned. The Gibbston Character Zone is not adjacent to an ONF, and so the issue does not arise for land in the Gibbston Valley.

1210. Returning to the notified form of Policy 6.3.3.2, we regard degradation as importing a more than minor adverse effect, but for clarity, recommend that the policy be amended to say that. We have considered the evidence as to alternative ways in which a qualitative element might be introduced into this policy. Ms Louise Taylor[672] suggested adding "*as a whole",* so as to give it a spatial dimension. Mr Carey Vivian suggested that the test be whether the landscape quality and visual amenity "*values"* of the ONF are adversely affected. Given the objective sought to be achieved (3.2.5.1), we consider a *'more than minor adverse effect'* test is a more appropriate test. We also think that a more than minor adverse effect would, in all likelihood degrade an ONF *'as a whole'* and adversely affect the values that make it significant[673]. The only other amendments we would recommend are consequential (to refer to Rural Character Landscapes and renumber it 6.3.10) and clarification (to make it clear that the focus is on the ONF to which subdivision and development is adjacent).

1211. Accordingly, we recommend that this Policy be amended to read:

"Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes adjacent to Outstanding Natural Features does not have more than minor adverse effects on the landscape quality, character and visual amenity of the relevant Outstanding Natural Feature(s)."

1212. Policy 6.3.5.4 as notified read:

"Encourage any landscaping to be sustainable and consistent with the established character of the area."

1213. The only submissions specifically on this policy sought its retention. Mr Barr recommended one minor change, to clarify that the reference to sustainability in this context is not the broad concept in section 5 of the Act, but rather relates to whether landscaping is viable.

669 Submission 375: Opposed in FS1097 and FS1282

670 Submissions 519 and 598: Supported in FS1015, FS1097 and FS1287; Opposed in FS1282 and FS1356

671 Submissions 355 and 598: Supported in FS1287; Opposed in FS1282 and FS1320

672 Giving evidence for Matukituki Trust

673 The focus of Proposed RPS, Policy 3.2.4

1214. We agree with the thinking behind that suggested change, but consider it could be made clearer. Accordingly, we recommend that this Policy be renumbered 6.3.11 and amended to read:

"Encourage any landscaping to be ecologically viable and consistent with the established character of the area."

1215. In summary, having reviewed the policies in this section, we consider that individually and collectively with the policies both in Chapter 3 and in the balance of this chapter, they are the most appropriate way to achieve the objectives in Chapter 3 relevant to use, development and protection of the rural areas of the District at a strategic level.

8.6. Policies – Managing Activities in ONLs and on ONFs

1216. As notified, Policy 6.3.1.3 read:

"That subdivision and development proposals located within the Outstanding Natural Landscape, or an Outstanding Natural Feature, be assessed against the assessment matters in provisions 21.7.1. and 21.7.3 because subdivision and development is inappropriate in almost all locations meaning successful applications will be exceptional cases."

1217. Submissions on this policy included:

a. Seeking that the Policy be restricted to a cross reference to the assessment matters[674];
b. Seeking to delete reference to the assessment matters, but retain the emphasis on subdivision and development being generally inappropriate[675];
c. Seeking to delete it entirely[676];
d. Seeking to amend the concluding words to soften the expectations as the number of locations where developments will be inappropriate[677];
e. Seeking to amend the policy to state the intention to protect ONLs or ONFs from inappropriate subdivision, use or development[678];
f. Seeking to qualify the policy to provide specifically for infrastructure with its own test, or alternatively add a new policy the same effect[679].

1218. In his reply evidence, Mr Barr recommended this policy be amended to read:

"That subdivision and development proposals located within the Outstanding Natural Landscape, or an Outstanding Natural Feature, be assessed against the assessment matters in provisions 21.7.1 and 21.7.3 because subdivision development is inappropriate in almost all locations within the Wakatipu Basin, and inappropriate in many locations throughout the districtwide Outstanding Natural Landscapes."

674 Submissions 249, 355, 502, 519, 621: Supported in FS1012, FS1015 and FS1097; Opposed in FS1282, FS1320 and FS1356
675 Submissions 375, 437, 456: Opposed in FS1015, FS1097, FS1160 and FS1282
676 Submissions 624, 806
677 Submissions 598: Supported in FS1097, FS1117 and FS1287; Opposed in FS1282
678 Submission 581: Supported in FS1097; Opposed in FS1282
679 Submissions 251, 805: Supported in FS1092, FS1097 and FS1115; Opposed in FS1282

1219. The recommended amendment recognises a distinction drawn in the initial Environment Court decision on the ODP[680] between the reduced capacity of the Wakatipu Basin ONLs to absorb change, compared to the ONLs in the balance of the District[681].

1220. A number of the planning witnesses who appeared at the hearing criticised this policy as notified as inappropriately prejudicing applications yet to be made. Ms Louise Taylor suggested to us for instance that such predetermination was inconsistent with the caselaw applying a *'broad judgment'* to resource consent applications.

1221. Mr Tim Williams noted also that there were a number of examples where developments in ONLs had been found to be appropriate. While Mr Williams did not say so explicitly, the implication was that it is not factually correct that appropriate development in an ONL is an exceptional case.

1222. As against those views, Mr John May gave evidence suggesting that the notified policy was both realistic and reflected the sensitivity and value of the District's landscapes.

1223. The Environment Court thought it was necessary to make comment about the likelihood of applications being successful in the ODP to make it clear that the discretionary activity status afforded activities in ONLs and ONFs under the ODP did not carry the usual connotation that such activities are potentially suitable in most if not all locations in a zone[682]. The Environment Court made it clear that, were this not able to be stated, a more restrictive, non-complying activity would be appropriate.

1224. Mr Goldsmith[683] submitted to us that the existing reference to appropriate development in ONLs being an exceptional case originated from the Environment Court's identification of the ONLs in the Wakatipu Basin as requiring a greater level of protection. He also submitted that elevation of the existing provision into a policy required justification and evidence[684].

1225. We do not think Mr Goldsmith's first point is factually correct. While the initial consideration in the Environment Court's mind might have been the vulnerability of the Wakatipu Basin ONLs, the ODP text the Court approved reads:

> *"… in or on outstanding natural landscapes and features, the relevant activities are inappropriate in almost all locations within the zone, **particularly** within the Wakatipu Basin or in the Inner Upper Clutha area…"* [Emphasis added]

1226. On the second point, we do not think elevation from a provision explaining the rule status ascribed to a policy requires justification in the sense Mr Goldsmith was arguing. Clearly the Environment Court thought that was the position as a fact. Whether it should now be expressed as a policy turns on whether that is the most appropriate way to achieve the relevant objective (3.2.5.1) which we have already found to be the most appropriate way to achieve the purpose of the Act. This is the basis on which we have approached the matter.

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680 C180/99 at [136]

681 See ODP Section 1.5.3iii(iii)

682 Refer the discussion in Lakes District Rural Landowners Society Inc v Queenstown Lakes District Council C75/2001 at 41-46

683 When appearing for Ayrburn Farm Estate Ltd, Bridesdale Farm Developments Ltd, Shotover Country Ltd and Mt Cardrona Station Ltd. Mr Brown gave planning evidence supporting that submission.

