

**Appendix D** - A copy of the relevant parts of the decision; and

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# 3 STRATEGIC DIRECTION



## 3.1 Purpose

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This chapter sets out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities:

- a. dramatic alpine landscapes free of inappropriate development;
- b. clean air and pristine water;
- c. vibrant and compact town centres;
- d. compact and connected settlements that encourage public transport, biking and walking;
- e. diverse, resilient, inclusive and connected communities;
- f. a district providing a variety of lifestyle choices;
- g. an innovative and diversifying economy based around a strong visitor industry;
- h. a unique and distinctive heritage;
- i. distinctive Ngāi Tahu values, rights and interests.

The following issues need to be addressed to enable the retention of these special qualities:

- a. Issue 1: Economic prosperity and equity, including strong and robust town centres, requires economic diversification to enable the social and economic wellbeing of people and communities.
- b. Issue 2: Growth pressure impacts on the functioning and sustainability of urban areas, and risks detracting from rural landscapes, particularly its outstanding landscapes.
- c. Issue 3: High growth rates can challenge the qualities that people value in their communities.
- d. Issue 4: The District's natural environment, particularly its outstanding landscapes, has intrinsic qualities and values worthy of protection in their own right, as well as offering significant economic value to the District.
- e. Issue 5: The design of developments and environments can either promote or weaken safety, health and social, economic and cultural wellbeing.
- f. Issue 6: Tangata Whenua status and values require recognition in the District Plan.

This chapter sets out the District Plan's strategic Objectives and Policies addressing these issues. High level objectives are elaborated on by more detailed objectives. Where these more detailed objectives relate to more than one higher level objective, this is noted in brackets after the objective. Because many of the policies in Chapter 3 implement more than one objective, they are grouped, and the relationship between individual policies and the relevant strategic objective(s) identified in brackets following each policy. The objectives and policies in this chapter are further elaborated on in Chapters 4 – 6. The principal role of Chapters 3 - 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan. In addition, they also provide guidance on what those more detailed provisions are seeking to achieve and are accordingly relevant to decisions made in the implementation of the Plan.

- 3.2.1 The development of a prosperous, resilient and equitable economy in the District. (addresses Issue 1)
- 3.2.1.1 The significant socioeconomic benefits of well designed and appropriately located visitor industry facilities and services are realised across the District.
  - 3.2.1.2 The Queenstown and Wanaka town centres<sup>1</sup> are the hubs of New Zealand's premier alpine visitor resorts and the District's economy.
  - 3.2.1.3 The Frankton urban area functions as a commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin.
  - 3.2.1.4 The key function of the commercial core of Three Parks is focused on large format retail development.
  - 3.2.1.5 Local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres<sup>2</sup>, Frankton and Three Parks, are sustained.
  - 3.2.1.6 Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.
  - 3.2.1.7 Agricultural land uses consistent with the maintenance of the character of rural landscapes and significant nature conservation values are enabled. (also elaborates on SO 3.2.4 and 3.2.5 following)
  - 3.2.1.8 Diversification of land use in rural areas beyond traditional activities, including farming, provided that the character of rural landscapes, significant nature conservation values and Ngāi Tahu values, interests and customary resources, are maintained. (also elaborates on S.O.3.2.5 following)
  - 3.2.1.9 Infrastructure in the District that is operated, maintained, developed and upgraded efficiently and effectively to meet community needs and to maintain the quality of the environment. (also elaborates on S.O. 3.2.2 following)

<sup>1</sup> Defined by the extent of the Town Centre Zone in each case

<sup>2</sup> Defined by the extent of the Town Centre Zone in each case

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### 3.2.2 Urban growth is managed in a strategic and integrated manner. (addresses Issue 2)

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 live, 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.

(also elaborates on S.O. 3.2.3, 3.2.5 and 3.2.6 following)

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### 3.2.3 A quality built environment taking into account the character of individual communities. (addresses Issues 3 and 5)

3.2.3.1 The District's important historic heritage values are protected by ensuring development is sympathetic to those values.

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### 3.2.4 The distinctive natural environments and ecosystems of the District are protected. (addresses Issue 4)

- 3.2.4.1 Development and land uses that sustain or enhance the life-supporting capacity of air, water, soil and ecosystems, and maintain indigenous biodiversity.
- 3.2.4.2 The spread of wilding exotic vegetation is avoided.
- 3.2.4.3 The natural character of the beds and margins of the District's lakes, rivers and wetlands is preserved or enhanced.
- 3.2.4.4 The water quality and functions of the District's lakes, rivers and wetlands are maintained or enhanced.
- 3.2.4.5 Public access to the natural environment is maintained or enhanced.

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- 3.2.5 The retention of the District's distinctive landscapes. (addresses Issues 2 and 4)
- 3.2.5.1 The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration.
  - 3.2.5.2 The rural character and visual amenity values in identified Rural Character Landscapes are maintained or enhanced by directing new subdivision, use or development to occur in those areas that have the potential to absorb change without materially detracting from those values.
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- 3.2.6 The District's residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety. (addresses Issues 1 and 6)
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- 3.2.7 The partnership between Council and Ngāi Tahu is nurtured. (addresses Issue 6).
- 3.2.7.1 Ngāi Tahu values, interests and customary resources, including taonga species and habitats, and wahi tupuna, are protected.
  - 3.2.7.2 The expression of kaitiakitanga is enabled by providing for meaningful collaboration with Ngāi Tahu in resource management decision making and implementation.

## 3.3 Strategic Policies

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### Visitor Industry

- 3.3.1 Make provision for the visitor industry to maintain and enhance attractions, facilities and services within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone. (relevant to S.O. 3.2.1.1 and 3.2.1.2)

### Town Centres and other Commercial and Industrial Areas

- 3.3.2 Provide a planning framework for the Queenstown and Wanaka town centres that enables quality development and enhancement of the centres as the key commercial, civic and cultural hubs of the District, building on their existing functions and strengths. (relevant to S.O. 3.2.1.2)

- 3.3.3 Avoid commercial zoning that could undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity. (relevant to S.O. 3.2.1.2)
- 3.3.4 Provide a planning framework for the Frankton urban area that facilitates the integration of the various development nodes. (relevant to S.O. 3.2.1.3)
- 3.3.5 Recognise that Queenstown Airport makes an important contribution to the prosperity and resilience of the District. (relevant to S.O. 3.2.1.3)
- 3.3.6 Avoid additional commercial zoning that will undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine increasing integration between those areas and the industrial and residential areas of Frankton. (relevant to S.O. 3.2.1.3)
- 3.3.7 Provide a planning framework for the commercial core of Three Parks that enables large format retail development. (relevant to S.O. 3.2.1.4)
- 3.3.8 Avoid non-industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities. (relevant to S.O. 3.2.1.3 and 3.2.1.5)
- 3.3.9 Support the role township commercial precincts and local shopping centres fulfil in serving local needs by enabling commercial development that is appropriately sized for that purpose. (relevant to S.O. 3.2.1.5)
- 3.3.10 Avoid commercial rezoning that would undermine the key local service and employment function role that the centres outside of the Queenstown and Wanaka town centres, Frankton and Three Parks fulfil. (relevant to S.O. 3.2.1.5)
- 3.3.11 Provide for a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification. (relevant to S.O. 3.2.1.1, 3.2.1.2, 3.2.1.5, 3.2.1.6 and 3.2.1.9)

#### Climate Change

- 3.3.12 Encourage economic activity to adapt to and recognise opportunities and risks associated with climate change.

#### Urban Development

- 3.3.13 Apply Urban Growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Jack's Point), Wanaka and Lake Hawea Township. (relevant to S.O. 3.2.2.1)
- 3.3.14 Apply provisions that enable urban development within the UGBs and avoid urban development outside of the UGBs. (relevant to S.O. 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2)
- 3.3.15 Locate urban development of the settlements where no UGB is provided within the land zoned for that purpose. (relevant to S.O. 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2)

#### Heritage

- 3.3.16 Identify heritage items and ensure they are protected from inappropriate development. (relevant to S.O. 3.2.2.1, and 3.2.3.1)

## Natural Environment

- 3.3.17 Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna, as Significant Natural Areas on the District Plan maps (SNAs). (relevant to S.O. 3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.4.3 and 3.2.4.4)
- 3.3.18 Protect SNAs from significant adverse effects and ensure enhanced indigenous biodiversity outcomes to the extent that other adverse effects on SNAs cannot be avoided or remedied. (relevant to S.O. 3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.1.2, 3.2.4.3 and 3.2.4.4)
- 3.3.19 Manage subdivision and / or development that may have adverse effects on the natural character and nature conservation values of the District's lakes, rivers, wetlands and their beds and margins so that their life-supporting capacity and natural character is maintained or enhanced. (relevant to S.O. 3.2.1.8, 3.2.4.1, 3.2.4.3, 3.2.4.4, 3.2.5.1 and 3.2.5.2)

## Rural Activities

- 3.3.20 Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with significant nature conservation values or degrade the existing character of rural landscapes. (relevant to S.O. 3.2.1.7, 3.2.5.1 and 3.2.5.2)
- 3.3.21 Recognise that commercial recreation and tourism related activities seeking to locate within the Rural Zone may be appropriate where these activities enhance the appreciation of landscapes, and on the basis they would protect, maintain or enhance landscape quality, character and visual amenity values. (relevant to S.O. 3.2.1.1, 3.2.1.8, 3.2.5.1 and 3.2.5.2)
- 3.3.22 Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for rural living developments. (relevant to S.O. 3.2.1.7, 3.2.5.1 and 3.2.5.2)
- 3.3.23 Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas. (relevant to S.O. 3.2.1.8 and 3.2.5.2)
- 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. (relevant to S.O. 3.2.1.8, 3.2.5.1 and 3.2.5.2)
- 3.3.25 Provide for non-residential development with a functional need to locate in the rural environment, including regionally significant infrastructure where applicable, through a planning framework that recognises its locational constraints, while ensuring maintenance and enhancement of the rural environment. (relevant to S.O. 3.2.1.8, 3.2.1.9 3.2.5.1 and 3.2.5.2)
- 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. (relevant to S.O. 3.2.1.8, 3.2.4.1 and 3.2.4.3)
- 3.3.27 Prohibit the planting of identified exotic vegetation with the potential to spread and naturalise unless spread can be acceptably managed for the life of the planting. (relevant to S.O.3.2.4.2)
- 3.3.28 Seek opportunities to provide public access to the natural environment at the time of plan change, subdivision or development. (relevant to S.O.3.2.4.6)

### Landscapes

- 3.3.29 Identify the District's Outstanding Natural Landscapes and Outstanding Natural Features on the District Plan maps. (relevant to S.O.3.2.5.1)
- 3.3.30 Avoid adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor and or not temporary in duration. (relevant to S.O.3.2.5.1)
- 3.3.31 Identify the District's Rural Character Landscapes on the District Plan maps. (relevant to S.O.3.2.5.2)
- 3.3.32 Only allow further land use change in areas of the Rural Character Landscapes able to absorb that change and limit the extent of any change so that landscape character and visual amenity values are not materially degraded. (relevant to S.O. 3.2.19 and 3.2.5.2)

### Cultural Environment

- 3.3.33 Avoid significant adverse effects on wāhi tūpuna within the District. (relevant to S.O.3.2.7.1)
- 3.3.34 Avoid remedy or mitigate other adverse effects on wāhi tūpuna within the District. (relevant to S.O.3.2.7.1)
- 3.3.35 Manage wāhi tūpuna within the District, including taonga species and habitats, in a culturally appropriate manner through early consultation and involvement of relevant iwi or hapū. (relevant to S.O.3.2.7.1 and 3.2.7.2)

# 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

## PART B - CHAPTER 3

### 2. OVERVIEW/HIGHER LEVEL PROVISIONS

66. As notified, Chapter 3 contained a Statement of Purpose (in 3.1) and then seven subsections (3.2.1-3.2.7 inclusive) each with its own “goal”, one or more objectives under the specified goal and in most but not all cases, one or more policies to achieve the stated objective. The specified goals are as follows:

- “3.2.1 Goal Develop a prosperous, resilient and equitable economy;*
- 3.2.2 Goal The strategic and integrated management of urban growth;*
- 3.2.3 Goal A quality built environment taking into account the character of individual communities;*
- 3.2.4 Goal The protection of our natural environment and ecosystems;*
- 3.2.5 Goal Our distinctive landscapes are protected from inappropriate development;*
- 3.2.6 Goal Enable a safe and healthy community that is strong, diverse and inclusive for all people.*
- 3.2.7 Goal Council will act in accordance with the principles of the Treaty of Waitangi and in partnership with Ngāi Tahu.”*

67. The initial question which requires determination is whether there should be a strategic chapter at all. UCES<sup>125</sup> sought that some aspects be shifted out of Chapter 3 into other chapters, but otherwise that the entire chapter should be deleted. We note in passing that in terms of collective scope, this submission would put virtually all relief between Chapter 3 as notified and having no strategic chapter, within scope.

68. As Mr Haworth explained it to us, the UCES submission forms part of a more general position on the part of the Society that, with some specified changes, the format and context of the ODP should remain unchanged. At the core of his argument, Mr Haworth contended that the ODP was generally working well and should simply be rolled over, certainly as regards the management of the rural issues of interest to UCES. He appeared to put this in part on the basis of the character of the PDP process as a review of the ODP and in part on his own, and UCES’s, experience of the ODP in operation. He referred specifically, however, to a Council’s monitoring report<sup>126</sup>, quoting it to the effect that “*Council should consider carefully before setting about any comprehensive overhaul*”.

69. We note that the quotations Mr Haworth extracted from the 2009 monitoring report were somewhat selective. He omitted mention of what was described<sup>127</sup> as the major qualification, a concern that the Plan may not be effective in avoiding cumulative adverse effects on the landscape and in preventing urban style expansion in some areas.

70. Nor do we think there is anything in this being a ‘review’ of the ODP. The discretion conferred by section 79 is wide, and in this case the Council has considered whether changes are required and determined that a different approach, employing a greater degree of strategic direction, is needed. That said, where submissions (such as those of UCES) seek reversion to the

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<sup>125</sup> Submission 145: Opposed in FS1162, FS1254, FS1313

<sup>126</sup> District Plan Monitoring Report: Monitoring the Effectiveness and Efficiency of the Rural General Zone, QLDC April 2009

<sup>127</sup> At page 3

structure and/or content of the ODP, section 32 requires that we consider that as a possible alternative to be recommended.

71. In that regard, Mr Haworth also drew attention to the increased complexity of management of rural subdivision and development which, under the PDP as notified, is split between Chapter 3, Chapter 6 and Chapter 21. He also criticised the content of those provisions which provided, as he saw it, a weakening of the ability to protect landscape values in the rural environment, but we regard that as a different point, which needs to be addressed in relation to the provisions of the respective chapters.
72. While there is much that can be learned from the decisions that gave rise to the ODP, equally, it needs to be recognised that those decisions are now more than 15 years old. The evidence of the Council on the extent of growth in the District over that period is clear. While the Environment Court remarked on those trends in its 1999 decision, particularly in the Wakatipu Basin, the District is now significantly further along the continuum towards an optimal level of development (some might say it is already sub-optimal in some locations). Mr Haworth himself contended that there is more pressure on the ONLs of the District.
73. Case law has also advanced. The Supreme Court's decision in *King Salmon* in particular, provides us with guidance that was not available to the Environment Court in 1999.
74. Lastly, the jurisdiction of the Environment Court was constrained by the document that was the result of Council decisions, and the scope of the appeals before it. We do not know if the Environment Court would have entertained a strategic directions chapter in 1999. It does not appear to have had that option available to it, and the Court's decisions do not record any party as having sought that outcome.
75. We also accept Mr Paetz's evidence that there is a need for a greater level of strategic direction than the ODP provided to address the challenging issues faced by the District<sup>128</sup>.
76. In summary, we do not recommend complete deletion of Chapter 3 as sought by UCES. While, as will be seen from the discussion following, there are a number of aspects of Chapter 3 that might be pared back, we think there is value in stating strategic objectives and policies that might be fleshed out by the balance of the PDP. Put in section 32 terms, we believe that this is the most appropriate way to achieve the purpose of the Act in this District at this time. Similarly, while we do not recommend complete substitution of the ODP for the existing strategic chapters, there are aspects of the ODP that can usefully be incorporated into the strategic chapters (including Chapter 3). We discuss which aspects in the body of our report.
77. If Chapter 3 is to be retained, as we would recommend, the next question is whether its structuring is appropriate. Queenstown Park Limited<sup>129</sup> sought that the strategic direction section be revised "*so that the objectives and policies are effects based, and provide a forward focussed, strategic management approach*". Those two elements might arguably be seen as mutually contradictory, but the second half of that relief supports a view that we would agree with, that there needs to be a focus on whether what is provided is indeed forward looking and genuinely '*strategic*'. Put another way, the guidance it provides needs to be pitched at a high level, and not focus on minutiae.

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<sup>128</sup> Most of the other planners who gave evidence appeared to take the desirability of having one or more '*strategic*' chapters as a given. Mr Tim Williams, however, explicitly supported the concept of having higher order provisions (at paragraph 10 of his evidence).

<sup>129</sup> Submission 806

78. In terms of general structuring, the submission of Real Journeys Limited<sup>130</sup> that provisions should be deleted where they duplicate or repeat other provisions might be noted. We agree that where provisions are duplicated, that duplication should generally be removed. The challenge is of course to identify where that has occurred.
79. The telecommunication companies<sup>131</sup> sought that the relationship of the goals, objectives and policies with the other Chapters of the Plan be defined and that the goals be deleted but retained as titles. Another variation on the same theme was provided by Darby Planning LP<sup>132</sup>, which sought that the goals be deleted and incorporated into the relevant objective.
80. Remarkables Park Limited<sup>133</sup> and Queenstown Park Limited<sup>134</sup> also sought deletion of the goal statements *“to remove confusion as to their status and relationship to objectives and policies”*.
81. We think that the starting point when looking at the structuring of Chapter 3, both internally and with respect to the balance of the PDP, is to decide what the goals are, and what purpose they serve. When counsel for the Council opened the hearing on 7 March 2016, he suggested that the goals were a mixture of objectives and issues, or alternatively a mixture of issues and anticipated environmental results. Consistent with that view, in his reply evidence, Mr Paetz stated:
- “The goals are more than the description of an issue, having the aspirational nature of an objective.”*
82. He opposed, however, relabelling them as objectives as that would potentially create structural confusion with objectives sitting under objectives. In Mr Paetz’s view, the use of the term *“goal”* is commonly understood by lay people and he saw no particular problem with retaining them as is.
83. We do not concur.
84. As Mr Paetz noted, lay people have a reasonably clear understanding what a goal is. However, as counsel for Darby Planning LP pointed out to us, that understanding is that a goal is an objective (and vice versa)<sup>135</sup>. It is inherently unsatisfactory to have quasi-objectives with no certainty as their role in the implementation of the PDP. Objectives have a particular role in a District Plan. Other provisions are tested under section 32 as to whether they are the most appropriate way to achieve the objectives. As Mr Chris Ferguson<sup>136</sup> noted, they also have a particular legal significance under section 104D of the Act. Accordingly, it is important to know what is an objective and what is not. We recommend that the goals not remain stated as *‘goals’*.

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<sup>130</sup> Submission 621

<sup>131</sup> Submissions 179, 191, 781: Opposed in FS1132; Supported in FS1121

<sup>132</sup> Submission 608: Opposed in FS1034

<sup>133</sup> Submission 807

<sup>134</sup> Submission 806

<sup>135</sup> *Ngati Kahungunu Iwi Inc v Hawkes Bay Regional Council* [2015] NZEnvC50 at [42] citing the Concise Oxford Dictionary

<sup>136</sup> Planning witness appearing for Darby Planning LP, Soho Ski Area Ltd, Treble Cove Investors, Hansen Family Partnership

85. There appear to be at least four alternative options. They could be deleted or alternatively converted to titles for the respective subsections, as the telecommunication submitters suggest. The problem with the goals framed as titles is that they would then add little value and would not reflect the process by which the objectives and policies were developed, which as we understand it from the evidence of Council, reflected those goals.
86. That would be still more the case if they were simply deleted, as Remarkables Park Ltd and Queenstown Park Ltd seek.
87. They could be incorporated into the objectives, as Darby Planning LP suggests. That would preserve the work that went into their formulation, but the submission does not identify how exactly the objectives should be revised to achieve that result<sup>137</sup>.
88. Logically there are two ways in which the goals might be incorporated into the objectives. The first is if the wording of the goals were melded with that of the existing objectives. We see considerable difficulties with that course. On some topics, there are a number of objectives that relate back to a single goal. In other cases, a single objective is related to more than one goal. It is not clear to us how the exercise could be undertaken without considerable duplication, and possibly an unsatisfactory level of confusion.
89. The alternative is to reframe the ‘goals’ as higher-level objectives, each with one or more focused objectives explicitly stated to be expanding on the higher-level objective. This avoids the problem of excessive duplication noted above, and the fact that some of the existing objectives relate back to more than one ‘goal’ can be addressed by appropriate cross-referencing. It also addresses the problem Mr Paetz identified of potential confusion with objectives under objectives. We recommend this approach be adopted and Chapter 3 be restructured accordingly. We will discuss the wording of each goal/higher-level objective below.
90. One problem of expressing the goals as higher-level objectives is that they fail to express the issues the strategic objectives seek to address<sup>138</sup>. The result is something of a leap in logic; the high-level objectives come ‘out of the blue’ with little connection back to the special qualities identified in section 3.1.
91. The reality is, as the section 32 report for this aspect of the Plan makes clear<sup>139</sup>, that the ‘goals’ were themselves derived from a series of issues, worded as follows:
- “1. Economic prosperity and equity, including strong and robust town centres;
  2. Growth pressures impacting on the functionality and sustainability of urban areas, and risking detracting from rural landscapes;
  3. High growth rates can challenge the qualities that people value in their communities;
  4. Quality of the natural environment and ecosystems;
  5. The District’s outstanding landscapes offer both significant intrinsic and economic value for the District and are potentially at threat of degradation given the District’s high rates of growth;
  6. While median household incomes in the District are relatively high, there is significant variation in economic wellbeing. Many residents earn relatively low wages, and the cost of living in the district is high – housing costs, heating in winter, and transport. This affects the social and

<sup>137</sup> Mr Chris Ferguson, giving planning evidence on the point, supported this relief (see his paragraph 109) but similarly did not provide us with revised objectives illustrating how this might be done.