684 Mr Carey Vivian also drew our attention to the way in which the language had been changed from the ODP, and expressed the view that it made little sense as a policy.

1227. As regards Ms Taylor's *'broad judgment'* point, we rely on the confirmation provided by the Supreme Court in *King Salmon* that plan policies may emphasise protection rather than use and development consistently with the purpose of the Act, depending on the circumstances. We also note more recent authority[685] holding that reference back to Part 2 of the Act[686] is only required where plan provisions are invalid, incomplete or unclear.

1228. For our part, we had a problem with Policy 6.3.1.3 (and Policy 6.3.1.4 that follows it) because of the way they refer to assessment matters. As Ms Taylor observed[687], the role of assessment matters is to assist implementation of policies in a plan. We do not consider that it is appropriate that assessment matters act as quasi-policies. If they are effectively policies, they should be stated as policies in the Plan.

1229. We also consider it would be more helpful to explain not just that successful applications will be exceptional, but also to give some guidance as to what characteristics will determine whether they will be successful. As Mr Vivian observed, merely stating the general point makes little sense as a policy. The capacity to absorb change is clearly one important factor – refer notified Policy 6.3.4.1. The ODP identifies as another important touchstone (in the context of the policies governing ONLs in the Wakatipu Basin and ONFs) whether buildings and structures and associated roading and boundary developments are reasonably difficult to see. Mr Haworth (arguing in support of the more general UCES submission seeking that the ODP provisions governing development in rural areas should be retained in preference to the PDP provisions) was particularly critical of the loss of this criterion, and we consider it to be an aspect of the ODP that could usefully be carried over into the PDP.

1230. There is, however, one issue with the ODP wording. The ODP provides no indication of the viewpoint from which changes to the landscape must be reasonably difficult to see. This is surprising given that in the initial Environment Court decision on the ODP, the Environment Court observed:

> *"Further, even if one considers landscapes in the loose sense of 'views of scenery' the first question that arises is as to where the view is from. One cannot separate the view from the viewer and their viewpoint."*[688]

1231. The specific question of how this particular criterion should be framed was considered in a later decision in the sequence finalising the ODP[689].

1232. From that decision, it appears that the Council proffered a test of visibility based on what could be seen "*outside the property they are located on"*. Mr Goldsmith, then acting for a number of parties on the ODP appeals, is recorded as having argued that that qualification was otiose[690]. Counsel for the Council, Mr Marquet, is recorded as having argued that they protected landowners' rights.

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685 *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52

686 And therefore to a broad judgment on the application of section 5

687 As part of her evidence on behalf of X-Ray Trust Ltd.

688 C180/99 at [74]

689 C74/2000

690 That is, serving no useful purpose

1233. The Court took the position[691] that the views enjoyed by neighbours should not be determinative, and directed that the qualification be deleted.

1234. With respect to the reasoning of the Environment Court, the problem we see with the end result is that without definition of the viewpoint, reasonable visibility should presumably be determined from every relevant point. Moreover, virtually nothing will be "*reasonably difficult to see"* if one views it from sufficiently close range (unless a development takes place entirely underground). The point of having a visibility test depends on having a viewpoint that is far enough away to provide a developer with an opportunity to construct a development that meets the test. Clearly that will not be possible in all cases, nor, perhaps, in many cases.

1235. But the developer needs to have that opportunity, otherwise the policy becomes one which, as counsel and witnesses for a number of submitters contended was the case with the existing PDP policies in relation to development in ONLs, can never be met.

1236. In summary, we think that the test needs to be what is reasonably difficult to see "*from beyond the boundary of the site the subject of application"*. The location of the boundary of the site in relation to the development will of course vary according to the circumstances. The land beyond the boundary might be privately or publicly owned. We considered specifying visibility from a public viewpoint (i.e. a road). Given, however, that the purpose of this requirement is ultimately to provide better definition of more than minor adverse effects of subdivision, use and development on (among other things) visual amenity values of ONLs (refer recommended Objective 3.2.5.1), this would not be the most appropriate way to achieve the objective in section 32 terms.

1237. Any alternative viewpoint would necessarily be arbitrary (some specified minimum distance perhaps) and somewhat unsatisfactory for that reason.

1238. In summary, therefore, we recommend that Policy 6.3.1.3 be renumbered 6.3.12 and amended to read:

> *"Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes are reasonably difficult to see from beyond the boundary of the site the subject of application."*

1239. Policy 6.3.1.12, as notified read:

> *"Recognise and provide for the protection of Outstanding Natural Features and Landscapes with particular regard to values relating to cultural and historic elements, geological features and matters of cultural and spiritual value to Tangata Whenua including* Tōpuni*."*

1240. Submissions on this policy sought variously its deletion[692], introduction of reference to inappropriate subdivision, use and development both with and without reference to the

691 C74/2000 at [15]

692 Submissions 621 and 806: Opposed in FS1282

specific values currently identified[693], reference to a method that would identify the values in question[694], and expansion of the policy to include reference to Wāhi Tupuna[695]

1241. When Mr Barr appeared at the hearing, we asked why it was appropriate to refer to the specific values noted in this policy as a subset of all of the values that ONLs and ONFs might have. He explained that the intention was to capture the values that might not be obvious, and he recommended no change to the policy.

1242. Mr Barr makes a good point, that these particular values would not be obvious to the casual observer. As is discussed in the Hearing Panel's Stream 1A report (Report 2), consultation with Tangata Whenua is an important mechanism by which one can identify cultural elements in a landscape that would not otherwise be obvious. On that basis, we think it appropriate in principle to identify the significance of these particular values.

1243. For the same reason, we do not think it necessary or appropriate to insert reference to a method whereby the Council will identify all the values in question. In the case of cultural values at least, while the mapping of Wāhi Tupuna planned as part of a later stage in the District Plan review process will assist, it is primarily the responsibility of applicants for resource consent to identify whether and what values are present in landscapes that might be affected by their proposals.

1244. Submitter 810 makes a valid point, seeking reference to wāhi tupuna. The representatives of the submitter who gave evidence as part of the Stream 1A hearing indicated that there was likely to be an overlap in practice between ONLs and wāhi tupuna. Chapter 5 addresses the protection of wāhi tupuna, but if this policy is going to make specific reference to tōpuni as a matter of cultural and spiritual value to tangata whenua, we think that reference should also be made to wāhi tupuna.

1245. We have already discussed at length the utility of a qualification of policies such as this by reference to inappropriate subdivision, use and development. In summary, given the interpretation of that term by Supreme Court in its *King Salmon* decision, we do not think that it would materially alter the effect of a policy such as this.

1246. Having said that, we do have a problem with the existing wording in that recommended Objective 3.2.5.1. and Policy 3.3.29 already "*recognise and provide for"* the protection of ONLs and ONFs. The role of this policy is to flesh out how Objective 3.2.5.1 is achieved beyond what Policy 3.3.29 already says. To avoid that duplication, we recommend that the policy be renumbered 6.3.13 and reframed slightly to read:

"Ensure that the protection of Outstanding Natural Features and Outstanding Natural Landscapes includes recognition of any values relating to cultural and historic elements, geological features and matters of cultural and spiritual value to tangata whenua, including tōpuni and wāhi tupuna."