<sup>138</sup> A role both counsel for the Council and Mr Paetz identified, the goals as having, as above.

<sup>139</sup> Section 32 Evaluation Report – Strategic Direction at pages 5-11

*economic wellbeing of some existing residents and also reduces the economic competitiveness of the District and its ability to maximise productivity. The design of developments and environments can either promote or deter safety and health and fitness.*

7. *Tangata whenua status and values require recognition in the District Plan, both intrinsically in the spirit of partnership (Treaty of Waitangi), but also under Statutes;”*

92. These issues have their faults. There is an undesirable level of duplication between them. The fourth issue is not framed as an issue. The sixth issue is in fact two discrete points, the first of which, as well as being extremely discursive, is actually an aspect of the first issue.
93. Even given these various faults, however, we consider a modified version of the section 32 report issues would add value as part of the background information in Section 3.1, explaining the link between the special qualities it identifies and the objectives set out in Section 3.2. Unlike the objectives, the issues have no legal status or significance and we regard them as merely clarifying the revised higher-level objectives by capturing part of what was previously stated in the ‘goals’.
94. We will revert to how the ‘issues’ might be expressed in the context of our more detailed discussion of Section 3.1.
95. More generally in relation to the structuring of Chapter 3, we have formed the view that the overlaps between goals, and the separation of each subsection of Chapter 3 into a goal, followed by one or more objectives, with many of those objectives in turn having policies specific to that objective, has created a significant level of duplication across the chapter. In our view, this duplication needs to be addressed.
96. We are also concerned that there has been a lack of rigour in what has been regarded as ‘strategic’, which has in turn invited suggestions from some submitters that Chapter 3 ought to be expanded still further <sup>140</sup>.
97. We recommend that the best way to approach the matter is to collect together the strategic objectives in one section and the strategic policies in a separate section of Chapter 3. Objectives and policies duplicating one another are then no longer required and can be deleted.
98. It is recognised that it is still important to retain the link between objectives and policies, but this can be done by insertion of internal cross referencing. As previously discussed, we consider it is helpful to set out the issues that have generated the higher-level objectives, and we suggest a similar cross referencing approach to the links between the issues and the higher-level objectives. The revised PDP Chapter 3 attached to this report shows how we suggest this might best be done.
99. We also concur with the suggestion in the telecommunication submissions that there is a need for clarification as to the relationship between Chapter 3 and the balance of the PDP initially, and then the relationship of Part Two<sup>141</sup> with the balance of the Plan. The apparent intent (as set out in Mr Paetz’s Section 42A Report) is that they should operate as a hierarchy with

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<sup>140</sup> Counsel for DJ and EJ Cassells, Bulling Family and M Lynch and Friends of Wakatipu Gardens and Reserves for instance suggested to us that this was required to provide balance

<sup>141</sup> Comprising Chapters 3-6 inclusive

Chapter 3 at the apex, but the PDP does not actually say that. The potential confusion is enhanced by the fact that the ODP was drafted with the opposite intent<sup>142</sup>.

100. The last paragraph of Section 3.1 is the logical place for such guidance. Mr Chris Ferguson<sup>143</sup> suggested we might utilise a similar paragraph to that which the independent Hearing Panel for the Replacement Christchurch District Plan approved – stating explicitly that Chapter 3 has primacy over all other objectives and policies in the PDP, which must be consistent with it. That wording, however, reflected the unique process involved there, with the Strategic Directions Chapter released before finalisation of the balance of the Plan, and we think a more tailored position is required for the PDP to recognise that we are recommending revisions to the whole of Stage 1 of the PDP to achieve an integrated end product. Combining this concept with the need to explain the structure of the revised chapter, we recommend that it be amended to read as follows:

*“This Chapter sets out the District Plan’s high-level objectives and policies addressing these issues. High level objectives are elaborated on by more detailed objectives. Where these more detailed objectives relate to more than one higher level objective, this is noted in brackets after the objective. Because many of the policies in Chapter 3 implement more than one objective, they are grouped, and the relationship between individual policies and the relevant strategic objective(s) identified in brackets following each policy. The objectives and policies are further elaborated on in Chapters 4-6. The principal role of Chapters 3-6 collectively is to provide the direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan. In addition, they also provide guidance on what those more detailed provisions are seeking to achieve, and are accordingly relevant to decisions made in the implementation of the Plan.”*

## **2.1. Section 3.1 - Purpose**

101. With the exception of clarification of the relationship between the different elements of Chapter 3 and the balance of the PDP, as above, the submissions seeking amendments to the Statement of Purpose in Section 3.1<sup>144</sup> appear to be seeking to incorporate their particular aspirations as to what might occur in future, rather than stating the special qualities the District currently has, which is what Section 3.1 sets out to do. Accordingly, we do not recommend any change to the balance of Section 3.1.
102. We note that the amendments sought in Submission 810 was withdrawn when the submitter appeared at the Stream 1A hearing.
103. To provide the link between the specified special qualities and the high-level objectives in Section 3.2, we recommend the issues set out in the section 32 report be amended.
104. As discussed above, the sixth issue is effectively two issues with the first part an overly discursive aspect of the first issue. Looking both at the first part of sixth issue and the explanation of it in the section 32 report, the key point being made is that not all residents are able to provide for their social economic wellbeing due to a low wage structure and a high cost of living. The concept of an equitable economy in the first issue captures some of those issues,

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<sup>142</sup> C180/99 at [126]

<sup>143</sup> Planning witness for Darby Planning LP

<sup>144</sup> Submission 238: Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1299; and Submission 598: Supported in FS1287

but it also suggests a need to highlight both the need for greater diversification of the economy<sup>145</sup> and for enhanced social and economic prosperity.

105. The second, fourth and fifth issues refer variously to rural landscapes, the natural environment and outstanding landscapes. There is significant overlap between these elements. The outstanding landscapes of the District are generally rural landscapes. They are also part of the natural environment. The fourth issue also separates ecosystems from the natural environment when in reality, ecosystems are part of the natural environment. It is also not framed as an issue. Clearly outstanding landscapes require emphasis, given the national importance placed on their protection, but we recommend these three issues be collapsed into two.
106. Lastly, the reference to the reasons why Tangata Whenua status and values require recognition is unnecessary in the statement of an issue and can be deleted without losing the essential point.
107. In summary, we recommend that the following text be inserted into Section 3.1 to provide the linkage to the objectives and clarification we consider is necessary:
  - a. *“Issue 1: Economic prosperity and equity, including strong and robust town centres, requires economic diversification to enable the social and economic wellbeing of people and communities.*
  - b. *Issue 2: Growth pressure impacts on the functioning and sustainability of urban areas, and risks detracting from rural landscapes, particularly its outstanding landscapes.*
  - c. *Issue 3: High growth rates can challenge the qualities that people value in their communities.*
  - d. *Issue 4: The District’s natural environment, particularly its outstanding landscapes, has intrinsic qualities and values worthy of protection in their own right, as well as offering significant economic value to the District.*
  - e. *Issue 5: The design of developments and environments can either promote or weaken safety, health and social, economic and cultural wellbeing.*
  - f. *Issue 6: Tangata Whenua status and values require recognition in the District Plan.”*

## **2.2. Section 3.2.1 – Goal – Economic Development**

108. The goal for this subsection is currently worded:

*“Develop a prosperous, resilient and equitable economy”.*

109. Submissions specifically on this first goal (apart from those supporting it in its current form) sought variously that it be amended by a specific reference to establishment of education and research facilities<sup>146</sup> and that the word *“equitable”* be deleted<sup>147</sup>.
110. As part of UCES’s more general opposition to Chapter 3, Mr Haworth opposed Goal 1 on the basis that it was not required because the economy was already flourishing, and elevating recognition of the economy conflicted with the emphasis given to the importance of protecting the environment in a manner that is likely to threaten landscape protection.

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<sup>145</sup> Submission 115 sought that the first goal refer specifically to establishment of education and research facilities to generate high end jobs which we regard as an example of economic diversification

<sup>146</sup> Submission 115

<sup>147</sup> Submission 806

111. Mr Paetz did not recommend any amendment to this goal.
112. The RPS contains no over-arching objective related to the economy that bears upon how this goal is expressed. We should note, however, Policy 1.1.2 of the Proposed RPS which reads:
- “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.”*
113. This is in the context of an objective<sup>148</sup> focussing on integrated management of resources to support the wellbeing of people and communities.
114. If the restructuring we have recommended is accepted, so that each goal is expressed as a high-level objective expanded by more focussed objectives, we believe that the concerns underlying the submissions on this goal would largely be addressed. Thus, if Goal 1 has what is currently Objective 3.2.1.3 under and expanding it, the Plan will recognise the diversification that Submission 115 seeks, albeit more generally than just with reference to education and research facilities.
115. Similarly, while we can understand the concern underlying Submission 806, that reference to equity could be read a number of different ways, provision of a series of more focused objectives to flesh out this goal assists in providing clarity.
116. We do not accept Mr Haworth’s contentions either that a high-level objective focussing on economic wellbeing is unnecessary or that it threatens environmental values, including landscape values. The evidence we heard, in particular from Mr Cole<sup>149</sup>, indicates to us that economic prosperity (and social wellbeing) are not universally enjoyed in the District. We also intend to ensure that it is clear in the more detailed provisions expanding on this broad high-level objective that while important, economic objectives are not intended to be pursued without regard for the environment (reflecting the emphasis in the Proposed RPS quoted above).
117. In summary, therefore, the only amendments we recommend to the wording of Section 3.2.1 are to express it as an objective and to be clear that it is the economy of this district which is the focus, as follows:
- “The development of a prosperous, resilient and equitable economy in the District.”*
118. We consider a higher-level objective to this effect is the most appropriate way to achieve the purpose of the Act.

### **2.3. Section 3.2.1 – Objectives – Economic Development**

119. As notified, Section 3.2.1 had five separate objectives. The first two (3.2.1.1 and 3.2.1.2) focus on the economic contribution of central business areas of Queenstown and Wanaka and the commercial and industrial areas outside those areas respectively. The other three objectives focus on broader aspects of the economy.

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<sup>148</sup> Proposed RPS Objective 1.1

<sup>149</sup> For Queenstown Lakes Community Housing Trust.

120. A common feature of each of the objectives in Section 3.2.1 is that they commence with a verb: recognise, develop and sustain; enable; recognise; maintain and promote.
121. Nor is Section 3.2.1 alone in this. This appears to be the drafting style employed throughout Chapters 3, 4 and 6 (and beyond). Moreover, submitters have sought to fit in with that drafting style, with the result that almost without exception, the amendments sought by submitters to objectives would be framed in a similar way<sup>150</sup>.
122. We identified at the outset an issue with objectives drafted in this way. Put simply, they are not objectives because they do not identify “*an end state of affairs to which the drafters of the document aspire*”<sup>151</sup>.
123. Rather, by commencing with a verb, they read more like a policy – a course of action<sup>152</sup> (to achieve an objective).
124. We discussed the proper formulation of objectives initially with Mr Paetz and then with virtually every other planning witness who appeared in front of us. All agreed that a properly framed objective needed to state an environmental end point or outcome (consistent with the *Ngati Kahungunu* case just noted). At our request, Mr Paetz and his colleague Mr Barr (responsible for Chapter 6) produced revised objectives for Chapters 3, 4 and 6, reframing the notified objectives to state an environmental end point or outcome. Counsel for the Council filed a memorandum dated 18 March 2016 producing the objectives of Chapters 3, 4 and 6 reframed along the lines above. As previously noted, the Chair directed that the Council’s memorandum be circulated to all parties who had appeared before us (and those who were yet to do so) to provide an opportunity for comment.
125. We note that because the task undertaken by Mr Paetz and Mr Barr was merely to reframe the existing objectives in a manner that explicitly stated an environmental end point or outcome, rather than (as previously) just implying it, we do not regard this as a scope issue<sup>153</sup>, or as necessitating (to the extent we accepted those amendments) extensive evaluation under section 32.
126. Similarly, to the extent that submitters sought changes to objectives, applying the drafting style of the notified plan, we do not regard it as a scope issue to reframe the relief sought so as to express objectives so that they identify an environmental end point or outcome. We have read all submissions seeking amendments to objectives on that basis.
127. As notified, Objective 3.2.1.1 read:
- “Recognise, develop and sustain the Queenstown and Wanaka central business areas as the hubs of New Zealand’s premier alpine resorts and the Districts economy.”*
128. The version of this objective ultimately recommended by Mr Paetz and attached to counsel’s 18 March 2016 Memorandum read:

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<sup>150</sup> Submission 761 (Orfel Ltd) was a notable exception in this regard, noting that a number of Chapter 3 objectives are stated as policies, and seeking that they be reframed as aspirational outcomes to be achieved.

<sup>151</sup> *Ngati Kahungunu Iwi Incorporated v Hawkes Bay Regional Council* [2015] NZEnvC50 at [42]

<sup>152</sup> *Auckland Regional Council v North Shore City Council* CA29/95 at page 10

<sup>153</sup> Quite apart from the scope provided by Submission 761 for a number of the ‘*objectives*’ in issue.

*“The Queenstown and Wanaka town centres are the hubs of New Zealand’s premier alpine resorts and the District’s economy.”*

129. We think that substituting reference to Queenstown and Wanaka town centres is preferable to referring to their “*central business areas*” because of the lack of clarity as to the limits of what the latter might actually refer to. Although the evidence of Dr McDermott for the Council suggested that he had a broader focus, the advantage of referring to town centres is because the PDP maps identify the Town Centre zones in each case. Mr Paetz agreed that a footnote might usefully confirm that link, and we recommend insertion of a suitably worded footnote.
130. NZIA suggested that rather than referring to central business areas, the appropriate reference would be to the Queenstown and Wanaka waterfront. While that may arguably be an apt description for the central area of Queenstown, we do not think that it fits so well for Wanaka, whose town centre extends well up the hill along Ardmore Street and thus we do not recommend that change.
131. The focus of other submissions was not so much on the wording of this particular objective but rather on the fact that the focus on the Queenstown and Wanaka town centres failed to address the increasingly important role played by commercial and industrial development on the Frankton Flats<sup>154</sup>, the role that the Three Parks commercial development is projected to have in Wanaka<sup>155</sup>, and the role of the visitor industry in the District’s economy, facilities for which are not confined to the Queenstown and Wanaka town centres<sup>156</sup>. In his Section 42A Report, Mr Paetz recognised that the first and third of these points were valid criticisms of the notified PDP and recommended amended objectives to address them.
132. Turning to the RPS to see what direction we get from its objectives, the focus is on a generally expressed promotion of sustainable management of the built environment<sup>157</sup> and of infrastructure<sup>158</sup>. The policies relevant to these objectives are framed in terms of promoting and encouraging specified desirable outcomes<sup>159</sup>, minimising adverse effects of urban development and settlement<sup>160</sup>, and maintaining and enhancing quality of life<sup>161</sup>. As such, none of these provisions appear to bear upon the objectives in this part of the PDP, other than in a very general way.
133. The Proposed RPS gets closer to the point at issue with Objective 4.5 seeking effective integration of urban growth and development with adjoining urban environments (among other things). The policies supporting that objective do not provide any relevant guidance as to how this might be achieved. Policy 5.5.3, however, directs management of the distribution of commercial activities in larger urban areas “*to maintain the vibrancy of the central business district and support local commercial needs*” among other things by “*avoiding unplanned*

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<sup>154</sup> E.g. Submission 238: Supported in FS1097 and FS1117; Opposed in FS1107, FS1157, FS1226, FS1239, FS1241, FS1242, FS1248, FS1249; Submission 806: Supported in FS1012; Submission 807

<sup>155</sup> Submission 249: Supported in FS1117

<sup>156</sup> E.g. Submission 615: Supported in FS1105, FS1137; Submission 621: Supported in FS1097, FS1117, FS1152, FS1333, FS1345; Submission 624; Submission 677; Supported in FS1097, FS1117; Opposed in FS1035, FS1074, FS1312, FS1364; Submission 716: Supported in FS1097, FS1117, FS1345

<sup>157</sup> RPS Objective 9.4.1

<sup>158</sup> RPS Objective 9.4.2

<sup>159</sup> RPS Policies 9.5.2 and 9.5.3

<sup>160</sup> RPS Policy 9.5.4

<sup>161</sup> RPS Policy 9.5.5

*extension of commercial activities that has significant adverse effects on the central business district and town centres.”*

134. We read this policy as supporting the intent underlying this group of objectives, while leaving open how this might be planned.
135. Addressing each objective suggested by Mr Paetz in turn, the version of his recommended Frankton objective presented with his reply evidence reads:
- “The key mixed use function of the Frankton commercial area is enhanced, with better transport and urban design integration between Remarkables Park, Queenstown Airport, Five Mile and Frankton Corner”.*
136. This is an expansion from the version of the same objective recommended with Mr Paetz’s Section 42A Report reflecting a view (explained by Mr Paetz in this reply evidence<sup>162</sup>) that the Frankton area should be viewed as one wider commercial locality, comprising a network of several nodes, with varying functions and scales.
137. Dr McDermott gave evidence for the Council, supporting separate identification of the Frankton area on the basis that its commercial facilities had quite a different role to the town centres of Wanaka and Queenstown and operated in a complimentary manner to those centres.
138. We also heard extensive evidence from QAC as to the importance of Queenstown Airport to the District’s economy<sup>163</sup>.
139. We accept that Frankton plays too important a role in the economy of the District for its commercial areas to be classed in the ‘other’ category, as was effectively the case in the notified Chapter 3. We consider, however, that it is important to be clear on what that role is, and how it is different to that of the Queenstown and Wanaka town centres. That then determines whether a wider or narrower view of what parts of the Frankton area should be the focus of the objective.
140. The term Dr McDermott used to describe Frankton was “mixed use” and Mr Paetz recommended that that be how the Frankton area is described.
141. The problem we had with that recommendation was that it gives no sense of the extent of the ‘mix’ of uses. In particular, “mixed use” could easily be taken to overlap with the functions of the Queenstown town centre. Dr McDermott described the latter as being distinguished by the role it (and Wanaka town centre) plays in the visitor sector, both as destinations in their own right and then catering for visitors when they are there<sup>164</sup>. By contrast, he described Frankton as largely catering for local needs although when he appeared at the hearing, he emphasised that local in this sense is relative, because of the role of the Frankton retail and industrial facilities in catering for a wider catchment than just the immediate Frankton area. While Dr McDermott took the view that that wider catchment might extend as far as Wanaka, his opinion in that regard did not appear to us to be based on any hard evidence. However, we accept that Frankton’s role is not limited to serving the immediate ‘local’ area.

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<sup>162</sup> At paragraph 5.7

<sup>163</sup> In particular, the evidence of Mr Mark Edghill

<sup>164</sup> Dr P McDermott, EIC at 2.1(c).

142. Mr Chris Ferguson suggested to us that because of the overlapping functions between commercial centres, referring to *“the wider Frankton commercial area”* confused the message<sup>165</sup>.
143. Evidence we heard, in particular from the NZIA representatives, took the same point further, suggesting that Frankton’s importance to the community was not limited to its commercial and industrial facilities, and that it had an important role in the provision of educational, health and recreation facilities as well. We accept that point too. This evidence suggests a need to refer broadly to the wider Frankton area than just to specific nodes or elements, and to a broader range of community facilities.
144. The extent to which this objective should focus on integration was also a matter in contention. The representatives for QAC opposed reference to integration for reasons that were not entirely clear to us and when he reappeared on the final day of hearing, Mr Kyle giving evidence for QAC, said that he was ambivalent on the point.
145. For our part, we regard integration between the various commercial and industrial nodes of development on the Frankton Flats (including Queenstown Airport), and indeed its residential areas<sup>166</sup>, as being important, but consider that this is better dealt with as a policy. We will come back to that.
146. In summary, we recommend that Mr Paetz’s suggested objective largely be accepted, but with the addition of specific reference to its focus on visitors, to provide a clearer distinction between the roles of Queenstown and Wanaka town centres and Frankton and Three Parks respectively.
147. Accordingly, we recommend that the wording of Objective 3.2.1.1 (renumbered 3.2.1.2 for reasons we will shortly explain) be amended so read:
- “The Queenstown and Wanaka town centres<sup>167</sup> are the hubs of New Zealand’s premier alpine visitor resorts and the District’s economy.”*
148. We further recommend that a new objective be added (numbered 3.2.1.3) as follows:
- “The Frankton urban area functions as a commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin.”*
149. The case for recognition of the Three Parks commercial area is less clear. While, when the development is further advanced, it will be a significant element of the economy of the Upper Clutha Basin, that is not the case at present.
150. Mr Dippie appeared before us and made representations on behalf of Orchard Road Holdings Limited<sup>168</sup> and Willowridge Developments Limited<sup>169</sup> advocating recognition of Three Parks in the same way that the Frankton commercial areas were proposed (by Council staff) to be

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<sup>165</sup> C Ferguson, EIC at paragraph 103

<sup>166</sup> A key issue for QAC is how Queenstown airport’s operations might appropriately be integrated with further residential development in the wider Frankton area

<sup>167</sup> Defined by the extent of the Town Centre Zone in each case.

<sup>168</sup> Submission 91/Further Submission 1013

<sup>169</sup> Submission 249/Further Submission 1012

recognised, but was reasonably non-specific as to exactly how that recognition might be framed.

151. Dr McDermott's evidence in this regard suffered from an evident unfamiliarity with the Wanaka commercial areas and was therefore not particularly helpful. However, we were assisted by Mr Kyle who, although giving evidence for QAC, had previously had a professional role assisting in the Three Parks development. In response to our query, he described the primary function of the Three Parks commercial area as being to provide more locally based shopping, including provision for big box retailing. He thought there was a clear parallel between the relationship between Frankton and Queenstown town centre.

152. Mr Paetz recommended in his reply evidence that the Three Parks area be recognised in its own objective as follows:

*"The key function of the commercial core of the Three Parks Special Zone is sustained and enhanced, with a focus on large format retail development".*

153. We do not regard it is appropriate for the objective related to Three Parks to provide for *"sustaining and enhancing"* of the function of the commercial part of the Three Parks area; that is more a policy issue. Similarly, saying that the Three Parks Commercial Area should be focussed on large format retail development leaves too much room, in our view, for subsidiary focusses which will erode the role of the Wanaka town centre. Lastly, referring to the Three Parks *'Special Zone'* does not take account of the possibility that there may not be a *'Special Zone'* in future.

154. Ultimately, though, we recommend that the Three Parks Commercial Area be recognised because it is projected to be a significant element of the economy of the Upper Clutha Basin over the planning period covered by the PDP.

155. To address the wording issues noted above, we recommend that the objective (numbered 3.2.1.4) be framed as follows:

*"The key function of the commercial core of Three Parks is focussed on large format retail development".*

156. The only submission seeking amendment to the notified Objective 3.2.1.3, sought that it be reworded as an aspirational outcome to be achieved, rather than as a policy<sup>170</sup>. In his reply evidence, the version of this objective suggested by Mr Paetz (addressing this point) read:

*"Development of innovative and sustainable enterprises that contribute to diversification of the District's economic base and create employment opportunities."*

157. Although only an issue of emphasis, we see the environmental outcome as being related to the District's economic base. Development of enterprises contributing to economic diversity and employment are a means to that end.

158. Accordingly, we recommend that the objective (renumbered 3.2.1.6) be reframed as follows:

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<sup>170</sup> Submission 761

*“Diversification of the District’s economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.”*

159. As already noted, a number of submissions raised the need for specific recognition of the visitor industry outside the Queenstown and Wanaka town centres.

160. The objective recommended by Mr Paetz in his reply evidence to address the failure of the notified plan to recognise the significance of the visitor industry to the District economy in this context was framed as follows:

*“The significant socioeconomic benefits of tourism activities across the District are provided for and enabled.”*

161. While we accept the need for an objective focused on the contribution of the visitor industry outside the Queenstown and Wanaka town centres to the District’s economy, including but not limited to employment, the phraseology of Mr Paetz’s suggested objective needs further work. Talking about the benefits being provided for does not identify a clear outcome. The objective needs to recognise the importance of the visitor industry without conveying the impression that provision for the visitor industry prevails over all other considerations irrespective of the design or location of the visitor industry facilities in question. Policy 5.3.1(e) of the Proposed RPS supports some qualification of recognition for visitor industry facilities – it provides for tourism activities located in rural areas *“that are of a nature and scale compatible with rural activities”*. Similarly, one would normally talk about enabling activities (that generate benefits) rather than enabling benefits. Benefits are realised. Lastly, we prefer to refer to the visitor industry rather than to tourism activities. Reference to tourism might be interpreted to exclude domestic visitors to the District. It also excludes people who visit for reasons other than tourism.

162. In summary, we recommend that a new objective be inserted worded as follows:

*“The significant socioeconomic benefits of well designed and appropriately located visitor industry facilities and services are realised across the District.”*

163. Given the importance of the visitor industry to the District’s economy and the fact that the other objectives addressing the economy are more narrowly focused, we recommend that it be inserted as the first objective (fleshing out the revised goal/higher-level objective stated in Section 3.2.1) and numbered 3.2.1.1.

164. Objective 3.2.1.2 was obviously developed to operate in conjunction with 3.2.1.1. As notified, it referred to the role played by commercial centres and industrial areas outside the Wanaka and Queenstown central business areas.

165. Many of the submissions on this objective were framed around the fact that as written, it would apply to the Frankton Flats commercial and industrial areas, and to the Three Parks commercial area. As such, if our recommendations as above are accepted, those submissions have effectively been overtaken, being addressed by insertion of specific objectives for those areas.

166. In Mr Paetz’s reply evidence, the version of this objective he recommended read:

*“Enhance and sustain the key local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres and Frankton.”*

167. Starting with two verbs, this still reads more like a policy than an objective. Mr Paetz’s suggested objective also fails to take account of his recommendation (which we accept) that the commercial area of Three Parks be the subject of a specific objective. Lastly, and as for renumbered Objective 3.2.1.2, it needs clarity as to the extent of the ‘town centres’.

168. Addressing these matters, we recommend that this objective (renumbered 3.2.1.5) be amended to read as follows:

*“Local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres<sup>171</sup>, Frankton, and Three Parks are sustained.”*

169. Objective 3.2.1.4 as notified read:

*“Recognise the potential for rural areas to diversify their land use beyond the strong productive value of farming, provided a sensitive approach is taken to rural amenity, landscape character, healthy ecosystems, and Ngai Tahu values, rights and interests.”*

170. This objective attracted a large number of submissions querying the reference to farming having a “strong productive value”<sup>172</sup> with many of those submissions seeking that the objective refer to “traditional” land uses. Some submissions<sup>173</sup> sought that the objective be more overtly ‘enabling’. One submission<sup>174</sup> sought to generalise the objective so that it does not mention the nature of current uses, but rather focuses on enabling “tourism, employment, recreational, and residential based activities” and imports a test of “functional need to be located in rural areas.” Mr Carey Vivian, giving evidence both for this submitter and a further submitter opposing the submission<sup>175</sup>, suggested to us that a ‘functional need’ test would ensure inappropriate diversification does not occur. Mr Chris Ferguson supported another submission<sup>176</sup> that suggested a functional need test<sup>177</sup>, but did not comment on how that test should be interpreted. We are not satisfied that Mr Vivian’s confidence is well founded. As we will discuss later in this report in relation to suggestions that activities relying on the use of rural resources should be provided for, these seem to us to be somewhat elastic concepts, potentially applying to a wide range of activities.

171. Many submissions also sought deletion of the reference to a “sensitive” approach<sup>178</sup>.

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<sup>171</sup> Defined by the extent of the Town Centre Zone in each case

<sup>172</sup> See e.g. Submissions 343, 345, 375, 407, 437, 456, 513, 522, 532, 534, 535, 537, 696, 806, 807; Supported in FS1097, FS1192, FS1256, FS1286, FS1322; Opposed in FS1004, FS1068, FS1071, FS1120, FS1282, FS1322.

<sup>173</sup> E.g. Submission 621

<sup>174</sup> Submission 519; Supported in FS1015 and FS1097; Opposed in FS1356

<sup>175</sup> Further Submission 1356

<sup>176</sup> Submission 608-Darby Planning LP

<sup>177</sup> As part of a revised version of the objective that has similarities to that sought in Submission 519, but also some significant differences discussed further below.

<sup>178</sup> See e.g. Submissions 519, 598, 600, 791, 794, 806, 807; Supported in FS1015, FS1097, FS1209; Opposed in FS1034, FS1040, FS1356

172. Suggestions varied as to how potential adverse effects resulting from diversification of land uses might be addressed. One submitter<sup>179</sup> suggested adverse effects on the matters referred to be taken into account, or alternatively that an ‘*appropriate*’ approach be taken to adverse effects. Mr Vivian, giving planning evidence on the point, suggested as a third alternative, an ‘*effects-based*’ approach. Another submitter<sup>180</sup> suggested that potential adverse effects be avoided, remedied or mitigated. Mr Jeff Brown supported the latter revision in his planning evidence<sup>181</sup>, on the basis that he preferred the language of the Act. Yet another submission<sup>182</sup>, supported by the planning evidence of Mr Chris Ferguson, suggested that reference to adverse effects be omitted (in the context of a reframed objective that would recognise the value of the natural and physical resources of rural areas to enable specified activities and to accommodate a diverse range of activities).
173. By Mr Paetz’s reply evidence, he had arrived at the following recommended wording:
- “Diversification of land use in rural areas providing adverse effects on rural amenity, landscape character, healthy ecosystems and Ngai Tahu values, rights and interests are avoided, remedied or mitigated.”*
174. Looking to the RPS for direction, we note that Objective 5.4.1 identifies maintenance and enhancement of the primary production capacity of land resources as an element of sustainable management of those resources. Policy 5.5.2 is also relevant, promoting retention of the primary productive capacity of high class soils. We did not hear any evidence as to whether any, and if so, which, soils would meet this test in the District, but Policy 5.5.4 promotes diversification and use of the land resource to achieve sustainable land use and management systems. While generally expressed, the latter would seem to support the outcome the PDP objective identifies, at least in part.
175. The Proposed RPS focuses on the sufficiency of land being managed and protected for economic production<sup>183</sup>. This is supported by policies providing, inter alia, for enabling of primary production and other activities supporting the rural economy and minimising the loss of significant soils<sup>184</sup>. This also supports recognition of the primary sector.
176. We accept that the many submissions taking issue with the reference to the strong productive value of farming have a point, particularly in a District where the visitor industry makes such a large contribution to the economy, both generally and relative to the contribution made by the farming industry<sup>185</sup>. Nor is it obvious why, if the effects-based tests in the objective are met, diversification of non-farming land uses is not a worthwhile outcome.
177. The alternative formulation of the objective suggested by Darby Planning LP, and supported by Mr Ferguson, would side-step many of the other issues submissions have focussed on, but ultimately, we take the view that stating rural resources are valued for various specified purposes does not sufficiently advance achievement of the purpose of the Act. Put simply, it invites the query: so what?

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<sup>179</sup> Submission 519; Supported in FS1015 and FS1097; Opposed in FS1356

<sup>180</sup> Submission 806

<sup>181</sup> At paragraph 4.7

<sup>182</sup> Submission 608; Supported in FS1097, FS1117, FS1155, FS1158; Opposed in FS1034

<sup>183</sup> Proposed RPS, Objective 5.3

<sup>184</sup> Proposed RPS, Policy 5.3.1

<sup>185</sup> We note in particular the evidence of Mr Ben Farrell (on behalf of Real Journeys Ltd in relation to this point).

178. Reverting to Mr Paetz’s recommendation, in our view, it is desirable to be clear what the starting point is; diversification from what? Accordingly, we recommend the submissions seeking that reference be to traditional land uses in rural areas be accepted. Clearly farming is one such traditional land use and we see no issue with referring to that as an example. We do not accept that a ‘*functional need*’ test would add value, because of the lack of clarity as to what that might include.
179. We also agree that the reference in a notified objective to a sensitive approach requires amendment because it gives little clarity as to the effect of the sensitive approach on the nature and extent of adverse effects. We do not, however, recommend that reference be made to adverse effects being avoided, remedied or mitigated. For the reasons discussed above, this gives no guidance as to the desired level of adverse effects on the matters listed. The suggestions that the objective refer to adverse effects being taken into account, or that an appropriate approach be taken to them. would push it even further into the realm of meaninglessness<sup>186</sup>. Those options are not recommended either.
180. Some submissions<sup>187</sup> sought to generalise the nature of the adverse effects required to be managed, deleting any reference to any particular category of effect.
181. In our view, part of the answer is to be clearer about the nature of adverse effects sought to be controlled, combined with being clear about the desired end result. We consider that rural amenity is better addressed through objectives related to activities in the rural environment more generally. Reference to healthy ecosystems in this context is, in our view, problematic. The health of the ecosystems does not necessarily equate with their significance. In addition, why are adverse effects on healthy ecosystems more worthy of protection from diversified land uses than unhealthy ecosystems? One would have thought it might be the reverse.
182. The PDP contains an existing definition of “nature conservation values”. When counsel for the Council opened the hearing, we queried the wording of this definition which incorporated policy elements and did not actually fit with the way the term had been used in the PDP. Counsel agreed that it needed amendment and in Mr Paetz’s reply evidence he suggested the following revised definition of nature conservation values:
- “The collective and interconnected intrinsic values of the indigenous flora and fauna, natural ecosystems and landscape.”*
183. We regard the inclusion of a generalised reference to landscape as expanding nature conservation values beyond their proper scope. Landscape is relevant to nature conservation values to the extent that it provides a habitat for indigenous flora and fauna and natural ecosystems, but not otherwise.
184. Objective 21.2.1 of the PDP refers to ecosystem services as a value deserving of some recognition. The term itself is defined in Chapter 2 as the resources and processes the environment provides. We regard it as helpful to make it clear that when natural ecosystems are referred to in the context of nature conservation values, the collective values of ecosystems include ecosystem services.

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<sup>186</sup> As indeed would the further alternative suggested by Mr Vivian

<sup>187</sup> E.g. Submissions 806 and 807

185. Accordingly, we recommend to the Stream 10 Hearing Panel that the definition of nature conservation values be amended to read:

*“The collective and interconnected intrinsic values of indigenous flora and fauna, natural ecosystems (including ecosystem services), and their habitats.”*

186. Given this revised definition, nature conservation values is a concept which, in our view, could be utilised in this objective. However, given the breadth of the values captured by the definition, it would not be appropriate to refer to all nature conservation values. Some qualitative test is required; in this context, we recommend that the focus be on ‘significant’ nature conservation values.

187. Lastly, consequential on the changes to the Proposed RPS discussed in Report 2, and to the recommendations of that Hearing Panel as to how Objective 3.2.7.1 is framed, the reference to Ngāi Tahu values, **rights** and interests needs to be reviewed.

188. In summary, therefore, we recommend that the objective (renumbered 3.2.1.8) read as follows:

*“Diversification of land use in rural areas beyond traditional activities, including farming, provided that the character of rural landscapes, significant nature conservation values and Ngāi Tahu values, interests and customary resources are maintained.”*

189. While we agree with Mr Paetz’s recommendation that reference to the strong productive value of farming (in the context of notified Objective 3.2.1.4) be deleted, deletion of that reference, and amending the objectives to refer to realisation of the benefits from the visitor industry and diversification of current land uses leaves a gap, because it fails to recognise the economic value of those traditional farming activities. We accept that ongoing farming also provides a collateral benefit to the economy through its contribution to maintenance of existing rural landscape character, on which the visitor industry depends<sup>188</sup>. Mr Ben Farrell gave evidence suggesting, by contrast, that farming has had adverse effects on natural landscapes and that those ‘*degraded*’ natural environments had significant potential to be restored<sup>189</sup>. We accept that farming has extensively modified the natural (pre-European settlement) environment. However, the expert landscape evidence we heard (from Dr Read) is that large areas of farmed landscapes are outstanding natural landscapes and section 6(b) requires that those landscapes be preserved. Cessation of farming might result in landscapes becoming more natural, but we consider that any transition away from farming would have to be undertaken with great care.

190. Continuation of the status quo, by contrast, provides greater surety that those landscapes will be preserved. As already noted, recognition of existing primary production activities is also consistent both with the RPS and the Proposed RPS. The notified Objective 3.2.5.5. sought to address the contribution farming makes to landscape values, as follows:

*“Recognise that agricultural land use is fundamental to the character of our landscapes.”*

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<sup>188</sup> The relationship between landscape values and economic benefits was recognised by the Environment Court as long ago as *Crichton v Queenstown Lakes District Council*. W12/99 at page 12. Dr Read gave evidence that this remains the position – see Dr M Read, EiC at 4.2.

<sup>189</sup> B Farrell, EiC at [111] and [116]

191. That objective attracted a large number of submissions, principally from tourist interests and parties with an interest in residential living in rural environments, seeking that it recognise the contribution that other activities make to the character of the District's landscapes<sup>190</sup>. This prompted Mr Paetz to recommend that the focus of the objective be shifted to read:

*"The character of the District's landscapes is maintained by ongoing agricultural land use and land management."*

192. We agree with the thinking underlying Mr Paetz's recommendation, that as many submitters suggest, agricultural land uses are not the only way that landscape character is maintained.

193. However, we have a problem with that reformulation, because not all agricultural land use and land management will maintain landscape character<sup>191</sup>.

194. We are also wary of any implication that existing farmers should be locked into farming as the only use of their land, particularly given the evidence we heard from Mr Phillip Bunn as to the practical difficulties farmers have in the Wakatipu Basin continuing to operate viable businesses. The objective needs to encourage rather than require farming of agricultural land.

195. The suggested objective also suffers from implying rather than identifying the desired environmental end point. To the extent the desired end point is continued agricultural land use and management (the implication we draw from the policies seeking to implement the objective), landscape character values are not the only criterion (as the policies also recognise – referring to significant nature conservation values).

196. We therefore recommend that Objective 3.2.5.5 be shifted to accompany the revised Objective 3.2.1.4, as above, and amended to read as follows:

*"Agricultural land uses consistent with the maintenance of the character of rural landscapes and significant nature conservation values are enabled."*

197. Logically, given that agricultural land uses generally represent the status quo in rural areas, this objective should come before the revised Objective 3.2.1.4 and so we have reordered them, numbering this Objective 3.2.1.7.

198. The final objective in Section 3.2.1, as notified, related to provision of infrastructure, reading:

*"Maintain and promote the efficient operation of the District's infrastructure, including designated Airports, key roading and communication technology networks."*

199. A number of submissions were lodged by infrastructure providers<sup>192</sup> related to this objective, seeking that its scope be extended in various ways, discussed further below. We also heard a substantial body of evidence and legal argument regarding the adequacy of treatment for

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<sup>190</sup> Submissions 343, 345, 375, 407, 437, 456, 513, 515, 522, 531, 534, 535, 537, 598, 807; Supported in FS1097, FS1056, FS1086, FS1287, FS1292, FS1322; Opposed in FS1068, FS1071, FS1091, FS1120 and FS1282

<sup>191</sup> Mr Dan Wells suggested to us the introduction of pivot irrigators for instance as an example of undesirable agricultural evolution from a landscape character perspective).

<sup>192</sup> Submissions 251, 433, 635, 719, 805; Supported in FS1077, FS1092, FS1097, FS1115, FS1117, FS1159, FS1340; Opposed in FS1057, FS1117, FS1132

infrastructure in this regard, and elsewhere. We were reminded by Transpower New Zealand Limited<sup>193</sup> that we were obliged to give effect to the NPSET 2008.