1247. Policy 6.3.4.2 as notified read:

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693 Submissions 355 and 806: Supported in FS1097; Opposed in FS1282 and FS1320

694 Submission 355: Supported in FS1097; Opposed in FS1282 and FS1320

695 Submission 810 (noting that the other aspect of the relief sought by this submitter – referring to Manawhenua rather than Tangata Whenua – was withdrawn by the submitter by submitters representatives when they appeared in the Stream 1A Hearing)

"Recognise that large parts of the District's Outstanding Natural Landscapes include working farms and accept that viable farming involves activities which may modify the landscape, providing the quality and character of the Outstanding Natural Landscapes is not adversely affected."

1248. Only one submitter sought amendments specifically to this policy, seeking that it be broadened to enable any uses that might modify the landscape[696].

1249. Mr Barr did not recommend any change to this policy. We concur.

1250. In the part of our report addressing Chapter 3, we recommended that the viability of farming be identified as a specific issue to be addressed by the strategy objectives and policies of that chapter. The same reasoning supports this policy.

1251. We do not consider it is appropriate to provide an open-ended recognition for any changes to ONLs. We do not think such recognition would be consistent with recommended Objective 3.2.5.1. We note also that Mr Jeff Brown, giving evidence on behalf of submitter 806 among others, did not support the relief sought in this submission.

1252. Mr Tim Williams suggested that reference might be made to other land uses, while retaining reference to the quality and character of the ONLs. While that approach is not open to the obvious objection above, we regard the extent to which non-farming activities in ONLs are accommodated as something generally best left for determination under the more general policies of Chapter 3. We discuss possible exceptions to that position below.

1253. Accordingly, we recommend that policy 6.3.4.2 be renumbered 6.3.14 but otherwise adopted with only a minor grammatical change to read:

"Recognise that large parts of the District's Outstanding Natural Landscapes include working farms and accept that viable farming involves activities that may modify the landscape, providing the quality and character of the Outstanding Natural Landscapes is not adversely affected."

1254. Policy 6.3.3.1 of the PDP as notified read:

"Avoid subdivision and development on Outstanding Natural Features that does not protect, maintain or enhance Outstanding Natural Features."

1255. Submitters on this policy sought that it be deleted or alternatively qualified to refer to qualities of the relevant ONFs, to refer to inappropriate subdivision and development, or to have less of an avoidance focus. Although Mr Barr did not recommend any change to this policy, we view it as duplicating recommended Policy 3.3.30 and therefore recommend that it be deleted as adding no additional value.

1256. Policy 6.3.4.4. as notified read:

"The landscape character and amenity values of the Outstanding Natural Landscape are a significant intrinsic, economic and recreational resource, such that large scale renewable electricity generation or new large scale mineral extraction development proposals including

696 Submission 806

windfarm or hydro energy generation are not likely to be compatible with the Outstanding Natural Landscapes of the District".

1257. Submissions on this policy largely opposed it. The view was expressed that the policy inappropriately predetermines the outcome of resource consent applications yet to be made.

1258. Mr Barr recommended one minor change to make it clear that the policy refers to '*new*' large scale renewable electricity generation proposals.

1259. Mr Vivian suggested to us that there was a need to balance the landscape values affected against the positive benefits of renewable electricity generation.

1260. At least in the case of ONLs and ONFs, we do not think there is scope for the balancing process Mr Vivian had in mind.

1261. Mr Napp, appearing for Straterra[697] sought to persuade us that the Waihi and Macraes mines provided examples of large scale proposals with well-developed restoration protocols. Mr Napp, however, accepted that the nature of the terrain any open cast mine would encounter in this District would make reinstatement a difficult proposition and that it was hard to imagine any large open cast mining proposal in an ONL would be consentable. While Mr Napp emphasised that modern mining techniques are much less destructive of the landscape than was formerly the case, we think that the existing policy wording still leaves room for an exceptional proposal. Mr Napp also did not seek to persuade us that there was any great likelihood of such a proposal being launched within the planning period.

1262. Mr Druce, appearing as the representative of Contact Energy[698], likewise indicated that that company was not anticipating any new generation being installed in the Upper Clutha Catchment. Given the terms of the Water Conservation Order on the Kawarau River and its tributaries (as recently extended to include the Nevis River), there would thus appear to be no likelihood of any new large hydro generation facilities being constructed in the District within the planning period either.

1263. The policy refers specifically to wind farm or hydro energy developments. We do not think that specific reference is necessary given the definition of renewable electricity generation in the NPSREG 2011. We think that a new large scale solar electricity generation plant would be equally unlikely to be compatible with the values of ONLs and the resources to fuel any other renewable electricity generation project are not available within the District.

1264. We also find the duplicated reference to ONLs somewhat clumsy and consider it could be shortened without loss of meaning.

1265. Accordingly, we recommend that this policy be renumbered 6.3.15 and amended to read:

"The landscape, character and amenity values of the Outstanding Natural Landscapes are a significant intrinsic, economic, and recreational resource, such that new large scale renewable electricity generation or new large-scale mineral extraction development proposals are not likely to be compatible with them."

697 Submission 598

698 Submission 580

1266. In relation to activities in ONLs and ONFs, Trojan Helmet Limited[699] sought that the notified Policy 6.3.5.6 (which applied to non-outstanding landscapes and emphasised the relevance of open landscape character where it is open at present), be shifted so as to apply to ONLs. As the submitter noted, this is already a policy of the ODP. Mr Jeff Brown supported that position in his evidence.

1267. We will address the relevance of open landscape character in non-outstanding landscapes shortly, but in summary, we agree that open landscape character is an aspect both of ONLs and ONFs that should be emphasised.

1268. Accordingly, we recommend that this submission be accepted and that a new policy related to managing activities of ONLs and ONFs numbered 6.3.16 be inserted as follows:

"Maintain the open landscape character of Outstanding Natural Landscapes and Outstanding Natural Features where it is open at present."

1269. Another area where submissions sought new policies was in relation to recognition of infrastructure. We heard extensive evidence and legal argument from both Transpower New Zealand Limited and QAC seeking greater recognition of the significance of infrastructure and the locational constraints it is under. Representatives for Transpower also emphasised the relevance of the NPSET 2008 to this issue.

1270. We have already discussed at some length the latter point, but in summary, we recognise that greater recognition for regionally significant infrastructure is desirable.

1271. Mr Barr recommended that a new Policy 6.3.1.12 be inserted reading:

"Regionally significant infrastructure shall be located to avoid, remedy or mitigate degradation of the landscape, while acknowledging location constraints, technical or operational requirements."

1272. We agree that the correct focus, consistent with Policy 4.3.2 and 4.3.3 of the Proposed RPS, is on regionally significant infrastructure. We have already commented on the appropriate definition of that term[700].

1273. When we discussed this policy wording with Mr Barr, he explained that reference to "*acknowledging"* locational constraints was intended to mean something between just noting them and enabling infrastructure to proceed as a result of such constraints. He was reluctant, however, to recommend qualifiers that, in his view, would require a significant amplification of the text.

1274. We also bear in mind the reply evidence of Mr Paetz who, after initially been supportive of an alternative policy wording (in the context of Chapter 3) providing for mitigation of the impacts of regionally significant infrastructure on ONLs and ONFs where practicable, came to the view that this would not be likely to allow the Council to fulfil its functions in terms of sections 6(a) and 6(b) of the Act.