200. Other submissions<sup>194</sup> sought deletion of an inclusive list. Submission 807 argued that the *'three waters'* are essential and should be recognised. That submission also sought that the objective emphasise timely provision of infrastructure. Submission 806 sought that the objective recognise the need to minimise adverse effects by referring to the importance of maintaining the quality of the environment.
201. Another approach suggested was to clarify/expand the description of infrastructure<sup>195</sup>
202. Mr Paetz recommended that we address these submissions by inserting a new goal, objective and policy into Chapter 3.
203. We do not agree with that recommendation. It seems to us that while important at least to the economic and social wellbeing of people and communities (to put it in section 5 terms), infrastructure needs (including provisions addressing reverse sensitivity issues) are ultimately an aspect of development in urban and rural environments so as to achieve a prosperous and resilient economy (and therefore squarely within the first goal/high-level objective), rather than representing a discrete topic that should be addressed with its own goal/high-level objective.
204. That does not mean, however, that this is not an appropriate subject for an objective at the next level down. Reverting then to the notified objective, we consider the submissions opposing the listing of some types of infrastructure have a point. Even though the list is expressed to be inclusive, it invites a *'me too'* approach from those infrastructure providers whose facilities have not been listed<sup>196</sup> and raises questions as to why some infrastructure types are specifically referenced, and not others. The definition of 'infrastructure' in the Act is broad, and we do not think it needs extension or clarification.
205. The essential point is that the efficient operation of infrastructure is a desirable outcome in the broader context of seeking a prosperous and resilient District economy. Quite apart from any other considerations, Objective 9.4.2 of the RPS (promoting the sustainable management of Otago's infrastructure<sup>197</sup>) along with Policy 9.5.2 (promoting and encouraging efficiency and use of Otago's infrastructure) would require its recognition. We regard that as an appropriate objective, provided that outcome is not pursued to the exclusion of all other considerations; in particular, without regard to any adverse effects on the natural environment that might result.
206. It follows that we accept in principle the point made in Submission 806, that adverse effects of the operation of infrastructure need to be minimised as part of the objective.
207. As regards the submissions seeking extension of the scope of the objective, we accept that this objective might appropriately be broadened to relate to the provision of infrastructure, as well

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<sup>193</sup> Submission 805

<sup>194</sup> Submissions 806 and 807; Opposed in FS1077

<sup>195</sup> Submissions 117 and 238: Supported in FS1117; Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

<sup>196</sup> Accepting that submissions of this ilk were not limited to infrastructure providers- NZIA sought that bridges be added to the list.

<sup>197</sup> See Objective 4.3 of the Proposed RPS to similar effect

as its operation. Submitters made a number of suggestions as to how a revised objective might be framed to extend it beyond infrastructure 'operation'. Variations included reference to:

- a. Infrastructure 'development'<sup>198</sup>
- b. 'Provision' of infrastructure<sup>199</sup>
- c. 'Maintenance development and upgrading' of infrastructure<sup>200</sup>, wording that we note duplicates Policy 2 of the NPSET 2008.

208. In terms of how infrastructure should be described in the objective, again there were a number of suggestions. Some submissions sought that infrastructure provision be 'effective'<sup>201</sup>, again reflecting wording in the NPSET 2008. Submission 635 also suggested that reference be made to safety. Lastly, and as already noted, submission 807 sought that reference be made to the timing of the infrastructure provision.

209. Mr Paetz recommended the following wording:

*"Maintain and promote the efficient and effective operation, maintenance, development and upgrading of the District's existing infrastructure and the provision of new infrastructure to provide for community wellbeing."*

210. We do not regard Mr Paetz's formulation as satisfactory. Aside from the absence of an environmental performance criterion and the fact that it is not framed as an outcome, the suggested division between existing and new infrastructure produces anomalies. Existing infrastructure might be operated, maintained and upgraded, but it is hard to see how it can be developed (by definition, if it exists, it has already been developed). Similarly, once provided, why should new infrastructure not be maintained and upgraded? The way in which community wellbeing is referenced also leaves open arguments as to whether it applies to existing infrastructure, or just to new infrastructure.

211. We also think that 'community wellbeing' does not capture the true role of, or justification for recognising, infrastructure. Submissions 806 and 807 suggested that reference be to infrastructure "that supports the existing and future community", which is closer to the mark, but rather wordy. We think that reference would more appropriately be to meeting community needs.

212. The RPS is too generally expressed to provide direction on these issues, but we take the view that the language of the NPSET 2008 provides a sensible starting point, compared to the alternatives suggested, given the legal obligation to implement the NPSET. Using the NPSET 2008 language and referring to 'effective' infrastructure also addresses the point in Submission 807 – effective infrastructure development will necessarily be timely. Lastly, while safety is important, we regard that as a prerequisite for all development, not just infrastructure.

213. Taking all of these considerations into account, we recommend that Objective 3.2.1.5 be renumbered 3.2.1.9 and revised to read:

*"Infrastructure in the District that is operated, maintained developed and upgraded efficiently and effectively to meet community needs and which maintains the quality of the environment".*

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<sup>198</sup> Submission 251; Supported in FS1092, FS1097, FS1115, FS1117; Opposed in FS1132

<sup>199</sup> Submissions 635, 806, 807; Supported in FS 1159, Opposed in FS1077

<sup>200</sup> Submission 805

<sup>201</sup> Submissions 635, 805; Supported in FS1159

214. Having recommended an objective providing generically for infrastructure, we do not recommend acceptance of the New Zealand Fire Service Commission submission<sup>202</sup> that sought a new objective be inserted into Section 3.2.1 providing for emergency services. While important, this can appropriately be dealt with in the more detailed provisions of the PDP.
215. In summary, having considered all of the objectives in its proposed Section 3.2.1, we consider them individually and collectively to be the most appropriate way in which to achieve the purpose of the Act as it relates to the economy of the District.

#### **2.4. Section 3.2.2 Goal – Urban Growth Management**

216. The second specified ‘goal’ read:

*“The strategic and integrated management of urban growth”.*

217. A number of submissions supported this goal in its current form. One submission in support<sup>203</sup> sought that it be expanded to cover all growth within the district, not just urban growth.
218. One submission<sup>204</sup> sought its deletion, without any further explanation. Another submission<sup>205</sup> sought in relation to this goal, an acknowledgement that some urban development might occur outside the UGB.
219. A number of other submissions sought relief nominally in respect of the Section 3.2.2 goal that in reality relate to the more detailed objectives and policies in that section. We consider them as such.
220. Mr Paetz did not recommend any amendment to this goal.
221. The focus of the RPS previously discussed (on sustainable management of the built environment) is too generally expressed to provide direction in this context. The Proposed RPS focuses more directly on urban growth under Objective 4.5 (*“Urban growth and development is well-designed, reflects local character and integrates effectively with adjoining urban and rural environments”*). Policy 4.5.1 in particular supports this goal – it refers specifically to managing urban growth in a strategic and coordinated way.
222. Reverting to the submissions on it, we do not regard it as appropriate that this particular goal/high-level objective be expanded to cover all growth within the District. Growth within rural areas raises quite different issues to that in urban areas.
223. Nor do we accept Submission 807. The goal is non-specific as to where urban growth might occur. The submitter’s point needs to be considered in the context of the more detailed objectives and policies fleshing out this goal.
224. Accordingly, the only amendment we would recommend is to reframe this goal more clearly as a higher-level objective, as follows:

*“Urban growth managed in a strategic and integrated manner.”*

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<sup>202</sup> Submission 438; Supported in FS1160

<sup>203</sup> Submission 471; Supported in FS1092

<sup>204</sup> Submission 294

<sup>205</sup> Submission 807

225. We consider that a high-level objective in this form is the most appropriate way to achieve the purposes of the Act as it relates to urban growth.

## 2.5. Section 3.2.2 Objectives – Urban Growth Management

226. Objective 3.2.2.1 is the primary objective related to urban growth under what was goal 3.2.2. As notified it read:

*“Ensure urban development occurs in a logical manner:*

- a. To promote a compact, well designed and integrated urban form;*
- b. To manage the cost of Council infrastructure; and*
- c. To protect the District’s rural landscapes from sporadic and sprawling development.”*

227. Submissions on this objective sought variously:

- a. Its deletion<sup>206</sup>;
- b. Recognition of reverse sensitivity effects on significant infrastructure as another aspect of logical urban development<sup>207</sup>;
- c. Deletion of reference to logical development and to sporadic and sprawling development, substituting reference to “urban” development<sup>208</sup>;
- d. Removal of the implication that the only relevant infrastructure costs are Council costs<sup>209</sup>;
- e. Generalising the location of urban development (“*appropriately located*”) and emphasising the relevance of efficiency rather than the cost of servicing<sup>210</sup>.

228. The version of this objective recommended by Mr Paetz in his reply evidence accepted the point that non-Council infrastructure costs were a relevant issue, but otherwise recommended only minor drafting changes.

229. In our view, consideration of this objective needs to take into account a number of other objectives in Chapter 3:

*“3.2.2.2: Manage development in areas affected by natural hazards.”<sup>211</sup>*

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

*3.2.6.1 Provide access to housing that is more affordable;*

*3.2.6.2 Ensure a mix of housing opportunities.*

*3.2.6.3 Provide a high quality network of open spaces and community facilities.”*

230. Submissions on the above objectives sought variously:

- a. Deletion of Objective 3.2.2.2<sup>212</sup>;

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<sup>206</sup> Submission 806

<sup>207</sup> Submissions 271 and 805; Supported in FS1092, FS1121, FS1211, FS1340; Opposed in FS 1097 and FS1117

<sup>208</sup> Submission 608; Opposed in FS1034

<sup>209</sup> Submission 635

<sup>210</sup> Submissions 806 and 807

<sup>211</sup> Although this could be read to apply to non-urban development in isolation, in the context of an urban development goal and a supporting policy focussed on managing higher density urban development, that is obviously not intended.

<sup>212</sup> Submission 806

- b. Amendment of 3.2.6.1 so that it is more enduring and refers not just to housing, but also to land supply for housing<sup>213</sup>;
  - c. Addition of reference in 3.2.6.1 to design quality<sup>214</sup>;
  - d. Collapsing 3.2.6.1 and 3.2.6.2 together<sup>215</sup>;
  - e. Amendment of 3.2.6.2 to refer to housing densities and typologies rather than opportunities<sup>216</sup>;
  - f. Amendment to 3.2.6.3 to refer to community activities rather than community facilities if the latter term is not defined to include educational facilities<sup>217</sup>.
231. Remarkably, for this part of the PDP at least, Objective 3.2.3.1 does not appear to have been the subject of any submissions, other than to the extent that it is caught by UCES's more general relief, seeking that Chapter 3 be deleted.
232. Mr Paetz did not recommend substantive changes to any of these objectives, other than to rephrase them as seeking an environmental outcome.
233. We have already noted some of the provisions of the RPS relevant to these matters. As in other respects, the RPS is generally expressed, so as to leave ample leeway in its implementation, but Policy 9.5.5 is worthy of mention here – it directs maintenance and where practicable enhancement of the quality of life within the build environment, which we regard as supporting Objective 3.2.3.1.
234. The Proposed RPS contains a number of provisions of direct relevance to this group of objectives. We have already noted Objective 4.5, which supports a focus on good design and integration, both within and without existing urban areas. Aspects of Policy 4.5.1 not already mentioned focus on minimising adverse effects on rural activities and significant soils, maintaining and enhancing significant landscape or natural character values, avoiding land with significant risk from natural hazards and ensuring efficient use of land. These provisions provide strong support for the intent underlying many of the notified objectives.
235. In our view, the matters covered by the group of PDP objectives we have quoted are so interrelated that they could and should be combined in one overall objective related to urban growth management.
236. In doing so, we recommend that greater direction be provided as to what outcome is sought in relation to natural hazards. Mr Paetz's recommended objective suggests that development in areas affected by natural hazards "*is appropriately managed*". This formulation provides no guidance to decision makers implementing the PDP. While the RPS might be considered equally opaque in this regard<sup>218</sup>, the proposed RPS takes a more directive approach. Policy 4.5.1, as noted, directs avoidance of land with significant natural hazard risk. Objective 4.1 of the Proposed RPS states:

*"Risk that natural hazards pose to Otago's communities are minimised."*

<sup>213</sup> Submissions 513, 515, 522, 528, 531, 532, 534, 535, 537: Supported in FS1256, FS1286, FS1292, FS1322; Opposed in FS1071 and FS1120

<sup>214</sup> Submission 238: Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1249

<sup>215</sup> Submission 806

<sup>216</sup> Submission 608: Opposed in FS1034

<sup>217</sup> Submission 524

<sup>218</sup> Refer Objective 11.4.2 and the policies thereunder

237. Having regard to these provisions (as we are bound to do), we recommend that the focus on natural hazard risk in relation to urban development similarly be on minimising that risk.
238. It is also relevant to note that the Proposed RPS also has an objective<sup>219</sup> seeking that Otago's communities "*are prepared for and are able to adapt to the effects of climate change*" and a policy<sup>220</sup> directing that the effects of climate change be considered when identifying natural hazards. While the RPS restricts its focus on climate change to sea-level rise<sup>221</sup>, which is obviously not an issue in this District, this is an area where we consider the Proposed RPS reflects a greater level of scientific understanding of the potential effects of climate change since the RPS was made operative<sup>222</sup>.
239. As above, submissions focus on the reference to logical development. It is hard to contemplate that urban development should be illogical (or at least not intentionally so), but we recommend that greater guidance might be provided as to what is meant by a logical manner of urban development. Looking at Chapter 4, and the areas identified for urban development, one obvious common feature is that they build on historical urban settlement patterns (accepting that in some cases it is a relatively brief history), and we recommend that wording to this effect be inserted in this objective.
240. Lastly, consistent with our recommendation above, reference is required in this context to the interrelationship of urban development and infrastructure. Mr Paetz's suggested formulation (manages the cost of infrastructure) does not seem to us to adequately address the issue. First, the concept that costs would be managed provides no indication as to the end result – whether infrastructure costs will be high, low, or something in between. Secondly, while obviously not intended to do so (Mr Paetz suggests a separate objective and policy to deal with it), restricting the focus of the objective to the costs of infrastructure does not address all of the reverse sensitivity issues that both QAC and Transpower New Zealand Limited emphasised to us, the latter with reference to the requirements of the NPSET 2008.
241. The suggestion by Remarkables Park Ltd and Queenstown Park Ltd that the focus be on efficiency of servicing, while an improvement on '*managing*' costs, similarly does not get close to addressing reverse sensitivity issues.
242. We accordingly recommend that reference should be made to integration of urban development with existing and planned future infrastructure. While this is still reasonably general, the recommendations following will seek to put greater direction around what is meant.
243. We regard reference to community housing as being too detailed in this context and do not agree with the suggestion that sprawling and sporadic development is necessarily '*urban*' in character<sup>223</sup>. Mr Chris Ferguson<sup>224</sup>, suggested as an alternative to the relief sought, that the objective refer to "*urban sprawl development*", which from one perspective, would restrict the ambit of the protection the objective seeks for rural areas still further. Mr Ferguson relied on

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<sup>219</sup> Objective 4.2.2

<sup>220</sup> Policy 4.1.1(d)

<sup>221</sup> Policy 8.5.8

<sup>222</sup> As well as reflecting the legislative change to add section 7(i) to the Act

<sup>223</sup> Depending of course on how '*urban development*' is defined. This is addressed in much greater detail below.

<sup>224</sup> Giving planning evidence on the submission of Darby Planning LP

the fact that Mr Bird’s evidence referred to sprawling development, but not to sporadic development, in his evidence. However, Mr Bird confirmed in answer to our question that he regarded sporadic development in the rural areas as just as concerning as sprawling development. Accordingly, we do not accept Mr Ferguson’s suggested refinement of the relief the submission sought.

244. We likewise do not accept the alternative relief sought in Submission 529. We consider that the role of educational facilities is better dealt with in the definition section, as an aspect of community facilities, than by altering the objective to refer to community activities. Such an amendment would be out of step with the focus of the objective on aspects of urban development.

245. Finally, we consider all objectives and policies will be more readily understood (and more easily referred to in the future) if any lists within them are alphanumeric lists rather than bullet points. Such a change is recommended under Clause 16(2) and all our recommended objectives and policies reflect that change.

246. In summary, we recommend that Objective 3.2.2.1 be amended to read:

*“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 and safe places to live, work and play;*
- d. minimise the natural hazard risk, taking account of 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.”*

247. We consider that an objective in this form is the most appropriate way to expand on the high-level objective and to achieve the purpose of the Act as it relates to urban development.

## **2.6. Section 3.2.3 – Goal – Urban Character**

248. As notified, the third goal read:

*“A quality built environment taking into account the character of individual communities.”*

249. A number of submissions supported this goal. One submission<sup>225</sup> sought its deletion.

250. Mr Paetz did not recommend any change to this goal.

251. Recognition of the character of the built environment implements the generally expressed provisions of the RPS related to the built environment (Objective 9.4 and the related policies) already noted. A focus on local character is also consistent with objective 4.5 of the Proposed RPS.

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<sup>225</sup> Submission 807

252. While Mr Haworth’s criticism of it in his evidence for UCES (as being “*a bit waffly*” and “*obvious*”) is not wholly unjustified, we consider that there is a role for recognition of urban character as a high-level objective that is expanded on by more detailed objectives. The goal as notified is already expressed in the form of an objective. Accordingly, we recommend its retention with no amendment as being the most appropriate way to achieve the purpose of the Act.

**2.7. Section 3.2.3 – Objectives – Urban Character**

253. We have already addressed Objective 3.2.3.1 as notified and recommended that it be shifted into Section 3.2.2.

254. Objective 3.2.3.2 as notified, read:

*“Protect the District’s cultural heritage values and ensure development is sympathetic to them.”*

255. The submissions on this objective either seek its deletion<sup>226</sup>, or that protection of cultural heritage values be “*from inappropriate activities*”<sup>227</sup>.

256. Mr Paetz’s reply evidence recommended that the objective be framed as:

*“Development is sympathetic to the District’s cultural heritage values.”*

257. Reference to cultural heritage includes both Maori and non-Maori cultural heritage. The former is, however, already dealt with in Section 3.2.7 and we had no evidence that non-Maori cultural heritage expands beyond historic heritage, so we recommend the objective be amended to focus on the latter.

258. Historic heritage is not solely an urban development issue, and so this should remain a discrete objective of its own, if retained, rather than being amalgamated into Objective 3.2.3.1.

259. Consideration of this issue comes against a background where Policy 9.5.6 of the RPS directs recognition and protection of Otago’s regionally significant heritage sites through their identification in consultation with communities and development of means to ensure they are protected from inappropriate subdivision, use and development. Both the language and the intent of this policy clearly reflects section 6(f) of the Act, requiring that the protection of historic heritage from inappropriate subdivision, use and development be recognised and provided for, without taking the provisions of the Act much further.

260. The Proposed RPS provides rather more direction with a policy<sup>228</sup> that the values and places and areas of historic heritage be protected and enhanced, among other things by avoiding adverse effects on those values that contribute to the area or place being of regional or national significance, and avoiding significant adverse effects on other values of areas and places of historic heritage.

261. Taking the provisions of the RPS and the Proposed RPS on board, deletion of this objective, at least as it relates to historic heritage, clearly cannot be recommended. The guidance from *King Salmon* as to the ordinary natural meaning of “*inappropriate*” in the context of a provision

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<sup>226</sup> Submission 806

<sup>227</sup> Submissions 607, 615, 621 and 716: Supported in FS1105, FS1137 and FS1345

<sup>228</sup> Policy 5.2.3

providing for protection of something inappropriate from subdivision use and development means that the objective, with or without reference to inappropriate development, would go further (be more restrictive) than implementation of the RPS or consistency with the Proposed RPS would require. However, we do not think that Mr Paetz's suggested wording referring to sympathetic development (on its own) is clear enough to endorse.

262. In summary, we recommend that the objective be reworded as follows:

*"The District's important historic heritage values are protected by ensuring development is sympathetic to those values."*

263. Taking account of the objectives recommended to be included in Section 3.2.2, we consider that this objective is the most appropriate way to achieve the purpose of the Act as it relates to urban character.

## **2.8. Section 3.2.4 – Goal – Natural Environment**

264. As notified, this goal read:

*"The protection of our natural environment and ecosystems".*

265. A number of submissions supported this goal. Two submissions opposed it<sup>229</sup>. Of those, Submission 806 sought its deletion (along with the associated objectives and policies).

266. Mr Paetz did not recommend any amendment to this goal.

267. Even as a high-level aspirational objective, the protection of all aspects of the natural environment and ecosystems is unrealistic and inconsistent with Objective 3.2.1. Nor does the RPS require such an ambitious overall objective - Objective 10.4.2 for instance seeks protection of natural ecosystems (and primary production) *"from significant biological and natural threats"*. Objective 10.4.3 seeks the maintenance and enhancement of the natural character of areas *"with significant indigenous vegetation and significant habitats of indigenous fauna"*.

268. The Proposed RPS addresses the same issue in a different way, focussing on the "values" of natural resources (and seeking they be maintained and enhanced<sup>230</sup>).

269. We consider it would therefore be of more assistance if some qualitative test were inserted so as to better reflect the direction provided at regional level (and Part 2 of the Act). Elsewhere in the PDP, reference is made to *'distinctive'* landscapes and this is an adjective we regard as being useful in this context. The more detailed objectives provide clarity as to what might be considered *'distinctive'* and the extent of the protection envisaged.

270. Accordingly, we recommend that this goal/high-level objective be reframed as follows:

*"The distinctive natural environments and ecosystems of the District are protected."*

271. We consider this is the most appropriate way to achieve the purpose of the Act in the context of a high-level objective related to the natural environment and ecosystems.

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<sup>229</sup> Submissions 806 and 807

<sup>230</sup> Proposed RPS, Objective 3.1

## 2.9. Section 3.2.4 – Objectives – Natural Environment

272. Objective 3.2.4.1 as notified, read as follows:

*“Promote development and activities that sustain or enhance the life supporting capacity of air, water, soils and ecosystems.”*

273. The RPS has a number of objectives seeking maintenance and enhancement, or alternatively safeguarding of life supporting capacity of land, water and biodiversity<sup>231</sup>, reflecting the focus on safeguarding life supporting capacity in section 5 of the Act. In relation to fresh water and aquatic ecosystems, the NPSFM 2014 similarly has that emphasis. The Proposed RPS, by contrast, does not have the same focus on life supporting capacity, or at least not directly so. The combination of higher order provisions, however, clearly supports the form of this objective.

274. The only submissions on the objective either support the objective as notified<sup>232</sup>, or seek that it be expanded to refer to maintenance of indigenous biodiversity<sup>233</sup>.

275. Mr Paetz recommended that the latter submission be accepted and reframing the objective to pitch it as environmental outcome, his version as attached to his reply evidence reads as follows:

*“Ensure development and activities maintain indigenous biodiversity, and sustain or enhance the life supporting capacity of air, water, soil and ecosystems.”*

276. So framed, the objective still starts with a verb and therefore, arguably, states a course of action (policy) rather than an environmental outcome.

277. It might also be considered that shifting the ‘policy’ from promoting an outcome to ensuring it occurs is a significant substantive shift that is beyond the scope of the submissions as above.

278. We accordingly recommend that this objective be reframed as follows:

*“Development and land uses that sustain or enhance the life-supporting capacity of air, water, soil and ecosystems, and maintain indigenous biodiversity.”*

279. Objective 3.2.4.2 as notified read:

*“Protect areas with significant Nature Conservation Values”.*

280. Submissions on this objective included requests for:

- a. Expansion to apply to significant waterways<sup>234</sup>;
- a. Substitution of reference to the values of Significant Natural Areas<sup>235</sup>;
- b. Amendment to protect, maintain and enhance such areas<sup>236</sup>;

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<sup>231</sup> RPS, Objectives 5.4.1, 6.4.3, 10.4.1..

<sup>232</sup> Submissions 600, 755: Supported in FS1209; Opposed in FS1034 – noting the discussion above regarding the efficacy of further submissions opposing submissions that support the notified provisions of the PDP

<sup>233</sup> Submissions 339, 706: Opposed in FS1097, FS1162 and FS1254

<sup>234</sup> Submission 117

<sup>235</sup> Submission 378: Opposed in FS1049 and FS1095

<sup>236</sup> Submission 598: Supported in FS1287; Opposed in FS1040

- c. Addition of reference to appropriate management as an alternative to protection<sup>237</sup>.
281. The version of this objective recommended by Mr Paetz in his reply evidence is altered only to express it as an environmental outcome.
282. Objective 10.4.3 of the RPS, previously noted, might be considered relevant to (and implemented by) this objective<sup>238</sup>.
283. As above, we recommend that the definition of ‘*Nature Conservation Values*’ be clarified to remove policy elements and our consideration of this objective reflects that revised definition. We do not consider it is necessary to specifically state that areas with significant nature conservation values might be waterways. We likewise do not recommend reference to ‘*appropriate management*’, since that provides no direction to decision-makers implementing the PDP.
284. However, we have previously recommended that maintenance of significant Nature Conservation Values be part of the objective relating both to agricultural land uses in rural areas and to diversification of existing activities. As such, we regard this objective as duplicating that earlier provision and unnecessary. For that reason<sup>239</sup>, we recommend that it be deleted.
285. Objective 3.2.4.3 as notified (and as recommended by Mr Paetz) read:
- “Maintain or enhance the survival chances for rare, endangered or vulnerable species of indigenous plant or animal communities”.*
286. Submissions specifically on this point included:
- Seeking that reference to be made to significant indigenous vegetation and significant habitats of indigenous fauna rather than as presently framed<sup>240</sup>;
  - Support for the objective in its current form<sup>241</sup>;
  - Amendment to make the objective subject to preservation of the viability of farming in rural zones<sup>242</sup>.
287. The reasons provided in Submission 378 are that the terminology used should be consistent with section 6 of the RMA.
288. While, as above, we do not regard the terminology of the Act<sup>243</sup> as a panacea, on this occasion, the submitter may have a point. While significant areas of indigenous vegetation and significant habitats of indigenous fauna are matters the implementation of the PDP can affect (either positively or negatively), the survival chances of indigenous plant or animal communities will likely depend on a range of factors, some able to be affected by the PDP, and some not. Moreover, any area supporting rare, endangered, or vulnerable species will, in our view, necessarily have significant nature conservation values, as defined. Accordingly, for the same reasons as in relation to the previous objective, this objective duplicates provisions we

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<sup>237</sup> Submission 600: Supported in FS1097 and FS1209; Opposed in FS1034, FS1040 and FS1080

<sup>238</sup> See also the Proposed RPS, Policy 3.1.9, which has a ‘maintain or enhance’ focus.

<sup>239</sup> Consistent with the Real Journeys submission noted above

<sup>240</sup> Submission 378: Supported in FS1097; Opposed in FS1049 and FS1095

<sup>241</sup> Submissions 339, 373, 600 and 706: Opposed in FS1034, FS1162, FS1209, FS1287 and FS1347

<sup>242</sup> Submission 701: Supported in FS1162

<sup>243</sup> Or indeed of the RPS, which uses the same language at Objective 10.4.3

have recommended above. It might also be considered to duplicate Objective 3.2.4.1, as we have recommended it be revised, given that maintenance of indigenous biodiversity will necessarily include rare, endangered, or vulnerable species of indigenous plant or animal communities.

289. For these reasons, we recommend that this objective be deleted.

290. Objective 3.2.4.4 as notified, read:

*“Avoid exotic vegetation with the potential to spread and naturalise.”*

291. Submissions on it varied from:

- a. Support for the wording notified<sup>244</sup>;
- b. Amendment to refer to avoiding or managing the effects of such vegetation<sup>245</sup>;
- c. Amendment to *“reduce wilding tree spread”*<sup>246</sup>.

292. Submission 238<sup>247</sup> approached it in a different way, seeking an objective focussing on promotion of native planting.

293. The thrust of the submissions in the last two categories listed above was on softening the otherwise absolutist position in the notified objective and Mr Paetz similarly recommended amendments to make the provisions less absolute.

294. The version of the objective he recommended with his reply evidence read:

*“Avoid the spread of wilding exotic vegetation to protect nature conservation values, landscape values and the productive potential of land.”*

295. We have already noted the provisions of the RPS and the Proposed RPS which, in our view, support the intent underlying this objective. Policy 10.5.3 of the RPS (seeking to reduce and where practicable eliminate the adverse effects of plant pests) might also be noted<sup>248</sup>.

296. The section 32 report supporting Chapter 3<sup>249</sup> records that the spread of wilding exotic vegetation, particularly wilding trees, is a significant problem in this District. In that context, an objective focusing on reduction of wilding tree spread or *‘managing’* its effects appears an inadequate objective to aspire to.

297. We agree that the objective should focus on the outcome sought to be addressed, namely the spread of wilding exotic vegetation, rather than what should occur instead. However, we see no reason to complicate the objective by explaining the rationale for an avoidance position. Certainly, other objectives are not written in this manner.

298. Lastly, we recommend rephrasing the objective in line with the revised style recommended throughout. The end result (renumbered 3.2.4.2) would be:

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<sup>244</sup> Submissions 289, 373: Opposed in FS1091 and FS1347

<sup>245</sup> Submission 590 and 600: Supported in FS1132 and FS 1209; Opposed in FS1034 and FS1040

<sup>246</sup> Submission 608; Opposed in FS1034

<sup>247</sup> Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

<sup>248</sup> Refer also Proposed RPS, Policy 5.4.5 providing for reduction in the spread of plant pests.

<sup>249</sup> Section 32 Evaluation Report- Strategic Direction at page 9

*“The spread of wilding exotic vegetation is avoided.”*

299. Objective 3.2.4.5 as notified read:

*“Preserve or enhance the natural character of the beds and margins of the District’s lakes, rivers and wetlands.”*

300. A number of submissions sought that the effect of the objective be softened by substituting “maintain” for “preserve”<sup>250</sup>.

301. Some submissions sought that reference to biodiversity values be inserted<sup>251</sup>.

302. Some submissions sought deletion of reference to enhancement and inclusion of protection from inappropriate subdivision, use and development<sup>252</sup>.

303. Mr Paetz did not recommend any change to the notified objective.

304. The origins of this objective are in section 6(a) of the Act which we are required to recognise and provide for and which refers to the ‘preservation’ of these areas of the environment, and the protection of them from inappropriate subdivision, use and development.

305. Objective 6.4.8 of the RPS is relevant on this aspect – it has as its object: “to protect areas of natural character...and the associated values of Otago’s wetlands, lakes, rivers and their margins”.

306. By contrast, Policy 3.1.2 of the proposed RPS refers to managing the beds of rivers and lakes, wetlands, and their margins to maintain or enhance natural character.

307. The combination of the RPS and proposed RPS supports the existing wording rather than the alternatives suggested by submitters. While section 6(a) of the Act would on the face of it support insertion of reference to inappropriate subdivision, use and development, given the guidance we have from the Supreme Court in the *King Salmon* litigation as to the meaning of that phrase, we do not consider that either regional document is inconsistent with or fails to recognise and provide for the matters specified in section 6(a) on that account. We also do not consider that reference to biodiversity values is necessary given that this is already addressed in recommended Objective 3.2.4.1.

308. The RPS (and section 6(a) of the Act) would also support (if not require) expansion of this objective to include the water above lake and riverbeds<sup>253</sup>, but we regard this as being addressed by Objective 3.2.4.6 (to the extent it is within the Council’s functions to address).

309. Accordingly, the only recommended amendment is to rephrase this as an objective (renumbered 3.2.4.3), in line with the style adopted above, as follows:

*“The natural character of the beds and margins of the District’s lakes, rivers and wetlands is preserved or enhanced.”*

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<sup>250</sup> See e.g. Submissions 607, 615, 621, 716: Supported in FS 1097, FS1105, FS 1137 and FS1345

<sup>251</sup> Submissions 339, 706: Opposed in FS 1015, FS1162, FS1254 and FS 1287

<sup>252</sup> Submissions 519, 598: Supported in FS 1015 and FS1287: Opposed in FS1356

<sup>253</sup> See also the Water Conservation (Kawarau) Order 1997, to the extent that it identifies certain rivers in the District as being outstanding by reason of their naturalness.

310. Objective 3.2.4.6 as notified read:

*“Maintain or enhance the water quality and function of our lakes, rivers and wetlands.”*

311. A number of submissions supported the objective as notified. The only submission seeking a substantive amendment, sought to delete reference to water quality<sup>254</sup>.

312. A focus on maintaining or enhancing water quality is consistent with Objective A2 of the NPSFM 2014, which the Council is required to give effect to. While that particular objective refers to overall quality, the decision of the Environment Court in *Ngati Kahungunu Iwi Authority v Hawkes Bay Regional Council*<sup>255</sup> does not suggest that any great significance can be read into the use of the word ‘overall’.

313. Similarly, while the policies of the NPSFM 2014 are directed at actions to be taken by Regional Councils, where land uses (and activities on the surface of waterways) within the jurisdiction of the PDP, impinge on water quality, we think that the objectives of the NPSFM 2014 must be given effect by the District Council as well.

314. One might also note Objective 6.4.2 of the RPS, that the Council is also required to give effect to, and which similarly focuses on maintaining and enhancing the quality of water resources.

315. Accordingly, we do not recommend deletion of reference to water quality in this context. The only amendment that is recommended is stylistic in nature, to turn it into an objective (renumbered 3.2.4.4) as follows:

*“The water quality and functions of the District’s lakes, rivers and wetlands is maintained or enhanced.”*

316. Objective 3.2.4.7 as notified read:

*“Facilitate public access to the natural environment.”*

317. Submissions on this objective included:

- a. Support for the objective as is<sup>256</sup>;
- b. Seeking that *“maintain and enhance”* be substituted for *“facilitate”* and emphasising public access *‘along’* rivers and lakes<sup>257</sup>;
- c. Inserting a link to restrictions on public access created by a subdivision or development<sup>258</sup>;
- d. Substituting *“recognise and provide for”* for *“facilitate”*<sup>259</sup>.

318. Mr Paetz in his reply evidence recommended no change to this particular objective.

319. To the extent that there is a difference between facilitating something and maintaining or enhancing it (any distinction might be seen to be rather fine), the submissions seeking that

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<sup>254</sup> Submission 600: Supported in FS1209; Opposed in FS1034 and FS1040.

<sup>255</sup> [2015] NZEnvC50

<sup>256</sup> Submissions 378, 625, 640: Opposed in FS1049, FS1095 and FS1347

<sup>257</sup> Submissions 339, 706: Supported in FS1097, Opposed in FS1254 and FS1287

<sup>258</sup> Submission 600: Supported in FS1209, Opposed in FS1034

<sup>259</sup> Submission 806

change were on strong ground given that Objective 6.4.7 of the RPS (and section 6(d) of the Act) refers to maintenance and enhancement of public access to and along lakes and rivers. We do not think, however, that specific reference is required to lakes and rivers, since they are necessarily part of the natural environment.

320. We reject the suggestion that the objective should “*recognise and provide for*” public access, essentially for the reasons set out above<sup>260</sup>.
321. In addition, while in practice, applications for subdivision and development are likely to provide the opportunity to enhance public access to the natural environment, we do not think that the objective should be restricted to situations where subdivision or development will impede existing public access. Any consent applicant can rely on the legal requirement that consent conditions fairly and reasonably relate to the consented activity<sup>261</sup> to ensure that public access is not sought in circumstances where access has no relationship to the subject-matter of the application.
322. Lastly, the objective requires amendment in order that it identifies an environmental outcome sought.
323. In summary, we recommend that this objective (renumbered 3.2.4.5) be amended to read:  
  
*“Public access to the natural environment is maintained or enhanced.”*
324. Objective 3.2.4.8 as notified read:  
  
*“Respond positively to Climate Change”.*
325. Submissions on it included:  
a. General support<sup>262</sup>;  
b. Seeking its deletion<sup>263</sup>;  
c. Seeking amendment to focus more on the effects of climate change<sup>264</sup>.
326. Mr Paetz recommended in his reply evidence that the objective remain as notified.
327. As already noted, the RPS contains a relatively limited focus on climate change, and might in that regard be considered deficient given the terms of section 7(i) of the Act (added to the Act after the RPS was made operative). The Proposed RPS contains a much more comprehensive suite of provisions on climate change and might, we believe, be regarded as providing rather more reliable guidance. The focus of the Proposed RPS, consistently with section 7(i), is clearly on responding to the effects of climate change. As the explanation to Objective 4.2 records, “*the effects of climate change will result in social, environmental and economic costs, and in some circumstances benefits*”. The Regional Council’s view, as expressed in the Proposed RPS, is that that change needs to be planned for.

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<sup>260</sup> Paragraph 58ff above

<sup>261</sup> Refer *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 and the many cases following it in New Zealand

<sup>262</sup> Submissions 117, 339, 708: Opposed in FS 1162

<sup>263</sup> Submission 807

<sup>264</sup> Submissions 598, 806 and 807 (in the alternative): Supported in FS1287; Opposed in FS1034

328. Against that background, we had difficulty understanding exactly what the outcome is that this objective is seeking to achieve. The sole suggested policy relates to the interrelationship of urban development policies with greenhouse gas emission levels, and their contribution to global climate change. As such, this objective appears to be about responding positively to the causes of global climate change, rather than responding to its potential effects.
329. At least since the enactment of the Resource Management (Energy and Climate Change) Amendment Act 2004, the focus of planning under the Act has been on the effects of climate change rather than on its causes.
330. It also appeared to us that to the extent that the PDP could influence factors contributing to global climate change, other objectives (and policies) already address the issue.
331. Accordingly, as suggested by some of the submissions noted above, and consistently with both the Proposed RPS and section 7(i) of the Act, the focus of District Plan provisions related to climate change issues should properly be on the effects of climate change. The most obvious area<sup>265</sup> where the effects of climate change are relevant to the final form of the District Plan is in relation to management of natural hazards. We have already discussed how that might be incorporated into the high level objectives of Chapter 3. While there are other ways in which the community might respond to the effects of climate change, these arise in the context of notified Policy 3.2.1.3.2. We consider Objective 3.2.4.8 is unclear and adds no value. While it could be amended as some submitters suggest, to focus on the effects of climate change, we consider that this would duplicate other provisions addressing the issues more directly. In our view, the better course is to delete it.
332. In summary, we consider that the objectives recommended for inclusion in Section 3.2.4 are individually and collectively the most appropriate way to achieve the purpose of the Act as it relates to the natural environment and ecosystems.

**2.10. Section 3.2.5 Goal – Landscape Protection**

333. As notified, this goal read:

*“Our distinctive landscapes are protected from inappropriate development.”*

334. A number of submissions supported this goal.
335. Submissions seeking amendment to it sought variously:
  - a. Amendment to recognise the operational and locational constraints of infrastructure<sup>266</sup>.
  - a. Substitution of reference to the values of distinctive landscapes<sup>267</sup>.
  - b. Substitution of reference to the values of ‘outstanding’ landscapes and insertion of reference to the adverse effects of inappropriate development on such values<sup>268</sup>.
336. A number of submissions also sought deletion of the whole of Section 3.2.5.
337. Mr Paetz did not recommend any amendment to this goal.

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<sup>265</sup> See Submission 117 in this regard

<sup>266</sup> Submissions 251, 433: Supported in FS1029, FS1061 and FS1085

<sup>267</sup> Submission 807

<sup>268</sup> Submission 806

338. The RPS focuses on outstanding landscapes<sup>269</sup>, reflecting in turn the focus of section 6(b) of the Act. The Proposed RPS, however, has policies related to both outstanding and highly valued landscapes, with differing policy responses depending on the classification, within the umbrella of Objective 3.2 seeking that significant and highly-valued natural resources be identified, and protected or enhanced.
339. Like the Proposed RPS, the subject matter of Section 3.2.5 is broader than just the outstanding natural landscapes of the District. Accordingly, it would be inconsistent to limit the higher-level objective to those landscapes.
340. For the same reason, a higher-level objective seeking the protection of both outstanding natural landscapes and lesser quality, but still distinctive, landscapes goes too far, even with the qualification of reference to inappropriate development. As discussed earlier in this report, given the guidance of the Supreme Court in *King Salmon* as to the correct interpretation of qualifications based on reference to inappropriate subdivision use and development, it is questionable whether reference to inappropriate development in this context adds much. To that extent, we accept the point made in legal submissions for Trojan Helmet Ltd that section 6 and 7 matters should not be conflated by seeking to protect all landscapes.
341. The suggestion in Submissions 806 and 807 that reference might be made to the values of the landscapes in question is one way in which the effect of the goal/higher-level objective could be watered down. But again, this would be inconsistent with objectives related to outstanding natural landscapes, which form part of Section 3.2.5.
342. We recommend that these various considerations might appropriately be addressed if the goal/higher order objective were amended to read:
- “The retention of the District’s distinctive landscapes.”*
343. We consider that this is the most appropriate way to achieve the purpose of the Act in the context of a high-level objective related to landscapes.

**2.11. Section 3.2.5 Objectives - Landscapes**

344. Objective 3.2.5.1 as notified read:

*“Protect the natural character of Outstanding Natural Landscapes and Outstanding Natural Features from subdivision, use and development.”*

345. This objective and Objective 3.2.5.2 following it (related to non-outstanding rural landscapes) attracted a large number of submissions, and evidence and submissions on them occupied a substantial proportion of the Stream 1B hearing. The common theme from a large number of those submitters and their expert witnesses was that Objective 3.2.5.1 was too protective of ONLs in particular, too restrictive of developments in and affecting ONLs, and would frustrate appropriate development proposals that are important to the District’s growth<sup>270</sup>.
346. Some suggested that the objective as notified would require that all subdivision use and development in ONLs and ONFs be avoided.<sup>271</sup> If correct, that would have obvious costs to the

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<sup>269</sup> RPS, Objectives 5.4.3, 6.4.8

<sup>270</sup> See e.g. Mr Jeff Brown’s evidence at paragraph 2.3.

<sup>271</sup> E.g. Ms Louise Taylor, giving evidence for Matukituki Trust

District's economy and to future employment opportunities that would need to be carefully considered.