699 Submission 437: Supported (in part) in FS1097

700 Refer our discussion of this issue at Section 3.18 above.

1275. We note the comments of the Environment Court in its initial ODP decision[701] rejecting a "*where practicable"* exclusion for infrastructure effects on ONLs. The Court stated:

"That is not a correct approach. The policy should be one that gives the Council the final say on location within Outstanding Natural Features."

1276. We record that counsel for Transpower Limited appeared reluctant to accept that even a "*where practicable"* type approach would be consistent with the NPSET 2008 formulation, "*seek to avoid"*. For the reasons stated in our Chapter 3 report, we do not agree with that interpretation of the NPSET 2008.

1277. Having regard to the fact that we are considering what policies would most appropriately give effect to our recommended Objectives 3.2.1.9 and 3.2.5.1, we think it follows that the policy cannot permit significant adverse effects on ONLs and ONFs.

1278. Similarly, and consistently with the NPSET 2008, we think the initial approach should be to seek to avoid all adverse effects. Where adverse effects cannot be avoided, we think that they should be reduced to the smallest extent practically possible; i.e. minimised.

1279. In summary, therefore, we recommend insertion of two new policies numbered 6.3.17 and 6.3.18, worded as follows:

"Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases.

"In cases where it is demonstrated that regionally significant infrastructure cannot avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, avoid significant adverse effects and minimise other adverse effects on those landscapes and features."

1280. We recognise that this leaves a potential policy gap for infrastructure that does not fall within the definition of regionally significant infrastructure. We consider the issues posed by such infrastructure are appropriately addressed in the more detailed provisions of Chapters 21 and 30. This is also consistent with our recommendation above that the former Rule 6.4.1.1 be converted to a new definition. As a result, the provision of infrastructure associated with subdivision and development will be considered at the same time as the development to which it relates.

1281. Submission 608[702] also sought a new policy providing for offsetting for wilding tree control within ONLs and ONFs. The submitter did not provide evidence supporting the suggested policy, relying on the reasons in its submission which, while advocating for the policy, did not explain how it would work in practice. Mr Barr recommended against its acceptance. As he put it, it seemed "*the submitter wishes to trade the removal of a pest for accepting degradation of the landscape resource"*. We agree. In the context of ONLs and ONFs, whose protection we are required to recognise and provide for, we would require considerable convincing that this is an appropriate policy response, including but not limited to a cogent section 32AA analysis, which the submitter did not provide.

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701 C180/99 at [72]

702 Supported in FS1097 and FS1117; Opposed in FS1015 and FS1034

1282. Lastly under this heading, we note that Policy 6.3.1.7 as notified read:

"When locating urban growth boundaries or extending urban settlements though plan changes, avoid impinging on Outstanding Natural Landscapes or Outstanding Natural Features and minimise disruption to the values derived from open rural landscapes."

1283. Mr Barr recommended a minor drafting change to this policy. For our part, and for the reasons discussed in our Chapter 4 report, we view this as a matter that is more appropriately dealt with in Chapter 4. We recommend that it be deleted from Chapter 6 and the submissions on it addressed in the context of Chapter 4.

1284. In summary, having reviewed the policies in this section, we consider that individually and collectively with the policies of Chapter 3 and those in the balance of this chapter, these policies are the most appropriate way, at a strategic level, to achieve the objectives in Chapter 3 relevant to use, development and protection of ONLs and ONFs – principally Objective 3.2.5.1, but also including Objectives 3.2.1.1, 3.2.1.7, 3.2.1.9, 3.2.3.1, 3.2.4.1 and 3.2.7.1.

8.7. Policies – Managing Activities in Rural Character Landscapes

1285. Policy 6.3.1.4, as notified, read:

"That subdivision and development proposals located within the Rural Landscape be assessed against the assessment matters in provisions 21.7.2 and 21.7.3 because subdivision and development is inappropriate in many locations in these landscapes, meaning successful applications will be, on balance, consistent with the assessment matters."

1286. This policy attracted a large number of submissions. Submissions included:
   a. Seeking deletion of the policy[703];
   b. That it refer only to assessment against the assessment matters[704];
   c. Deleting reference to the assessment matters and providing for adverse effects to be avoided, remedied or mitigated[705];
   d. Qualifying the application of the policy by reference to the requirements of regionally significant infrastructure[706].

1287. Mr Barr recommended that the word "*inappropriate"* be substituted by "*unsuitable"* but otherwise did not recommend any changes to this policy.

1288. For the reasons set out above in relation to Policy 6.3.1.3, we do not support a policy cross referencing the assessment criteria. The reference point should be the objectives and policies of the PDP. We also do not support a policy that refers simply to avoidance, remediation or mitigation of adverse effects. For the reasons set out at the outset of this report, such a policy would provide no guidance, and would not be satisfactory.

1289. We accept that regionally significant infrastructure raises particular issues. We recommend that those issues be dealt with in new and separate policies, which will be discussed shortly.

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703 Submission 806

704 Submissions 355, 761: Supported in FS1097; Opposed in FS1282 and FS1320

705 Submissions 437, 456, 513, 515, 522, 531, 532, 534, 535, 537, 608: Supported in FS1097, FS1256, FS1286, FS1292 and FS1322; Opposed in FS1034, FS1120 and FS1160

706 Submissions 635, 805: Opposed in FS1282

1290. We accept Mr Barr's suggested minor drafting change.

1291. In summary, we recommend that Policy 6.3.1.4 be renumbered 6.3.19 and reworded as follows:

"Recognise that subdivision and development is unsuitable in many locations in these landscapes and successful applications will need to be, on balance, consistent with the objectives and policies of the Plan."

1292. Policy 6.3.1.6, as notified, read:

"Enable rural lifestyle living through applying Rural Lifestyle Zone and Rural Residential Zone plan changes in areas where the landscape can accommodate change".

1293. A number of submissions on this policy sought amendments so it would refer to "*rural living"* rather than "*rural lifestyle living",* deleting specific reference to the Rural Residential and Rural Lifestyle Zones, and adding reference to "*carefully considered applications for subdivision and development for rural living"*, or similar descriptions.

1294. Millbrook Country Club[707] sought to broaden the focus of the policy to include resort activities and development.

1295. Queenstown Park Ltd[708] sought that reference be added to the positive effects derived from rural living.

1296. Mr Barr initially recommended some recognition for resort zone plan changes in his Section 42A Report, but when we discussed the matter with him, accepted that given there is no "*Resort Zone"* as such, the matter needed further consideration[709].

1297. In his reply evidence, Mr Barr discussed the issue more generally. He characterised some of the planning evidence for submitters seeking to rely on the extent to which the landscape character of the Wakatipu Basin has been and will continue to be affected by consented development as reading like '*the horse has bolted'* and that this position should be accepted. Mr Barr did not agree. He relied on Dr Read's evidence where she had stated that the ODP had not succeeded in appropriately managing adverse cumulative effects. We asked Dr Read that specific question: whether the horse had bolted? She did not think so, or that management of the cumulative effects of rural living in the Wakatipu Basin was a lost cause, and neither do we[710]. However, it is clearly an issue that requires careful management.