347. As already noted, a number of submissions sought the deletion of the entire Section 3.2.5<sup>272</sup>. As regards Objective 3.2.5.1, many submitters sought reference be inserted to “*inappropriate*” subdivision, use and development<sup>273</sup>.
348. One submitter combined that position with seeking that adverse effects on natural character of ONLs and ONFs be avoided, remedied or mitigated, as opposed to their being protected<sup>274</sup>.
349. Another suggestion was that the objective be broadened to refer to landscape values and provide for adverse effects on those values to be avoided, remedied or mitigated<sup>275</sup>.
350. The Council's corporate submission sought specific reference to indigenous flora and fauna be inserted into this objective<sup>276</sup>.
351. Submission 810<sup>277</sup> sought a parallel objective (and policy) providing for protection and mapping of wāhi tupuna.
352. The more general submissions<sup>278</sup> seeking provision for infrastructure also need to be kept in mind in this context.
353. In his Section 42A Report, Mr Paetz sought to identify the theme underlying the submissions on this objective by recommending that it be amended to read:
- “Protect the quality of the Outstanding Natural Landscapes and Outstanding Natural Features from subdivision, use and development.”*
354. His reasoning was that a focus solely on the natural character of ONLs and ONFs was unduly narrow and not consistent with “*RMA terminology*”. He did not, however, recommend acceptance of the many submissions seeking insertion of the word ‘*inappropriate*’ essentially because it was unnecessary – “*in saying ‘Protect the quality of the outstanding natural landscapes and outstanding natural features from subdivision, use and development’, the ‘inappropriate’ test is implicit i.e. Development that does not protect the quality will be inappropriate.*”<sup>279</sup>
355. By his reply evidence, Mr Paetz had come round to the view that the submitters on the point (and indeed many of the planning witnesses who had given evidence) were correct and that the word ‘*inappropriate*’ ought to be added. He explained his shift of view on the basis that

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<sup>272</sup> E.g. Submissions 632, 636, 643, 669, 688, 693, 702: Supported in FS1097; Opposed in FS1219, FS1252, FS1275, FS1283 and FS1316

<sup>273</sup> E.g. Submissions 355, 375, 378, 502, 519, 581, 598, 607, 615, 621, 624, 716, 805: Supported in FS1012, FS1015, FS1097, FS1117, FS1137, FS1282 and FS1287; Opposed in FS1049, FS1095 FS1282, FS1320 and FS1356

<sup>274</sup> Submission 519: Supported in FS1015, FS1097 and FS1117; Opposed in FS1282 and 1356

<sup>275</sup> Submissions 806 and 807

<sup>276</sup> Submission 809: Opposed in FS1097

<sup>277</sup> Supported in FS1098; Opposed in FS1132

<sup>278</sup> Submissions 251 and 433: Supported in FS1029, FS1061 and FS1085

<sup>279</sup> Section 42A Report at 12,103

that amendment would enable applicants “to make their case on the merits in terms of whether adverse impacts on ONFs or ONLs, including component parts of them, is justified”<sup>280</sup>.

356. Mr Paetz’s Section 42A Report reflects the decision of the Supreme Court in the *King Salmon* litigation previously noted. His revised stance in his reply evidence implies that the scope of appropriate subdivision, use and development in the context of an objective seeking protection of ONLs and ONFs from inappropriate subdivision, use and development is broader than that indicated by the Supreme Court.
357. The legal basis for Mr Paetz’s shift in position is discussed in the reply submissions of counsel for the Council. Counsel’s reply submissions<sup>281</sup> emphasize the finding of the Supreme Court that section 6 does not give primacy to preservation or protection and draws on the legal submissions of counsel for the Matukituki Trust to argue that a protection against ‘*inappropriate*’ development is not necessarily a protection against any development, but that including reference to it allows a case to be made that development is appropriate.
358. This in turn was argued to be appropriate in the light of the extent to which the district has been identified as located within an ONL or ONF (96.97% based on the notified PDP maps).
359. Although not explicitly saying so, we read counsel for the Council’s reply submissions as supporting counsel for a number of submitters who urged us to take a ‘*pragmatic*’ approach to activities within or affecting ONLs or ONFs<sup>282</sup>.
360. Counsel for Peninsula Bay Joint Venture<sup>283</sup> argued also <sup>284</sup> that Objective 3.2.5.1 failed to implement the RPS because the relevant objective in that document<sup>285</sup> refers to protection of ONLs and ONFs “*from inappropriate subdivision, use and development*”.
361. We agree that the objectives and policies governing ONFs and ONLs are of critical importance to the implementation of the PDP. While as at the date of the Stream 1B hearing, submissions on the demarcation of the ONLs and ONFs had yet to be heard, it was clear to us that a very substantial area of the district would likely qualify as either an ONL or an ONF. Dr Marion Read told us that this District was almost unique because the focus was on identifying what landscapes are not outstanding, rather than the reverse. As above, Council staff quantified the extent of ONLs and ONFs mapped in the notified PDP as 96.97%<sup>286</sup>.
362. Given our recommendation that there should be a strategic chapter giving guidance to the implementation of the PDP as a whole, the objective in the strategic chapter related to activities affecting ONLs and ONFs is arguably the most important single provision in the PDP.
363. For precisely this reason, we consider that this objective needs to be robust, in light of the case law and the evidence we heard, and clear as to what outcome is being sought to be achieved.

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<sup>280</sup> M Paetz, Reply Evidence at 5.23.

<sup>281</sup> At 6.6

<sup>282</sup> Mr Goldsmith for instance (appearing for Ayrburn Farms Ltd, Bridesdale Farms Ltd, Mt Cardrona Station) observed that elements of the existing planning regime for ONL’s exhibited a desirable level of pragmatism.

<sup>283</sup> Submission 378

<sup>284</sup> Written submissions at paragraph 32

<sup>285</sup> Objective 5.4.3

<sup>286</sup> See QLDC Memorandum Responding to Request for Further Information Streams 1A & 1B, Schedule 3

364. The starting point is that, as already noted, the Supreme Court in *King Salmon* found that:
- “We consider 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 it is that is sought to be protected.”<sup>287</sup>*
365. When we discussed the matter with Mr Gardner-Hopkins, at that point acting as counsel for Kawarau Jet Services, he agreed that we were duty bound to apply that interpretation, but having said that, in his submission, the point at which effects tip into being inappropriate takes colour from the wider policy framework and factual analysis.
366. That response aligns with the Environment Court’s decision in *Calveley v Kaipara DC*<sup>288</sup> that Ms Hill<sup>289</sup> referred us to. That case concerned both a resource consent appeal and an appeal on a plan variation. In the context of the resource consent appeal, the Environment Court emphasised that when interpreting the meaning of *“inappropriate subdivision, use and development”* in a particular plan objective, it was necessary to consider the objective in context (in particular in the context of the associated policy seeking to implement it). In that case, the policy supported an interpretation of the objective that was consistent with the natural and ordinary meaning identified by the Supreme Court in *King Salmon*, as above. However, as the Environment Court noted, neither the objective nor the policy suggested that subdivision development inevitably must be inappropriate. The Court found<sup>290</sup> that both the objective and policy recognised the potential for sensitively designed and managed developments to effectively protect ONL values and characteristics.
367. In that regard, it is worth noting that the Supreme Court in *King Salmon* likewise noted that a protection against *‘inappropriate’* development is not necessarily protection against *‘any’* development, but rather it allows for the possibility that there may be some forms of *‘appropriate’* development<sup>291</sup>. That comment was made in the context of the Supreme Court’s earlier finding as to what inappropriate subdivision, use and development was, as above.
368. Ultimately, though, we think that the *Calveley* decision is of peripheral assistance because the issue we have to confront is whether this particular objective should refer to protection of ONLs and ONFs from inappropriate subdivision, use and development. The wording of the policy seeking to implement the objective is necessarily consequential on that initial recommendation. Accordingly, while we of course accept the Environment Court’s guidance that a supporting policy might assist in the interpretation of the objective, the end result is somewhat circular given that we also have to recommend what form the supporting policy(ies) should take.
369. We should note that Ms Hill also referred us to the Board of Inquiry decision on the Basin Bridge Notice of Requirement, but we think that the Board of Inquiry’s decision does not particularly assist in our inquiry other than to the extent that the Board recorded its view that

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<sup>287</sup> [2016] NZSC38 at [101]

<sup>288</sup> [2014] NZEnvC 182

<sup>289</sup> Counsel for Ayrburn Farm Estate Limited, Bridesdale Farm Developments Limited, Shotover Country Limited, Mt Cardrona Station Limited

<sup>290</sup> At [132]

<sup>291</sup> *King Salmon* at [98]

it was obliged by the Supreme Court's decision to approach and apply Part 2 of the Act having regard to the natural meaning of "inappropriate" as above<sup>292</sup>.

370. Objective 5.4.3 of the RPS that the PDP is required to implement (absent invalidity, incompleteness or ambiguity) seeks:

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

371. Objective 5.4.3 is expressed in almost exactly the same terms as section 6(b) of the Act. There is accordingly no question (in our view) that the RPS is completely consistent with Part 2 of the Act in this regard. It also means that cases commenting on the interpretation of section 6(b), and indeed the other subsections using the same phraseology, are of assistance in interpreting the RPS. In that regard, while, as the Environment Court in *Calveley* has noted, the term "inappropriate" might take its meaning in plans from other provisions that provide the broader context, in the context of both RPS Objective 5.4.3 and section 6, 'inappropriate' should clearly be interpreted in the manner that the Supreme Court has identified<sup>293</sup>.

372. As counsel for the Council noted in their reply submissions, the Supreme Court stated that section 6 does not give primacy to preservation or protection. We think however, that Counsel's submissions understate the position, because what the Supreme Court actually said was:

*"Section 6 does not, we agree, give primacy to preservation or protection; it simply means that provision must be made for preservation and protection as part of the concept of sustainable management."*<sup>294</sup>

373. The Supreme Court went on from that statement to say that a Plan could give primacy for preservation or protection and in the Court's view, that was what the NZCPS policies at issue had done.

374. The point that has troubled us is how in practice one could make provision for the protection, in this case of ONLs and ONFs, whether as part of the concept of sustainable management (or as implementing Objective 5.4.3), without actually having an objective seeking that ONLs and ONFs be protected. We discussed this point with Mr Gardner-Hopkins<sup>295</sup> who submitted that while there has to be an element of protection and preservation of ONLs in the PDP, we had some discretion as to where to set the level of protection. Mr Gardner-Hopkins noted that the Supreme Court had implied that there were environmental bottom lines in Part 2, but that they were somewhat "saggy" in application.

375. We think that counsel may have been referring in this regard to the discussion at paragraph [145] of the Supreme Court's decision in which the Court found that even in the context of directive policies requiring avoidance of adverse effects, it was improbable that it would be necessary to prohibit an activity that has a minor or transitory adverse effect, even where the natural character sought to be preserved was outstanding.

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<sup>292</sup> *Final report and decision of the Board of Inquiry into the Basin Bridge Proposal* at paragraph [188](c)

<sup>293</sup> As the Basin Bridge Board of Inquiry found

<sup>294</sup> *King Salmon* at [149]

<sup>295</sup> At this point appearing for the Matukituki Trust

376. We think, therefore, that we would be on strong ground to provide in Objective 3.2.5.1, that ONLs and ONFs should be protected from adverse effects that are more than minor and/or not temporary in duration<sup>296</sup>. This approach would also meet the concern of a number of parties that the objective should not indicate or imply that all development in ONLs and ONFs is precluded<sup>297</sup>.
377. Based on our reading of the Supreme Court's decision in *King Salmon* however, if the adverse effects on ONLs and ONFs are more than minor and/or not temporary, it is difficult to say that the ONL or ONF, as the case may be, is being protected. Similarly, if the relevant ONL or ONF is not being protected, it is also difficult to see how any subdivision, use or development could be said to be 'appropriate'.
378. Even if we are wrong, and *King Salmon* is not determinative on the ambit of 'inappropriate subdivision use and development', we also bear in mind the general point we made above, based on the guidance of the Environment Court in its ODP decision C74/2000 at paragraph [10] that it was not appropriate to leave these policy matters for Council to decide on a case by case basis.
379. We do not accept the argument summarised above that was made for Peninsula Bay Joint Venture that because the RPS objective refers to inappropriate subdivision, use and development, so too must Objective 3.2.5.1. The legal obligation on us is to give effect to the RPS<sup>298</sup>. The Supreme Court decision in *King Salmon* confirms that that instruction means what it says. The Supreme Court has also told us, however, that saying that ONL's must be protected from inappropriate subdivision, use and development does not create an open-ended discretion to determine whether subdivision, use and development is 'appropriate' on a case-by-case basis. By contrast, it has held that any discretion is tightly controlled and must be referenced back to protection of the ONL or ONF concerned. Accordingly, omitting reference to inappropriate subdivision, use and development does not in our view fail to give effect to the RPS, because it makes no substantive difference to the outcome sought.
380. The Proposed RPS approaches ONLs and ONFs in a slightly different way. Policy 3.2.4 states that outstanding natural features and landscapes should be protected by, among other things, avoiding adverse effects on those values that contribute to the significance of the natural feature or landscape.
381. The Proposed RPS would certainly not support an open-ended reference to inappropriate subdivision, use and development. It does, however, support Mr Paetz's recommendation that the focus not be solely on the natural character of ONLs and ONFs. While we had some concerns as to the ambiguity that might result if Mr Paetz's initial recommendation (in his Section 42A Report) were accepted, and reference be made to the quality of ONLs and ONFs, we think he was on strong ground identifying that natural character is not the only quality of ONLs and ONFs. We note that the planning witness for Allenby Farms Limited and Crosshill Farms Limited, Mr Duncan White, supported the reference in the notified objective to natural character as being "*the significant feature of ONLs and ONFs*"<sup>299</sup>.

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<sup>296</sup> Mr White, planning witness for Allenby Farms Ltd and Crosshill Farms Ltd, supported that approach.

<sup>297</sup> This was a rationale on which Mr Dan Wells, for instance, supported addition of the word 'inappropriate' to the notified objective.

<sup>298</sup> Section 75(3)(c) of the Act

<sup>299</sup> D White, EiC at 3.2

382. Mr White, however, accepted that the so-called *Pigeon Bay* criteria for landscapes encompassed a wide variety of matters, not just natural character.
383. Mr Carey Vivian suggested to us that the objective might refer to “*the qualities*” of ONLs and ONFs, rather than “*the quality*” as Mr Paetz had recommended. It seems to us, however, that broadening the objective in that manner would push it too far in the opposite direction.
384. In our view, some aspects of ONLs and ONFs are more important than others, as the Proposed RPS recognises. Desirably, one would focus on the important attributes of the particular ONL and ONF in question<sup>300</sup>. The PDP does not, however, identify the particular attributes of each ONL or ONF. The ODP, however, focuses on the landscape values, visual amenity values and natural character of ONLs in the Wakatipu Basin, and we recommend that this be the focus of the PDP objective addressing ONLs and ONFs more generally – accepting in part a submission of UCES that, at least in this regard, there is value in rolling over the ODP approach.
385. Identifying the particular values of ONLs and ONFs of most importance also responds to submissions made by counsel for Skyline Enterprises Ltd and others that the restrictive provisions in the notified plan had not been justified with reference to the factors being protected.
386. An objective seeking no more than minor effects on ONLs and ONFs would effectively roll over the ODP in another respect. That is the policy approach in the ODP for ONLs in the Wakatipu Basin and for ONFs.
387. The structure of the ODP in relation to ONLs and ONFs is to have a very general objective governing landscape and visual amenity values, supported by separate policies for ONLs in the Wakatipu Basin, ONLs outside the Wakatipu Basin and ONFs. Many of the policies for the Wakatipu Basin ONLs and ONFs are identical. At least in appearance, the policies of the ODP are more protective of ONLs in the Wakatipu Basin than outside that area. The key policies governing subdivision and development outside the Wakatipu Basin focus on the capacity of the ONLs to absorb change, avoiding subdivision and development in those parts of the ONLs with little or no capacity to absorb change and allowing limited subdivision and development in those areas with a higher potential to absorb change. We note though that capacity to absorb change will be closely related to the degree of adverse effects when landscape and visual amenity values are an issue and so the difference between the two may be more apparent than real.
388. Submitters picked up on the different approach of the PDP from the ODP in this regard. UCES supported having a common objective and set of policies for ONLs across the district, utilising the objectives, and policies (and assessment matters and rules) in the ODP that apply to the ONLs of the Wakatipu Basin. When he appeared before us in Wanaka, counsel for Allenby Farms Limited, Crosshill Farms Limited and Mt Cardrona Station Limited, Mr Goldsmith, argued that when the Environment Court identified in its Decision C180/99 the desirability of a separate and more restricted policy regime for the Wakatipu Basin ONLs, it had good reason for doing so (based on the greater development pressures in the Wakatipu Basin, the extent of existing development activity and the visibility of the ONLs from the Basin floor). Mr Goldsmith submitted that there is no evidence that those factors do not still apply, and that accordingly the different policy approaches for Wakatipu Basin ONLs, compared to the ONL’s in the balance of the District should be retained.

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<sup>300</sup> Refer the recommendations of Report 16

389. This relief was not sought by Mr Goldsmith’s clients in their submissions and so we have regarded it as an example of a submitter (or in this case three submitters) seeking to rely on the collective scope provided by other unspecified submissions (i.e. the point discussed earlier in this report). In this particular case, the argument Mr Goldsmith pursued arguably falls within the jurisdiction created by the submissions already noted seeking deletion of the whole of Section 3.2.5 and we have accordingly considered it on its merits.
390. Discussing the point with us, Mr Goldsmith agreed that the Environment Court’s key findings were based on evidence indicating a need for stringent controls on the Wakatipu Basin and a lack of evidence beyond that. While he agreed that the lack of evidence before the Environment Court in 1999 should not determine the result in 2016 (when we heard his submissions), Mr Goldsmith submitted that there was no evidence before us that the position has changed materially. We note, however, that Mr Haworth suggested to us that the contrary was the case, and that development pressure had increased significantly throughout the District since the ODI was written<sup>301</sup>. Mr Haworth provided a number of examples of residential development having been consented in the ONLs of the Upper Clutha and also drew our attention to the tenure review process having resulted in significant areas of freehold land becoming available for subdivision and development within ONLs.
391. In addition, the Environment Court’s decision in 1999 reflected the then understanding of the role of section 6(b) of the Act in the context of Part 2 as a whole<sup>302</sup>. That position has now been overtaken by the Supreme Court’s decision in *King Salmon*, that we have discussed extensively already. The Supreme Court’s decision means that we must find a means to protect ONLs and ONFs as part of the implementation of the RPS and, in consequence, the sustainable management of the District’s natural and physical resources. In that context, we think that a different policy regime between ONLs in different parts of the district might be justified if they varied in quality (if all of them are outstanding, but some are more outstanding than others). But no party sought to advance an argument (or more relevantly, called expert evidence) along these lines.
392. We accordingly do not accept Mr Goldsmith’s argument. We find that it is appropriate to have one objective for the ONLs and ONFs of the District and that that objective should be based upon protecting the landscape and visual amenity values and the natural character of landscapes and features from more than minor adverse effects that are not temporary in nature.
393. We do not consider that reference is required to wāhi tupuna given that this is addressed in section 3.2.7.
394. We record that we have considered the submission of Remarkables Park Limited<sup>303</sup> and Queenstown Park Limited<sup>304</sup> that, in effect, a similar approach to that in the ODP should be taken, with a very general objective supported by more specific policies. The structure of the PDP is, at this strategic level, one objective for ONLs and ONFs, and another objective for other rural landscapes. We regard that general approach as appropriate. Once one gets to the point of determining that there should be an objective that is specific to ONLs and ONFs, it is not

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<sup>301</sup> J Haworth, Submissions and Evidence at page 16

<sup>302</sup> Refer C180/99 at paragraph [69]

<sup>303</sup> Submission 806

<sup>304</sup> Submission 807

appropriate, for the reasons already canvassed, that the outcome aspired to is one which provides for avoiding, remedying or mitigating adverse effects<sup>305</sup>.

395. The last point that we need to examine before concluding our recommendation is whether an objective that does not provide for protection of ONLs and ONFs from inappropriate subdivision, use and development fails to provide for critical infrastructure and/or fails to give effect to the NPSET 2008.
396. QAC expressed concern that an overly protective planning regime for ONLs and ONFs would constrain its ability to locate and maintain critical meteorological monitoring equipment that must necessarily be located at elevated locations around Queenstown Airport which are currently classified as ONLs or ONFs. QAC also noted that Airways Corporation operates navigational aids on similar locations which are critical to the Airport's operations<sup>306</sup>. QAC did not provide evidence though that suggested that the kind of equipment they were talking about would have anything other than a minor effect on the ONLs or ONFs concerned.
397. Transpower New Zealand also expressed concern about the potential effect of an overly protective regime for ONLs on the National Grid. The evidence for Transpower was that, there is an existing National Grid line into Frankton through the Kawarau Gorge and while the projected population increases would suggest a need to upgrade that line within the planning period of the PDP, the nature of the changes that would be required would be barely visible from the ground. The Transpower representatives who appeared before us accepted that that would be in the category of "minor" adverse effects. They nevertheless emphasised the need to provide for currently unanticipated line requirements that would necessarily have to be placed in ONLs given that the Wakatipu Basin is ringed with ONLs (assuming the notified plan provisions in this regard remain substantially unchanged). Counsel for Transpower, Ms Garvan, and Ms Craw, the planning witness for Transpower, drew our attention to Policy 2 of the NPSET 2008, which reads:

*"In achieving the purpose of the Act, decision-makers must recognise and provide for the effective operation, maintenance, upgrading and development of the electricity transmission network."*<sup>307</sup>

398. They also emphasised the relevance of Policy 8 of the NPSET 2008, which reads as follows:

*"In rural environments, planning and development of the transmission system should seek to avoid adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity and existing sensitive activities."*

399. Ms Craw also referred us to the provisions of the Proposed RPS suggesting that the PDP is inconsistent with the Proposed RPS. We note in this regard that Policy 4.3.3 of the Proposed RPS reads:

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<sup>305</sup> We note the planning evidence of Mr Tim Williams in this regard: Mr Williams was of the opinion (stated at his paragraph 14) that high-level direction for protection and maintenance of the District's nationally and internationally revered landscapes was appropriate.