1298. Mr Barr recommended in his reply evidence that this policy be reframed as follows:

"Encourage rural lifestyle and rural residential zone plan changes in preference to ad-hoc subdivision and development and ensure these occur in areas where the landscape can accommodate change."

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707 Submission 696

708 Submission 806

709 Mr Chris Ferguson suggested in his evidence that the reference be to Special Zones for this reason

710 That conclusion also accords with Mr Baxter's evidence that while the Wakatipu Basin is not composed of working farms any more, lots of properties in the Basin still look like farms, from which we infer they still have an identifiably *'rural'* character.

1299. We largely accept the thinking underpinning Mr Barr's recommendation. It follows that we do not accept the many submissions insofar as they sought that reference be made to rural living being enabled through resource consent applications (the epitome of ad-hoc development). Indeed, this policy is focussing on plan changes as an appropriate planning mechanism, in preference to development by a resource consent application. If anything, we think that needs to be made clearer.

1300. We do not think that specific reference needs to be made to plan reviews as an alternative planning mechanism to plan changes (as suggested by Mr Ferguson). On any plan review including management of residential development in rural areas, all of these issues will be considered afresh.

1301. Ideally also, this policy would refer to the new zone (the Wakatipu Basin Lifestyle Precinct) proposed in the Stage 2 Variationss, but we cannot presume that zoning will be confirmed after the hearing of submissions on the variations, and we lack jurisdiction to do so in any event.

1302. In summary, therefore, we recommend that Policy 6.3.1.6 be renumbered 6.3.20 and reworded as follows:

"Encourage Rural Lifestyle and Rural Residential Zone Plan Changes as the planning mechanism to provide for any new rural lifestyle and rural residential developments in preference to ad-hoc subdivision and development and ensure these zones are located in areas where the landscape can accommodate the change."

1303. Policy 6.3.2.3 as notified read:

"Recognise that proposals for residential subdivision or development in the Rural Zone that seek support from existing and consented subdivision or development have potential for adverse cumulative effects. Particularly where the subdivision and development would constitute sprawl along roads."

1304. Submissions on this policy included:
   a. Seeking deletion of the final sentence referring to sprawl along roads[711];
   b. Seeking to insert reference to inappropriate development in the Rural Zone[712];
   c. Seeking to delete this policy and the one following it, and substitute a policy that would ensure incremental subdivision and development does not degrade landscape character or visual amenity values including as a result of 'mitigation' of adverse effects[713].

1305. When Mr Barr appeared, we asked him what the words "*seeking support"* were intended to refer to, and he explained that this was intended to be a reference to the "*existing environment"* principle recognised in the case law[714]. In his reply evidence, Mr Barr sought to make this clearer. He also recommended acceptance of a submission seeking deletion of the last sentence of the Policy, given that it duplicates matters covered in Policy 6.3.2.4.

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711 Submission 456

712 Submission 600: Supported in FS1209; Opposed in FS1034

713 Submission 761: Opposed in FS1015

714 Acknowledging the observations of the High Court in *Royal Forest and Bird Protection Society v Buller District Council* [2013] NZHC1324 at [13] and following regarding the inappropriateness of it as a description of the relevant legal principles.

1306. We largely accept Mr Barr's recommendation. The exception is that we think that the reference to "*residential subdivision or development"* would benefit from clarification. The term 'rural living' was used extensively in the planning evidence we heard and we suggest that as an appropriate descriptor. We do not accept the suggestion in Submission 761 – for the reasons set out in our discussion of the appropriate strategic policy in Chapter 3 governing rural character landscapes, a general policy of *'no degradation'* would in our view go too far.

1307. However, we think there is room for a more restrictive approach to '*mitigation'* of proposed developments, which is also suggested in this submission, but which more properly relates to Policy 6.3.2.5. This is addressed shortly.

1308. In summary, we recommend Policy 6.3.2.3 be renumbered 6.3.21 and amended to read:

"Require that proposals for subdivision or development for rural living in the Rural Zone take into account existing and consented subdivision or development in assessing the potential for adverse cumulative effects."

1309. Policy 6.3.2.4 as notified read:

"Have particular regard to the potential adverse effects on landscape character and visual amenity values from infill within areas with existing rural lifestyle development or where further subdivision and development would constitute sprawl along roads."

1310. Apart from Submission 761 already noted, submissions included a suggestion that reference to infill be deleted[715].

1311. Mr Barr recommended that that submission be accepted. We agree. To the extent the policy seeks to manage the adverse effects of infill development, this is caught by Policy 6.3.2.3 (now 6.3.21) and as Mr Jeff Brown noted in his evidence, the assessment should be the same for *'infill'* as for *'outfill'*. Accordingly, we recommend that the policy be renumbered 6.3.22 and worded:

"Have particular regard to the potential adverse effects on landscape, character and visual amenity values where further subdivision and development would constitute sprawl along roads."

1312. Policy 6.3.2.5 as notified read:

"Ensure incremental changes from subdivision and development do not degrade landscape quality, character or openness as a result of activities associated with mitigation of the visual effects of a proposed development such as a screening planting, mounding and earthworks."

1313. Submissions included:
   a. Seeking deletion of the policy[716];
   a. Seeking to delete or amend reference to "*openness"*[717]*;*
   b. Amending the policy to require a significant effect or to focus on significant values[718];

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715 Submission 456

716 Submission 378: Opposed in FS1049 and FS1282

717 Submissions 437, 456: Supported in FS1097; Opposed in FS1160

718 Submissions 598 and 621: Supported in FS1287; Opposed in FS1282

c. Seeking that specific reference to mitigation be deleted[719]
d. Softening the policy to be less directive[720].

1314. Mr Barr did not recommend any changes to the policy as notified.

1315. As noted above in the discussion of the relief sought in Submission 761, we take the view that '*mitigation'* of adverse effects from subdivision and development should not be permitted itself to degrade important values. Clearly landscape quality and character qualify.

1316. The submissions challenging reference to openness in this context, however, make a reasonable point. The policy overlaps with others referring to openness and this duplication is undesirable. The submission of Hogans Gully Farming Ltd[721] suggested that "important views" be substituted. We regard this suggestion as having merit, since it captures an additional consideration.

1317. We also find the term "*screening planting"* difficult to understand. We think the intention is to refer to "*screen planting".*

1318. In summary, therefore, we recommend that this policy be renumbered 6.3.23 and read:

"Ensure incremental changes from subdivision and development do not degrade the landscape quality or character, or important views, as a result of activities associated with mitigation of the visual effects of proposed development such as screen planting, mounding and earthworks."

1319. As above, we recognise that provision also needs to be made for regionally significant infrastructure in the management of activities in RCLs. Many of the considerations discussed above in relation to recognising the role of infrastructure in relation to the ONL policies also apply although clearly, given the lesser statutory protection for RCLs, a more enabling policy is appropriate in this context.

1320. Having said that, we still regard it as appropriate that infrastructure providers should seek to avoid significant adverse effects on the character of RCLs.

1321. In summary, we recommend that two new policies be inserted in this part of the PDP numbered 6.3.24 and 25, reading:

"Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid significant adverse effects on the character of the landscape, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases.

In cases where it is demonstrated that regionally significant infrastructure cannot avoid significant adverse effects on the character of the landscape, such adverse effects shall be minimised."

1322. Policy 6.3.5.2 as notified read:

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719 Submission 621: Opposed in FS1282
720 Submission 696
721 Submission 456

"Avoid adverse effects from subdivision and development that are:

- *Highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); and*
- *Visible from public roads."*

1323. Again, a large number of submissions were made on this policy. Most of those submissions sought that the policy provide for avoiding, remedying or mitigating adverse effects (paralleling the ODP in this regard). Some submissions[722] sought deletion of visibility from public roads as a test.

1324. One submitter[723] sought greater clarity that this policy relates to subdivision and development on RCLs. Another submitter[724] sought reference be inserted to "*inappropriate subdivision, use and development".*

1325. Lastly, Transpower New Zealand Limited[725] sought an explicit exclusion for regionally significant infrastructure.

1326. Having initially (in his Section 42A Report) recommended against any change to the notified policy, Mr Barr recommended in his reply evidence that this policy be qualified in two ways – first to provide for avoiding, remedying or mitigating adverse effects, and secondly to limit the policy to focussing on visibility from public *'formed'* roads.

1327. We accept the point underlying the many submissions on this policy that avoiding adverse effects (given the clarification the Supreme Court has provided as to the meaning of "*avoid"* in *King Salmon)* poses too high a test when the precondition is whether a subdivision and development is visible from any public road. On the other hand, if the precondition is that the subdivision and development is "*highly visible"* from public places, we take the view that an avoidance approach is appropriate, because of the greater level of effect.

1328. The first bullet in Policy 6.3.5.2 also needs to be read in the light of the definition of trails, given that trails are excluded from the list of relevant public places.

1329. The current definition of trail reads:

"Means any public access route (excluding (a) roads and (b) public access easements created by the process of tenure review under The Crown Pastoral Land Act) legally created by way of grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities."

1330. There are no submissions on this definition. However, we consider clarification is desirable as to the exclusions noted (which are places, the visibility from which will be relevant to the application of notified Policy 6.3.4.2). Among other things, we recommend that the status of public access routes over reserves be clarified. Such access routes will not be the subject of a grant of easement and so this is not a substantive change.

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722 E.g. Submissions 513, 515, 531, 537, 608: Supported in FS1097, FS1256, FS1286 and FS1292; Opposed in FS1034

723 Submission 761: Opposed in FS1015

724 Submission 806

725 Submission 805

1331. In summary, we recommend to the Stream 10 Hearing Panel that the definition of trail be amended to read:

"Means any public access route legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities, and specifically excludes:

a. Roads, including road reserves;

b. Public access easements created by the process of a tenure review under the Crown Pastoral Land Act; and

c. Public access routes over any reserve administered by Queenstown Lakes District Council, the Crown or any of its entities."

1332. Returning to Policy 6.3.4.2, Mr Goldsmith[726] sought to justify constraining the policy to refer to public formed roads on the basis that the policy should not apply to roads that were not actually used. He accepted, however, that paper roads were used in the District as cycle routes and agreed that visibility from such routes was something the policy might focus on.

1333. For the same reason, we do not accept Mr Barr's recommendation that the policy refer to public formed roads.

1334. Rather than insert an *'avoid, remedy or mitigate'* type policy or some variation thereof (Mr Jeff Brown suggested "*avoid or appropriately mitigate"*), we prefer to provide greater direction by limiting the scope of the policy in other ways.

1335. Given that public roads are public places (and as such, would be used when testing whether a proposal would be highly visible), we recommend greater focus on narrowing the description of roads that are relevant for this aspect of the policy. To us, the key roads where visibility is important are those where the land adjoining the road forms the foreground for ONLs or ONFs. Effects on visual amenity from such roads are important because they diminish the visual amenity of the ONL or ONF.

1336. The second way in which we suggest the restrictiveness of the policy might be lessened is to make it clear that what is in issue are adverse effects on visual amenity, rather than any other adverse effects subdivision and development might have.

1337. Lastly, we recommend that the focus of the policy should be on subdivision, use and development as suggested in Submission 806. For the reasons set out above, we do not consider adding the word "*inappropriate"* would materially change the meaning of the policy.

1338. In summary, we recommend that Policy 6.3.5.2 be renumbered 6.3.26 and amended to read:

"Avoid adverse effects on visual amenity from subdivision, use and development that:

a. is highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); or

b. forms the foreground for an Outstanding Natural Landscape or Outstanding Natural Feature when viewed from public roads."

1339. Policies 6.3.5.3 and 6.3.5.6 both deal with the concept of openness. As notified, they read:

[726] Then appearing for GW Stalker Family Trust (Submission 535) and others.

"6.3.5.3 Avoiding planting and screening, particularly along roads and boundaries, which would degrade openness where such openness is an important part of the landscape, quality or character;

6.3.5.6 Have regard to the adverse effects from subdivision and development on the open landscape character where it is open at present."

1340. Submissions on Policy 6.3.5.3 included:
   a. Seeking amendment to refer to significant adverse effects on existing open landscape character[727];
   b. Seeking to substitute reference to views rather than openness, combined with emphasising that it is the appreciation of landscape quality or character which is important [728;]
   c. Seeking to reframe the policy to be enabling of planting and screening where it contributes to landscape quality or character[729].

1341. Many submitters sought deletion of the policy in the alternative. One submitter[730] sought that reference be made to inappropriate subdivision use and development.

1342. A similar range of submissions were made on Policy 6.3.5.6.

1343. A number of parties appearing before us on these policies emphasised to us the finding of the Environment Court in its 1999 ODP decision that protection of the open character of landscape should be limited to ONLs and ONFs and that non-outstanding landscapes might be improved both aesthetically and ecologically by appropriate planting[731].

1344. We note that the Court also mentioned views from scenic roads as an exception which might justify constraints on planting, so clearly in the Court's mind, it was not a legal principle that admitted of no exceptions.

1345. More generally, we think that open landscape character is not just an issue of views as many submitters suggest, although clearly views are important to visual amenity, and that a differentiation needs to be made between the floor of the Wakatipu Basin, on the one hand, and the Upper Clutha Basin on the other. It appears to us that the Environment Court's comments were made in the context of evidence (and argument) regarding the Wakatipu Basin. In that context, and on the evidence we heard, the focus should be on openness where it is important to landscape character (i.e. applying notified policy 6.3.5.3). We note that the Stage 2 Variations provide detailed guidance of the particular landscape values of different parts of the Wakatipu Basin.

1346. Dr Read identified the different landscape character of the Wakatipu Basin compared to the Upper Clutha Basin in her evidence, with the former being marked by much more intensive use and development, as well as being more enclosed, whereas the Upper Clutha Basin is marked by more extensive farming activities and is much bigger. She noted though that on

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727 Submission 356: Supported in FS1097

728 Submissions 437, 456, 513, 515, 522, 531, 537, 608: Supported in FS1097, FS1256, FS1286 and FS1292; Opposed in FS1034

729 Submission 806

730 Submission 513

731 C180/99 at [154]

the Hawea Flat, existing shelter belts mean that while more open, the Upper Clutha Basin is not as open as one might think.

1347. In summary, we recommend that Policies 6.3.5.3 and 6.3.5.6 be renumbered 6.3.27 and 6.3.28 and amended to read as follows:

"In the Wakatipu Basin, avoid planting and screening, particularly along roads and boundaries, that would degrade openness where such openness is an important part of its landscape quality or character.