<sup>306</sup> Consideration of such equipment now needs to factor in the provisions in the Proposed RPS indicating that it is infrastructure, whose national and regional significance should be recognised (Policy 4.3.2(e)).

<sup>307</sup> The NPSET 2008 defines the electricity transmission network to be the National Grid.

*“Minimise adverse effects from infrastructure that has national or regional significance, by all of the following:*

...

*(b) Where it is not possible to avoid locating in the areas listed in (a) above [which includes outstanding natural features and landscapes], avoiding significant adverse effects on those values that contribute to the significant or outstanding nature of those areas;...”*

400. We tested the ambit of the relief Transpower was contending might be required to give effect to the NPSET 2008, by suggesting an unlikely hypothetical example of a potential new national grid route<sup>308</sup> and inviting comment from Transpower’s representatives as to whether the NPSET 2008 required that provision be made for it. Counsel for Transpower accepted that the PDP was not required to enable the National Grid in every potential location, but rejected any suggestion that the PDP need only provide for Transpower’s existing assets and any known future development plans<sup>309</sup>.
401. We enquired of counsel whether, if the NPSET 2008 requires the PDP to enable the National Grid in circumstances where that would have significant adverse effects on ONLs or ONFs, the NPSET 2008 might itself be considered to be contrary to Part 2 and therefore within one of the exceptions that the Supreme Court noted in *King Salmon* to the general principle that a Council is not able to circumvent its obligation to give effect to a relevant National Policy Statement by a reference to an overall broad judgement under section 5.
402. We invited Counsel for Transpower New Zealand Limited to file further submissions on this point.
403. Unfortunately, the submissions provided by Counsel for Transpower did not address the fundamental point, which is that the Supreme Court expressly stated that:
- “... If there was an allegation going to the lawfulness of the NZCPS, that would have to be resolved before it could be determined whether a decision-maker who gave effect to the NZCPS as it stood was necessarily acting in accordance with pt 2.”<sup>310</sup>*
404. To the extent that counsel for Transpower relied on a recent High Court decision addressing the relevance of the NPSFM 2011 to a Board of Inquiry decision<sup>311</sup>, we note that the consistency or otherwise of the NPSFM 2011 with Part 2 of the Act was not an issue in that appeal. Rather, the point of issue was whether the Board of Inquiry had correctly given effect to the NPSFM 2011.
405. More recently, the High Court in *Transpower New Zealand Ltd v Auckland Council*<sup>312</sup> has held that national policy statements promulgated under section 45 of the Act (like the NPSET) are not an exclusive list of relevant matters and do not necessarily encompass the statutory purpose. The High Court found specifically<sup>313</sup> that the NPSET is not as all-embracing of the Act’s purpose set out in section 5 as is the New Zealand Coastal Policy Statement and that a decision-maker can properly consider the Act’s statutory purpose, and other Part 2 matters,

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<sup>308</sup> From Frankton to Hollyford, via the Routeburn Valley

<sup>309</sup> Addendum to legal submissions on behalf of Transpower New Zealand Limited dated 21 March 2016 at paragraph 2.

<sup>310</sup> *King Salmon* at [88]

<sup>311</sup> *Hawke’s Bay and Eastern Fish and Game Council v Hawke’s Bay RC* [2015] 2 NZLR 688

<sup>312</sup> [2017] NZHC 281

<sup>313</sup> *Ibid* at [84]

as well as the NPSET, when exercising functions and powers under the Act. As the Court observed, that does not mean we can ignore the NPSET; we can and should consider it and give it such weight as we think necessary.

406. Ultimately, we do not think we need to reach a conclusion as to whether the NPSET 2008 is consistent with Part 2 of the Act for the purposes of this report, because the NPSET 2008 does not expressly say that Transpower's development and expansion of the national grid may have significant adverse effects on ONLs or ONFs. Policy 8 says that Transpower must seek to avoid adverse effects, but gives no guidance as to how rigorously that policy must be pursued. Similarly, Policy 2 gives no indication as to the extent to which development of the National Grid must be provided for. It might also be considered that a contention that Transpower should be able to undertake developments with significant adverse effects on ONLs would be contrary to the Proposed RPS policy Ms Craw relied on (given that a significant adverse effect on ONLs will almost certainly be a significant adverse effect on the values that make the landscape outstanding).
407. In circumstances where Transpower did not present evidence suggesting any compelling need to provide for significant adverse effects of the National Grid on ONLs and ONFs, we do not think that the primary objective of the PDP should be qualified to make such provision.
408. We accept Mr Renton, giving evidence for Transpower, did suggest that there might be cause to route a National Grid line up the Cardrona Valley and over the Crown Range Saddle. However, he did not present this as anything more than a hypothetical possibility.
409. We note that the Environment Court came to a similar conclusion when considering the relevance of the NPSET 2008 to objectives and policies governing protection of indigenous biodiversity in the Manawatu-Wanganui Region, commenting<sup>314</sup>:
- "As with the NPSREG, we do not find that the NPSET gives electricity transmission activities so special a place in the order of things that it should override the regime that applies to indigenous biodiversity. In any case, we were not persuaded that this regime would present insurmountable obstacles to continuing to operate and expand the electricity transmission network to meet the needs of present and future generations."*
410. In summary, while we think that there does need to be additional provision for infrastructure, including, but not limited to, the National Grid, in the more specific policies in Chapter 6 implementing this objective, we recommend that Objective 3.2.5.1 be amended to read as follows:
- "The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration."*
411. Turning to non-outstanding landscapes, Objective 3.2.5.2 as notified read:
- "Minimise the adverse landscape effects of subdivision, use or development in specified Rural Landscapes."*
412. A large number of submissions sought to amend this objective so as to create a greater range of acceptable adverse effects. Suggestions included:

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<sup>314</sup> *Day et al v Manawatu-Wanganui RC* [2012] NZEnvC 182 at 3-127

- a. Substituting recognition of rural landscape values in conjunction with making provision for management of adverse effects<sup>315</sup>;
  - b. Providing for recognition of those values with no reference to adverse effects<sup>316</sup>;
  - c. Providing for management, or alternatively avoiding, remedying or mitigating of adverse effects<sup>317</sup>;
  - d. Inserting reference to inappropriate subdivision use and development<sup>318</sup>;
  - e. Shifting the focus from adverse landscape effects to adverse effects on natural landscapes<sup>319</sup>;
  - f. Incorporating reference to the potential to absorb change, among other things by incorporating current Objective 3.2.5.3 as a policy under this objective<sup>320</sup>.
413. In his Section 42A Report, Mr Paetz expressed the view that while the word ‘*minimise*’ was utilised in this objective to provide greater direction, that level of direction might not be appropriate in rural areas not recognised as possessing outstanding landscape attributes. He recommended alternative wording that sought to maintain and enhance the landscape character of the Rural Landscape Classification, while acknowledging the potential “*for managed and low impact change*”. When Mr Paetz appeared to give evidence, we discussed with him whether the two elements of his suggested amended objective (‘*maintain and enhance*’ v ‘*managed and low impact change*’) were internally contradictory<sup>321</sup>.
414. In his reply evidence, Mr Paetz returned to the point<sup>322</sup>. He acknowledged that there is at least probably, some tension or ambiguity introduced by the combination of terms and revised his recommendation so that if accepted, the objective would read:
- “The quality and visual amenity values of the Rural Landscapes [the amended term for the balance of rural areas that Mr Paetz recommended] are maintained and enhanced.”*
415. The common feature of the relief sought by a large number of the submissions summarised above is that, if accepted, they would have the result that the objective for non-outstanding rural landscapes would not identify any particular outcome against which one could test the success or otherwise of the policies seeking to achieve the objective.
416. We have discussed earlier the need for the PDP objectives to be meaningful and to identify a desired environmental outcome. Many of the submissions on this objective, if accepted, would not do that.
417. Accordingly, we do not recommend that those submissions be accepted, other than that they might be considered to be ‘accepted in part’ by our recommendation below.
418. The starting point for determining the appropriate objective for non-outstanding rural landscapes is to identify the provisions in the superior documents governing this issue. As

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<sup>315</sup> Submissions 437, 456, 513, 522, 532, 534, 537, 608; Supported in FS1071, FS1097, FS1256, FS1286, FS1292, FS1322 and FS1349; Opposed in FS1034 and FS1120

<sup>316</sup> Submission 515, 531

<sup>317</sup> Submissions 502, 519, 598, 607, 615, 621, 624, 696, 716, 805: Supported in FS1012, FS1015, FS10976, FS1105 and FS1137; Opposed in FS 1282 and FS1356

<sup>318</sup> Submissions 502, 519, 696: Supported in FS1012, FS1015 and FS1097; Opposed in FS1282 and FS1356

<sup>319</sup> Submissions 502, 519: Supported in FS1012, FS1015 and FS1097; Opposed in FS1282 and FS1356

<sup>320</sup> Submission 806

<sup>321</sup> As Ms Taylor, giving planning evidence for Matukituki Trust, suggested to us was the case.

<sup>322</sup> M Paetz, Reply Evidence at 5.25

already discussed, the RPS focuses principally on protection of ONLs and ONFs. The only objectives applying to the balance of landscapes and features are expressed much more generally, with non-outstanding landscapes considered as natural resources (degradation of which is sought to be avoided, remedied or mitigated<sup>323</sup>) or land resources (the sustainable management of which is sought to be promoted<sup>324</sup>). In terms of the spectrum between more directive and less directive higher other provisions identified by the Supreme Court in *King Salmon*<sup>325</sup>, these objectives provide little clear direction, and consequently considerable flexibility in their implementation.

419. The national policy statements likewise do not determine the general objective for non-outstanding landscapes, although both the NPSET 2008 and the NPSREG 2011, in particular need to be borne in mind.
420. The Proposed RPS is of rather more assistance. As previously noted, the Proposed RPS has policies both for ONLs and ONFs, and for highly valued (but not outstanding) natural features and landscapes, under the umbrella of an objective<sup>326</sup> seeking that significant and highly-valued natural resources be “*identified, and protected or enhanced*”.
421. Policy 3.2.5 clarifies that “*highly-valued*” natural features and landscapes are valued for their contribution to the amenity or quality of the environment.
422. Policy 3.2.6 states that highly-valued features and landscapes are protected or enhanced by “*avoiding significant adverse effects on those values which contribute to the high value of the natural feature [or] landscape*” and avoiding, remedying or mitigating other adverse effects.”.
423. The approach of the Proposed RPS to identification of “*highly-valued*” natural features and landscapes appears consistent with the relevant provisions in Part 2 of the Act. The first of these is section 7(c) pursuant to which we are required to have particular regard to “*the maintenance and enhancement of amenity values*”.
424. The second is section 7(f) of the Act, pursuant to which, we are required to have particular regard to “*maintenance and enhancement of the quality of the environment*”.
425. These provisions were the basis on which the Environment Court determined the need to identify “*visual amenity landscapes*”, which were separate from and managed differently to “*other rural landscapes*” in 1999. The Environment Court did not, however, identify which landscapes were in which category. In fact, it found that it had no jurisdiction to make a binding determination (for example, which might be captured on the planning maps<sup>327</sup>). In an earlier decision<sup>328</sup>, however, the Court observed that an area had to be of sufficient size to qualify as a ‘*landscape*’ before it could be classed as an ORL. It pointed to the Hawea Flats area as the obvious area most likely to qualify as an other rural landscape (ORL) and indicated that the area now known as the Hawthorn Triangle in the Wakatipu Basin might do so<sup>329</sup>.

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<sup>323</sup> RPS Objective 5.4.2

<sup>324</sup> RPS Objective 5.4.1

<sup>325</sup> *King Salmon* at [127]

<sup>326</sup> Proposed RPS, Objective 3.2

<sup>327</sup> *Wakatipu Environmental Society Incorporated and Ors v Queenstown Lakes District Council* C92/2001

<sup>328</sup> *Lakes District Rural Landowners Society Incorporated and Ors v Queenstown Lakes District Council* C75/2001

<sup>329</sup> Refer paragraph [27]

426. We should address here an argument put to us by counsel for GW Stalker Family Trust and others that section 7(b) operates, in effect, as a counterweight to section 7(c).
427. Section 7(b) requires that we have particular regard, among other things, to “*the efficient use and development of natural and physical resources*”. Mr Goldsmith characterised section 7(b) as encouraging an enabling regime allowing landowners to develop their land in order to generate social and economic benefits, and section 7(c) as acting as a brake on such development.
428. We do not accept that to be a correct interpretation either of section 7(b), or of its inter-relationship with section 7(c), or indeed with the other subsections of section 7.
429. Our understanding of efficiency and of efficient use and development of natural and physical resources is that it involves weighing of costs and benefits of a particular proposal within an analytical framework. The Environment Court has stated that consideration of efficiency needs to take account of all relevant resources and desirably quantify the costs and benefits of their use, development and protection<sup>330</sup>. Quantification of effects on non-monetary resources like landscape values may not be possible<sup>331</sup> and the High Court has held that it is not necessary to quantify all benefits and costs to determine a resource consent application<sup>332</sup>. We do not understand, however, the Court to have suggested that non-monetary costs are thereby irrelevant to the assessment of the most efficient outcome.
430. In a Proposed Plan context, we have the added direction provided by section 32 that quantification of costs and benefits is required if practicable. Irrespective of whether the relevant costs and benefits are quantified, though, we think it is overly simplistic to think that it is always more efficient to enable development of land to proceed. One of the purposes of the inquiry we are engaged upon is to test whether or not this is so.
431. It follows that the weighting given to maintenance and enhancement of amenity values in section 7(c) forms part of the weighing of costs and benefits, not a subsequent step to be considered once one has an initial answer based on a selective weighing of costs and benefits, so as potentially to produce a different conclusion.
432. In its earlier decision<sup>333</sup>, the Court emphasised the need to identify what landscapes fall within particular categories, as an essential first step to stating objectives and policies (and methods) for them<sup>334</sup>. We adopt that approach. While we acknowledge that the submissions on mapping issues are being resolved by a differently constituted Panel, we take the approach of the notified PDP as the appropriate starting point. In the Upper Clutha Basin, rural areas south of Lakes Hawea and Wanaka were generally (the Cardrona Valley is an exception) identified as RLC. Within the Wakatipu Basin (including the Crown Terrace), there are ONF’s identified, but the bulk of the rural areas of the Basin are identified as Rural Land Classification (or RLC) on the PDP maps as notified.
433. The evidence of Dr Marion Read was that farming is the dominant land management mechanism in the rural areas of the District, but that there is an observable difference between the Wakatipu Basin and the Upper Clutha Basin; the latter is much more extensive farming

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<sup>330</sup> *Lower Waitaki River Management Society Inc v Canterbury RC* C80/2009

<sup>331</sup> Or not with any certainty

<sup>332</sup> *Meridian Energy Ltd v Central Otago DC* CIV 2009-412-000980

<sup>333</sup> C180/99

<sup>334</sup> See in particular paragraphs [57] and [97]

than intensive. Dr Read was careful to emphasise that her description of the Wakatipu Basin as being “*farmed*” did not imply that landholdings were being operated as economically viable farming enterprises. Rather, it was a question of whether the land use involved cropping, stocking, or other farming activities.

434. For this reason, she did not believe that her evidence was materially different from that of Mr Baxter, who was the only other landscape expert that we heard from. Mr Baxter’s concern was to emphasise the extent to which rural living now forms part of the character of the Wakatipu Basin, but when we asked whether the Basin was still rural in character, he confirmed that his opinion was that it retained its pastoral character notwithstanding the extent of rural living developments. He also agreed that the balance of open space in the Basin was essential, drawing our attention in particular to the need to protect the uninterrupted depth of view from roads.
435. The evidence we heard from Dr Read and Mr Baxter also needs to be read in the light of the findings of the Environment Court in the chain of cases leading to finalisation of the ODP.
436. Even in 1999, the Environment Court clearly regarded rural living developments as having gone too far in some areas of the Wakatipu Basin. It referred to “*inappropriate urban sprawl*” on Centennial Road in the vicinity of Arrow Junction and along parts of Malaghan Road on its south side<sup>335</sup>. It concluded in relation to the non-outstanding landscapes of the Basin:
- “In the visual amenity landscape (inside the outstanding natural landscape) structures can be built, with appropriate remedial work or mitigation down to some kind of density limit that avoids inappropriate domestication”* [emphasis added]
437. We should note that a footnote linked to remedial work in the passage quoted states as an example of appropriate remedial work, removal of inappropriate houses in the adjoining natural landscape.
438. Elsewhere<sup>336</sup> the Court described ‘*urban sprawl*’ as a term referring to undesirable domestication of a landscape. The Court referred to domestication as being evidenced, among other things, by the chattels or fixtures (e.g. clothes lines/trampolines) that accumulate around dwelling houses.
439. The Court returned to this point in a subsequent decision<sup>337</sup>, agreeing with one of the expert witnesses who had given evidence before it that a stretch of the south side of Malaghan Road some 900 metres long containing 11 residential units within a rectangular area containing 22 hectares constituted “*inappropriate over-domestication*”. The Court stated that future development on this and other rural scenic roads, that form a ring around the Basin needed to be “*tightly controlled*”.
440. Dr Read gave evidence that since then, a substantial number of building platforms have been consented in the Wakatipu Basin, and to a lesser extent in the Upper Clutha Basin, suggesting to us an even greater need for clear direction as to the environmental outcomes being sought by the PDP<sup>338</sup>.

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<sup>335</sup> See 180/99 at [136]

<sup>336</sup> C180/99 at Paragraph [155]

<sup>337</sup> C186/2000 at [38]

<sup>338</sup> We note also the information to similar effect supplied under cover of counsel for the Council’s memorandum dated 18 March 2016

441. Picking up on the Court’s identification of over-domestication as the outcome that is not desired in rural areas, we think that the emphasis of the objective needs to be on rural character and amenity values, rather than as Mr Paetz suggested, the quality and visual amenity values so that it is directed at the aspects of environmental quality that are highly valued (employing the Proposed RPS test) and which are potentially threatened by further development.
442. Turning to the desired outcome, we have some concern that Policy 3.2.5 is both internally contradictory (combining a ‘*protect and enhance*’ focus with avoidance only of significant adverse effects) and inconsistent with sections 7(e) and 7(f) of the Act that support retention of a maintenance and enhancement outcome, notwithstanding the evidence we heard suggesting that this would pose too high a test.<sup>339</sup>
443. Put more simply, we think that the objective needs to be that rural areas remain rural in character. We note that rural character is mainly an issue of appearance, but not solely so<sup>340</sup>.
444. Policy 5.3.1 of the Proposed RPS supports that approach with its focus on enabling farming, minimising the loss of productive soils and minimising subdivision of productive rural land into smaller lots.
445. The need to provide greater direction suggests to us that there is merit in Queenstown Park Ltd’s submission that Objective 3.2.5.3 might be incorporated as a component of Objective 3.2.5.2. The precise relief sought is that it be a policy but for reasons that will be apparent, we think that it might provide more value as an element of the Objective itself. As notified, Objective 3.2.5.3 read:
- “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.”*
446. Most of the submissions on this objective were focussed on the word ‘*direct*’, seeking that it be softened to ‘*encourage*’<sup>341</sup>. Mr Chris Ferguson suggested in his planning evidence that should be “*encourage and enable*”, but we could not identify any submission that would support that extension to the relief sought in submissions<sup>342</sup> and so we have not considered that possibility further.
447. One submitter<sup>343</sup> sought that the ambit of this objective be limited to urban use or development.

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<sup>339</sup> E.g. from Mr Jeff Brown who supported a “recognise and manage” approach that in our view, would not clearly signal the desired outcome.

<sup>340</sup> Mr Tim Williams suggested to us that spaciousness, peace and quiet and smell were examples of landscape values going beyond the visual, albeit that he was of the view that the visual values were the key consideration.

<sup>341</sup> Submissions 513, 515, 519, 522, 528, 531, 532, 534, 535, 537, 608: Supported in FS1015, FS1097, FS1256, FS1286, FS1292 and FS1322; Opposed in FS1034, FS1068, FS1071, FS1120, FS1282 and FS1356

<sup>342</sup> Mr Ferguson did not himself identify any submission he was relying on.