In the Upper Clutha Basin, have regard to the adverse effects from subdivision and development on the open landscape character where it is open at present."

1348. Policy 6.3.5.5 as notified read:

"Encourage development to utilise shared accesses and infrastructure, to locate within the parts of the site where they will be least visible, and have the least disruption of the landform and rural character."

1349. Submissions on this policy sought variously, qualification to reflect what is operationally and technical feasible[732] and to delete reference to visibility substituting reference to minimising or mitigating disruption to natural landforms and rural character[733].

1350. Mr Barr recommended acceptance of the substance of the latter submission. We agree. Visibility is dealt with by other policies and should not be duplicated in this context. However, saying both minimise or mitigate would make the policy unclear. Consistent with the existing wording, minimisation is the correct focus.

1351. We do not consider that qualification is necessary to refer to operational and technical feasibility given that the policy only seeks to encourage the desired outcomes.

1352. We do accept, however, that the focus should be on 'natural' landforms, as opposed to any landforms that might have been created artificially.

1353. In summary, we recommend that Policy 6.3.5.5 be renumbered 6.3.29 and amended to read:

"Encourage development to utilise shared accesses and infrastructure, and to locate within the parts of the site where it will minimise disruption to the natural landform and to rural character."

1354. Policy 6.3.4.1 as notified read:

"Avoid subdivision and development that would degrade the important qualities of the landscape, character and amenity, particularly where there is little or no capacity to absorb change. "

1355. While Mr Barr recommended that this policy be retained as is, the amendments we have recommended to notified Policy 6.3.1.3 (in relation to ONLs and ONFs) means that Policy

732 Submission 635

733 Submission 836: Supported in FS1097

6.3.4.1 no longer serves a useful purpose. Accordingly, it should be deleted as a consequential change.

1356. The same reasoning prompts us to recommend deletion of Policy 6.3.1.11 which as notified, read:

"Recognise the importance of protecting the landscape character and visual amenity values particularly as viewed from public places."

1357. This policy has effectively been overtaken by the package of policies we have recommended and should be deleted as a consequential change.

1358. Policy 6.3.1.11 was almost identical to notified Policy 6.3.4.3 which read:

"Have regard to adverse effects on landscape character and visual amenity values as viewed from public places, with emphasis on views from formed roads."

1359. It too should be deleted as a consequential change.

1360. Policy 6.3.5.1 as notified read:

"Allow subdivision and development only where it will not degrade landscape quality or character, or diminish the visual amenity values identified for any Rural Landscape."

1361. While Mr Barr recommended that this policy remain as is, it overlaps (and conflicts) with Policy 3.3.32 that we have recommended.

1362. Accordingly, we recommend that this policy be deleted as a consequential change.

1363. Lastly, under this heading, we should discuss Policies 6.3.2.1 and 6.3.2.2, which relate to residential development in the rural zones. As notified, these policies read respectively:

"Acknowledge that subdivision and development in the rural zones, specifically residential development, has a finite capacity if the District's landscape quality, character and amenity values are to be sustained.

Allow residential subdivision only in locations where the District's landscape character and visual amenity would not be degraded."

1364. While Mr Barr recommended that these policies be retained, we have a number of issues with them. As discussed in the context of Objective 3.2.5.2, a Plan provision referring to finite capacity for development is of little use without a statement as to where the line is drawn, and where existing development is in relation to the line. More materially, the two policies purport to govern development across the rural zones and therefore encompasses ONLs, ONFs and Rural Character Landscapes. We have endeavoured to emphasise the different tests that need to be applied, depending on whether a landscape is an ONL (or ONF) or not.

1365. Last but not least, these policies overlap (and in some respects conflict) with other policies we have recommended in Chapter 3 (specifically 3.3.21-23, 3.3.30 and 3.3.32) and in Chapter 6 (specifically 6.3.12). Therefore, we recommend they be deleted.

1366. In summary, having reviewed the policies in this section, we consider that individually and collectively with the policies of Chapter 3 and the balance of this chapter, these policies are the most appropriate way, at a strategic level, to achieve the objectives in Chapter 3 relevant to use, development and protection of landscapes that are not ONLs or ONFs – principally Objective 3.2.5.2 but also including Objectives 3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.1.9, 3.2.3.1, 3.2.4.1 and 3.2.7.1.

8.8. Policies – Managing Activities on Lakes and Rivers

1367. Policy 6.3.6.1 as notified read:

"Control the location, intensity and scale of buildings, jetties, moorings and utility structures on the surface and margins of water bodies and ensure these structures maintain or enhance the landscape quality, character and amenity values."

1368. Submissions on this policy sought variously:
   a. Qualification of amenity values to refer to "*visual amenity values"*[734]*;*
   a. Deletion of the latter part of the policy identifying the nature of the controls intended[735];
   b. Qualifying the reference to enhancement so that it occurs *"where appropriate"*[736];
   c. Qualifying the policy so it refers to management rather than controlling, identifies the importance of lakes and rivers as a resource and refers to avoiding, remedying or mitigating effects[737].

1369. Mr Barr recommended that the word "*infrastructure"* be substituted for utility structures as the only suggested change to this policy. This is more consistent with the terminology of the PDP and we do not regard it as a substantive change.

1370. Against the background of recommended Objective 3.2.4.3, which seeks that the natural character of the beds and margins of lakes, rivers and wetlands is preserved or enhanced, it is appropriate that buildings on the surface and margins of water bodies are controlled so as to assist achievement of the objective. For the same reason, a generalised "*avoid, remedy or mitigate"* policy is not adequate.

1371. We also do not consider that adding the words "*where appropriate"* will provide any additional guidance to the application of the policy.

1372. Further, we do not agree that reference to amenity values should be qualified and restricted to just visual amenity. To make that point clear requires a minor drafting change.

1373. We also recommend that the word "*the"* before landscape be deleted to avoid any ambiguity as to which values are in issue. Again, we consider that this is a minor non-substantive change.

1374. In summary, we recommend that these, together with the drafting change suggested by Mr Barr be the only substantive amendments, with the result that the policy, now renumbered 6.3.30, would read as follows:

734 Submission 110
735 Submission 621
736 Submission 635
737 Submission 766 and 806: Supported in FS1341

"Control the location, intensity and scale of buildings, jetties, moorings and infrastructure on the surface and margins of water bodies and ensure these structures maintain or enhance landscape quality and character, and amenity values."

1375. Policy 6.3.6.2 as notified read:

"Recognise the character of the Frankton Arm including the established jetties and provide for these on the basis that the visual qualities of the District's distinctive landscapes are maintained and enhanced."

1376. Submissions on this policy included:
   a. A request to refer to the "*modified"* character of the Arm and to delete reference to how the Arm should be managed[738].
   b. A request to provide greater guidance as to how this policy will be applied to applications for new structures and activities and to support the importance of providing a water based public transport system[739]

1377. Mr Barr did not recommend any change to this policy.

1378. We consider that, as with Policy 6.3.6.1, the relief suggested in Submission 621 would not be consistent with Objective 3.2.4.5. Having said that, to the extent that the existing character of the Frankton Arm is modified, the policy already provides for that. To the extent that other submissions seek greater guidance on how this policy might be applied, it is supplemented by more detailed provisions in the Rural Zone Chapter.

1379. Accordingly, we do not recommend any changes to this policy other than to renumber it 6.3.31.

1380. Policy 6.3.6.3 as notified read:

"Recognise the urban character of Queenstown Bay and provide for structures and facilities providing they protect, maintain or enhance the appreciation of the District's distinct landscapes."

1381. Submissions on this policy sought to delete the proviso[740] and to seek additional guidance along the same lines as sought for the previous policy[741]

1382. Mr Barr did not recommend any change.

1383. With one minor exception, we agree. A policy that recognises and provides for something with no indication of the extent of that provision is not satisfactory, as it provides no guidance to the implementation of the PDP. However, as with the previous policy, more detailed guidance is provided in the relevant zone chapter[742].

738 Submission 621
739 Submissions 766 and 806: Supported in FS1341
740 Submission 621
741 Submissions 766, 608 and 806: Supported in FS1341
742 Chapter 12: Queenstown Town Centre Zone

1384. The exception noted above relates to the reference to "*distinct"* landscapes in the policy. This appears to be a typographical error. The term should be "*distinctive"*. Correcting that error, the policy we recommend, renumbered 6.3.31, is:

"Recognise the urban character of Queenstown Bay and provide for structures and facilities providing they protect, maintain or enhance the appreciation of the District's distinctive landscapes."

1385. It is notable that the three policies we have just reviewed under the heading Lakes and Rivers all relate to structures and other facilities on the surface and margins of the District's water bodies. There is no policy specifically relating to the use of the surface of the District's water bodies. That omission was the subject of comment in the evidence. We have already discussed the submission of Kawarau Jet Services Limited[743] seeking a new policy worded:

"Provide for a range of appropriate Recreational and Commercial Recreational activities in the rural areas and on the lakes and rivers of the District."

1386. In the part of this report discussing Chapter 3[744], we said that we thought it appropriate that commercial recreation activities in rural areas be addressed there and that the specific issue of commercial recreation activities on the District's waterways be addressed in Chapter 6. We also note the submission of Real Journeys Limited[745] seeking, as part of greater recognition for tourism activities at a policy level, protection for "*existing transport routes and access to key visitor attractions from incompatible uses and development of land and water".*

1387. Mr Ben Farrell provided evidence on this submission. Mr Farrell supported the concept proposed in the Real Journeys' submission that there be a separate chapter for water, as he described it, "*to more appropriately recognise and provide for the significance of fresh water".*

1388. When Mr Farrell appeared at the hearing in person, he clarified that what he was suggesting was greater emphasis on water issues and that this might be achieved either by a separate chapter, or at least a separate suite of provisions. He summarised his position as being one where he was not seeking substantive change in the provisions, but rather to focus attention on it as an issue. He noted specifically that the landscape provisions seemed silent on water.

1389. We concur that there appears insufficient emphasis on water issues in Chapter 6. We have endeavoured to address that by appropriate headings, but we think that the Kawarau Jet submission points the way to a need to address both recreational and commercial use of the District's waterways in policy terms.

1390. Having said that, we think that there are flaws with the relief Kawarau Jet has sought. As the Real Journeys' submission indicates, one of the issues that has to be confronted in the implementation of the PDP is competition for access to the District's waterways. A policy providing for a range of activities on lakes and rivers could be read as implying that every waterway needs to accommodate a range of activities, whereas the reality is that in many situations, access is constrained because the waterways in question are not of sufficient breadth or depth to accommodate all potential users.

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743 Submission 307

744 Refer Section 3.14 above

745 Submission 621

1391. The Kawarau Jet submission does not provide a sufficient jurisdictional basis for us to recommend direction on how these issues should be resolved. The Real Journeys' submission gets closer to the point, but only addresses some of the issues. One point that can be made is that any general policy is not intended to cut across the more detailed policies already governing structures. Other than that however, while we would prefer a more directive policy, we have concluded that the best that can be done in the context of Chapter 6 is a policy that provides a framework for more detailed provisions in Chapters 12 and 21.

1392. We also do not consider that commercial use should be limited to commercial recreation – that would exclude water taxis and ferry services, and we do not consider there is a case for doing that.

1393. Accordingly, we recommend a new policy numbered 6.3.33, worded as follows:

"Provide for appropriate commercial, and recreational activities on the surface of water bodies that do not involve construction of new structures."

1394. Contact Energy[746] sought a new policy, seeking to recognise changes to landscape values on a seasonal basis resulting from electricity generation facilities. The submitter's focus is obviously on changes to levels and flows in Lake Hawea and the Hawea River resulting from operation of the Hawea Control Structure. Those activities are regional council matters and we do not consider the proposed policy is required in this context.

1395. In summary, within the jurisdictional limits we are working within, we consider that the policies we have recommended in relation to lakes and rivers are the most appropriate way, at a strategic level, to achieve the objectives of Chapter 3 applying to waterways – specifically Objectives 3.2.1.1, 3.2.1.7, 3.2.4.1, 3.2.4.3, 3.2.4.4, 3.2.5.1 and 3.2.5.2.

1396. We have also stood back and reflected on the policies and other provisions of Chapter 6 as a whole. For the reasons set out above, we consider that individually and collectively the policies are the provisions recommended represent the most appropriate way to achieve the objectives of Chapter 3 relevant to landscape and rural character.

9. PART D RECOMMENDATIONS

1397. As with Chapters 3 and 4, Appendix 1 contains our recommended Chapter 6.

1398. In addition, we recommend[747] that the Stream 10 Hearing Panel consider addition of a new definition of 'subdivision and development' be inserted in Chapter 2, worded as follows:

"Subdivision and Development - *includes subdivision, identification of building platforms, any buildings and associated activities such as roading, earthworks, lighting, landscaping, planting and boundary fencing and access/gateway structures".*

1399. We also recommend[748] the Stream 10 Hearing Panel consider amendment of the existing definition of 'trail' as follows:

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746 Submission 580: Opposed in FS1040

747 Refer the discussion of this point at Section 8.4 above.

748 Refer in this instance to Section 8.7above.

Trail *– means any public access route legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities, and specifically excludes:*

a. roads, including road reserves;

d. public *access easements created by the process of tenure review under the Crown Pastoral Land Act; and*

e. public *access routes over any reserve administered by Queenstown Lakes District Council, the Crown or any of its entities*

PART E: OVERALL RECOMMENDATIONS

1400. For the reasons we have set out above, we recommend to the Council that:
   a. Chapter 3 be adopted in the form set out in Appendix 1;
   b. Chapter 4 be adopted in the form set out in Appendix 2;
   c. Chapter 6 be adopted in the form set out in Appendix 3; and
   d. The relevant submissions and further submissions be accepted, accepted in part or rejected as set out in Appendix 4.

1401. We also recommend to the Stream 10 Hearing Panel that the definitions discussed above of the terms:
   a. nature conservation values;
   b. regionally significant infrastructure;
   c. urban development;
   d. resort;
   e. subdivision and development; and
   f. trail

   be included in Chapter 2 for the reasons set out in our report.

For the Hearing Panel

Denis Nugent, Chair
Date: 16 March 2018