<sup>343</sup> Submission 600: Supported in FS1209, Opposed in FS1034

448. Another submitter<sup>344</sup> sought that the extent to which adverse effects were controlled be qualified by inserting reference to ‘*significant*’ detracting from landscape and visual amenity values.
449. Some submissions<sup>345</sup> suggested deleting reference to detracting from the identified values, substituting the words “*while recognising the importance of*”.
450. Another suggestion<sup>346</sup> was to explicitly exempt development of location-specific resources.
451. Mr Paetz recommended acceptance of the submission that would limit the focus of the objective to urban activities. In his Section 42A Report Mr Paetz expressed the view that rural subdivision and development could be contemplated on more of a case by case, effects-based perspective, whereas it was more appropriate for urban development to be directed to particular locations “*with a firmer policy approach taken on spatial grounds*’.
452. For the reasons already expressed, we do not agree that subdivision, use and development should be the subject of a case by case merits assessment with little direction from the PDP. As Dr Read noted in her evidence before us, there is a problem with cumulative effects from rural living developments, particularly in the Wakatipu Basin. We consider that it is past time for the PDP to pick up on the Environment Court’s finding in 1999 that there were areas of the Wakatipu Basin that required careful management, because they were already at or very close to the limit at which over domestication would occur.
453. Dr Read’s report dated June 2014<sup>347</sup> referenced in the section 32 analysis supporting Chapter 6 identifies the rural areas within the Wakatipu Basin where, in her view, further development should be avoided, as well as where increased development might be enabled, on a controlled basis.
454. The Hearing Panel considering submissions on the Rural Chapters (21-23) requested that the Council consider undertaking a structure planning exercise to consider how these issues might be addressed in greater detail. The Council agreed with that suggestion and the end result is a package of provisions forming part of the Stage 2 Variations providing greater direction on subdivision, use and development in the non-outstanding rural areas of the Wakatipu Basin. As at the date of our finalising this report, submissions had only just been lodged on those provisions and so it is inappropriate that we venture any comment on the substance of those provisions. However, we note that hearing and determination of those submissions will provide a mechanism for management of the adverse cumulative effects we have noted, even if the shape the provisions take is not currently resolved.
455. One side-effect of the rezoning of rural Wakatipu Basin land is that there now appears to be no non-outstanding Rural Zoned land in the Basin. Although some provisions of Chapter 6 (as notified) have been deleted or amended, our reading of key policies that remain (as discussed in Part D of this report) is that the landscape categories still only apply in the Rural Zone. We have not identified any submission clearly seeking that this position be changed so that the categorisations would apply more broadly.

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<sup>344</sup> Submission 643

<sup>345</sup> Submissions 513, 515, 522, 528, 531, 532, 534, 535, 537: Supported in FS1097, FS1256, FS1286, FS1292 and FS1322; Opposed in FS1068, FS1071, FS1120

<sup>346</sup> Submissions 519, 598: Supported in FS1015, FS1287; Opposed in FS1091, FS1282 and FS1356

<sup>347</sup> Read Landscapes Ltd, ‘*Wakatipu Basin Residential Subdivision and Development Landscape Assessment*’

456. It follows that this particular objective, together with other strategic objectives and policies referring to (as we recommend below they be described) Rural Character Landscapes, does not apply in practice in the Wakatipu Basin. If this is not what the Council intends, we recommend it be addressed in a further variation to the PDP.
457. Lastly, we agree with Submission 643 (and the planning evidence of Mr Wells) that some qualification is required to ensure that this is not a ‘*no development*’ objective. That would not be appropriate in a non-outstanding rural environment.
458. Providing a complete exemption for location-specific resources would, however, go too far in the opposite direction. A provision of this kind could perhaps be justified with respect to use and development of renewable energy resources, relying on the NPSREG 2011, but we heard no evidence of any demand for such development in the non-outstanding rural areas of the District. In any event, the submission that such provision be made was advanced on behalf of mining interests who were clearly pursuing a different agenda.
459. Because the focus of this objective is on rural character and the landscapes in question are only a relatively small subset of the rural landscapes of the district, we recommend that the term utilised on the planning maps and in the PDP generally for these landscapes is ‘*Rural Character Landscapes*’.
460. In summary, for all of these reasons, we recommend that Objectives 3.2.5.2 and 3.2.5.3 be combined in an amended Objective 3.2.5.2 reading as follows:

*“The rural character and visual amenity values in identified Rural Character Landscapes are maintained or enhanced by directing new subdivision, use or development to occur in those areas that have the potential to absorb change without materially detracting from those values.”*

461. Objective 3.2.5.4 as notified read as follows:

*“Recognise there is a finite capacity for residential activity in rural areas if the qualities of our landscapes are to be maintained.”*

462. Most of the focus of submissions on this objective was on the word “*finite*”. The issue, as it was put by Mr Tim Williams<sup>348</sup> to us, is that without an identification of what that finite capacity is, and where current development is in relation to that capacity, the objective serves little purpose. Mr Williams supported greater direction as to which areas have capacity to absorb further development, and which areas do not<sup>349</sup>. Many of the submissions also sought that the objective provide for an appropriate future capacity for residential activity.
463. In his reply evidence, Mr Paetz recommended that this objective be revised to read:

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<sup>348</sup> Giving planning evidence for Skyline Enterprises Ltd, Totally Tourism Ltd, Barnhill Corporate Trustee Ltd & DE, ME Bunn & LA Green, AK and RB Robins & Robins Farms Ltd

<sup>349</sup> As did Ms Robb, counsel for the parties Mr Williams was giving evidence for, and Mr Goldsmith, counsel for GW Stalker Family Trust and Others

*“The finite capacity of rural areas to absorb residential development is considered so as to protect the qualities of our landscapes.”*

- 464. As restated, we do not consider the objective adds any value that is not already captured by our recommended revised Objective 3.2.5.2/3.
- 465. We recommend that it be deleted.
- 466. In summary, we consider that the objectives recommended are individually and collectively the most appropriate way to achieve the purpose of the Act as it relates to landscapes in the District.

**2.12. Section 3.2.6 – Community Health and Safety**

- 467. As notified, this goal read:

*“Enable a safe and healthy community that is strong, diverse and inclusive for all people.”*

- 468. A number of submissions supported this goal.
- 469. Submission 197 opposed it on the basis that large employers in the District should be responsible for providing affordable accommodation for their employees.
- 470. Submission 806 sought removal of unnecessary repetition. The reasons provided for the submission suggest that the area of repetition referred to is in relation to urban development.
- 471. Submission 807 sought that the whole of Section 3.2.6 should be deleted, or in the alternative the number of objectives and policies should be significantly reduced.
- 472. Mr Paetz did not recommend any change to this goal.
- 473. The focus of the RPS (Objective 9.4.1) is on sustainable management of built environment as a means, among other things, to meet people’s needs. This is both extremely general and more narrowly directed than the PDP goal. Policy 9.5.5 gets closer, with a focus on maintaining, and where practicable enhancing, quality of life, albeit that the means identified for doing so are generally expressed.
- 474. The Proposed RPS has a chapter entitled *“Communities in Otago are resilient, safe and healthy”*<sup>350</sup>. The focus of objectives in the chapter is on natural hazards, climate change, provision of infrastructure and the supply of energy, management of urban growth and development, and of hazardous substances. The following chapter is entitled *“People are able to use and enjoy Otago’s natural and built environment”*, with objectives focussing on public access to the environment, historic heritage resources, use of land for economic production and management of adverse effects.
- 475. Policy 1.1.3 of the Proposed RPS focuses more directly on provision for social and cultural wellbeing and health and safety, albeit in terms providing flexibility as to how this is achieved, except in relation to human health (significant adverse effects on which must be avoided).
- 476. We regard the higher level focus of these chapters as supporting the intent of this goal, and Policy 1.1.3 as providing guidance as to how it might be framed.

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<sup>350</sup> Proposed RPS, Chapter 4

477. At present, this goal is framed as a policy, commencing with a verb.
478. Looking at what outcome is being sought here and the capacity of the District Plan to achieve that outcome, we take the view that this particular higher-level objective is better framed in section 5 terms; emphasis is therefore required on people in communities providing for their social, cultural and economic well being and their health and safety. As above, this is also the direction Policy 1.1.3 of the Proposed RPS suggests.
479. So stated, there is an area of overlap with Goal/Objective 3.2.2 (as Submission 806 observes), but we nevertheless regard this as a valuable high-level objective, particularly for the non-urban areas of the District.

480. Accordingly, we recommend that this goal/high-level objective be reframed to read:

*“The District’s residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety.”*

481. We regard this, in conjunction with the other high-level objectives it has recommended, to be the most appropriate way to achieve the purpose of the Act.

#### **2.13. Section 3.2.6 – Additional Objectives**

482. We have already addressed Objectives 3.2.5.5, 3.2.6.1, 3.2.6.2 and 3.2.6.3, recommending that they be amalgamated into what was 3.2.2.1.

483. Objective 3.2.6.4 as notified read:

*“Ensure planning and development maximises opportunities to create safe and healthy communities through subdivision and building design.”*

484. While the submissions on all of these objectives were almost universally in support, we view these matters, to the extent that they are within the ability of the PDP to implement<sup>351</sup>, as being more appropriately addressed in the context of Chapter 4. We therefore accept the point made in Submission 807 summarised above, that the objectives in this section might be significantly pared back.

485. Although this leaves the higher-level objective without any more focused objectives unique to it, we do not regard this as an unsatisfactory end result. To the extent the goal/high-level objective relates to non-urban environments, these matters can be addressed in the more detailed plan provisions in other chapters. In summary, therefore, we are satisfied both the amendments and the relocation of the objectives in Section 3.2.6 we have recommended are the most appropriate way to achieve the purpose of the Act.

#### **2.14. Section 3.2.7 – Goal and Objectives**

486. Lastly in relation to Chapter 3 objectives, we note that the goal in Section 3.2.7 and the two objectives under that goal (3.2.7.1 and 3.2.7.2) are addressed in the Stream 1A Hearing Report (Report 2).

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<sup>351</sup> Provision of community facilities is more a Local Government Act issue than a matter for the PDP.

487. The revised version of these provisions in the amended Chapter 3 attached to this Report as Appendix 1 shows the recommendations of that Hearing Panel for convenience.

## 2.15. Potential Additional Goals and Objectives

Before leaving the strategic objectives of the PDP, we should note submissions seeking entirely new goals and/or objectives. We have already addressed some of those submissions above.

488. A number of submitters<sup>352</sup> sought insertion of a 'goal' specifically related to tourism, generally in conjunction with a new strategic objective and policy. We have already addressed the submissions related to objectives and policies for tourism. While important to the District, ultimately we consider tourism is an aspect of economic development and therefore covered by (now) higher order objective 3.2.1. We therefore recommend rejection of these submissions.

489. The Upper Clutha Tracks Trust<sup>353</sup> sought insertion of a new goal worded as follows:

*"A world class network of trails that connects communities."*

490. The submitter also sought a new objective to sit under that goal as well as a series of new policies.

491. The submitter did not appear so as to provide us with any evidential foundation for such change. In the absence of evidence, we do not regard the relief sought by the submitter as so obviously justified as a high-level objective of the PDP that it would recommend such amendments.

492. NZIA<sup>354</sup> likewise sought insertion of a new goal, worded as follows:

*"Demand good design in all development."*

493. Mr Paetz did not recommend acceptance of this submission. While we acknowledge that good design is a worthwhile aspiration, we see it as an aspect of development that might more appropriately be addressed in more detailed provisions that can identify what good design entails. We will return to the point in the context of Chapter 4 rather than as a discrete high-level objective of its own. Accordingly, we do not recommend acceptance of this submission.

494. Slopehill Properties Limited<sup>355</sup> sought a new objective (or policy) to enable residential units to be constructed outside and in addition to approved residential building platforms with a primary use of the increased density is to accommodate family. Mr Farrell gave planning evidence on this submission, supported by members of the Columb family who own property between Queenstown and Arthurs Point. Clearly, a case can be made to address situations like that of the Columb family where different generations of the same family seek to live in close proximity. The difficulty we see with an objective in the District Plan (or indeed a policy) providing for this situation is that there appears to be no safeguard against it being used on a large scale to defeat the objective seeking to retain the rural character of land outside existing

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<sup>352</sup> Submissions 607, 615, 621, 677: Supported in FS1097, FS1105, FS1117, FS1137, FS1152, FS1153, FS1330 and FS1345; Opposed in FS1035, FS1074, FS1312 and FS1364

<sup>353</sup> Submission 625: Supported in FS1097; Opposed in FS1347

<sup>354</sup> Submission 238: Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1242, FS1248 and FS1249

<sup>355</sup> Submission 854: Supported in FS1286; Opposed in FS1349

urban areas. Certainly, Mr Farrell was not able to suggest anything to us. Nor was Mr Farrell able to quantify the potential implications of such an objective for the District more broadly.

495. In summary, while we accept that the Columbs' personal situation is meritorious, we cannot recommend acceptance of their submission against that background.

496. In summary, having reviewed the objectives we have recommended, we consider that individually and collectively, they are the most appropriate way to achieve the purpose of the Act within the context of strategic objectives, for the reasons set out in this report.

### 3. POLICIES

497. Turning to the policies of Chapter 3, given the direction provided by section 32, the key reference point of our consideration of submissions and further submissions is whether they are the most appropriate means to achieve the objectives we have recommended.

#### 3.1. Policy 3.2.1.1.3 – Visitor Industry

498. Consistent with our recommendation that the objectives should be reordered with the initial focus on the benefits provided by the visitor industry, we recommend that what was Policy 3.2.1.1.3 be the first policy.

499. As notified, that policy read:

*“Promote growth in the visitor industry and encourage investment in lifting the scope and quality of attractions, facilities and services within the Queenstown and Wanaka central business areas.”*

500. The submissions on this policy all sought to expand its scope beyond the Queenstown and Wanaka central areas. Many submissions have sought that the focus be district-wide. One submission<sup>356</sup> sought to link the promotion of visitor industry growth to maintenance of the quality of the environment.

501. When Real Journeys Limited appeared at the hearing, its representatives emphasised the need for provision for visitor accommodation facilities, not all of which could practically be located within the two town centres. They also took strong exception to the implication of Policy 3.2.1.1.3 that the quality of existing attractions, facilities and services for visitors (as distinct from their scope) needed improvement.

502. Mr Paetz recommended that the submissions be addressed by a minor amendment to the existing policy (to refer to Queenstown and Wanaka town centres rather than to their central business areas) consistent with his recommended objective, and a new policy framed as follows:

*“Enable the use and development of natural and physical resources for tourism activity where adverse effects are avoided, remedied or mitigated”.*

503. We accept the thrust of the submissions and evidence we heard on this aspect of the PDP, that attractions, facilities and services for visitors are not and should not be limited to the Queenstown and Wanaka town centres. We also accept the logic of Mr Paetz's suggested

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<sup>356</sup> Submission 806

approach of providing for the visitor industry more broadly, but are concerned with the open-ended nature of the suggested broader policy.

504. In his Section 42A Report, Mr Paetz acknowledged that his recommending a policy focus on adverse effects being avoided, remedied or mitigated was not consistent with the general approach of the PDP seeking to minimise the use of that phrasing. He considered it appropriate in this context because the policy is not specific to the environmental effects it is concerned with. In Mr Paetz's view, a higher bar would be set in more sensitive landscapes or environments by other objectives and policies.

505. While this may be so, we consider that greater direction is required that this is the intention.

506. It seems to us that part of the issue is that visitor industry developments within the 'urban' areas of the district outside the Queenstown and Wanaka town centres raise a different range of issues to visitor industry developments in rural areas. In the former, the objectives and policies for the zones concerned provide more detailed guidance. In the latter, the strategic objectives and policies focused on landscape quality and rural character provide guidance. Policy 5.3.1(e) of the Proposed RPS might also be noted in this context – it supports provision for tourism activities in rural areas "of a nature and scale compatible with rural activities". It is apparent to us that while some specific provision is required for visitor industry developments in rural areas, this is better located alongside other strategic policies related to the rural environment. We return to the point in that context.

507. We also identify some tension between a policy that seeks to 'promote growth' in the visitor industry with recommended issues and objectives seeking to promote diversification in the District's economy. Consequently, we recommend that this wording be softened somewhat.

508. In summary, we recommend that Policy 3.2.1.1.3 be renumbered 3.3.1 as follows and amended to read as follows:

*"Make provision for the visitor industry to maintain and enhance attractions, facilities and services within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone."*

509. We consider that this policy, operating in conjunction with the other policies it will recommend, is the most appropriate way to achieve Objectives 3.2.1.1 and 3.2.1.2 as recommended above.

### **3.2. Policies 3.2.1.1.1 and 3.2.1.1.2 – Queenstown and Wanaka Town Centres**

510. As notified these two policies read:

*"3.2.1.1.1 Provide a planning framework for the Queenstown and Wanaka central business areas that enables quality development and enhancement of the centres as the key commercial hubs of the District, building on their existing functions and strengths.*

*3.2.1.1.2 Avoid commercial rezoning that could fundamentally undermine the role of the Queenstown and Wanaka central business areas as the primary focus of the District's economic activity."*

511. Submissions on these policies reflected the submissions on Objective 3.2.1.1 discussed above, seeking to expand its scope to recognise the role of Frankton's commercial areas in relation to

Queenstown, and Three Parks in relation to Wanaka. Willowridge Developments Ltd<sup>357</sup> sought to confine both policies to a focus on the business and commercial areas of Queenstown and Wanaka. Queenstown Park Limited<sup>358</sup> also sought to soften Policy 3.2.1.1.2 so that it was less directive. NZIA<sup>359</sup> sought recognition that the Queenstown and Wanaka town centres play a broader role than just as commercial hubs.

512. In his reply evidence, Mr Paetz recommended:
- a. Consequential changes in the wording based on his recommended objective, to refer to Queenstown and Wanaka town centres;
  - b. Amending Policy 3.2.1.1.1 to refer to the civic and cultural roles of the two town centres;
  - c. Deletion of the word '*fundamentally*' from Policy 3.2.1.1.2;
  - d. Addition of four new policies recognising the role of Frankton commercial areas and the importance of Queenstown Airport, and a further policy focused on Three Parks.
513. Addressing first the suggested amendments to Policies 3.2.1.1.1 and 3.2.1.1.2, we agree with Mr Paetz's recommendations with only a minor drafting change. NZIA make a good point regarding the broader role of the town centres. Similarly, the word '*fundamentally*' is unnecessary. Testing whether additional zoning could '*undermine*' the role of the existing town centres already conveys a requirement for a substantial adverse effect.
514. We also agree that, provided the separate roles of the Frankton and Three Parks are addressed, a strong policy direction is appropriate.
515. As a result, we recommend that Policies 3.2.1.1.1. and 3.2.1.1.2 be renumbered and amended to read as follows:
- “3.3.2 *Provide a planning framework for the Queenstown and Wanaka town centres that enables quality development and enhancement of the centres as the key commercial, civic and cultural hubs of the District, building on their existing functions and strengths.*
- 3.3.3 *Avoid commercial rezoning that could undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity.*”
516. We note that the provisions of the RPS related to management of the built environment<sup>360</sup> are too high level and generally expressed to provide direction on these matters. Policy 5.3.3 of the Proposed RPS, however, supports provisions which avoid “*unplanned extension of commercial activities that has significant adverse effects on the central business district and town centres, including on the efficient use of infrastructure, employment and services.*”
517. As regards the new policies suggested by Mr Paetz for Frankton and Three Parks, we agree with the recommendations of Mr Paetz with five exceptions.
518. We recommend that reference to Frankton not be limited to the commercial areas of that centre because existing industrial areas play an important local servicing role (as recognised by the revised recommended objective above) and Queenstown Airport has a much broader role than solely “*commercial*”. We also consider that reference to “*mixed-use*’ development

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<sup>357</sup> Submission 249: Opposed in FS1097

<sup>358</sup> Submission 806: Supported in FS1012

<sup>359</sup> Submission 238: Supported in FS1097 and FS1117; Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1249

<sup>360</sup> RPS, Section 9.4

nodes is unnecessary. Having broadened the policy beyond commercial areas, the uses are obviously “mixed”.

519. Secondly, Mr Paetz recommended that recognition of Queenstown Airport refer to its “essential” contribution to the prosperity and “economic” resilience of the District.
520. While Queenstown Airport plays an extremely important role, we take the view that categorising it as “essential” would imply that it prevailed over all other considerations. Given the competing matters that higher order documents require be recognised and provided for (reflecting in turn Part 2 of the Act), we do not regard that as appropriate.
521. We have also taken the view that the nature of the contribution Queenstown Airport makes is not limited to its economic contribution. The evidence for QAC emphasised to us that Queenstown Airport is a lifeline utility under the Civil Defence Emergency Management Act 2002 with a key role in planning and preparing for emergencies, and for response and recovery in the event of an emergency. We accordingly recommend that the word “economic” be deleted from Mr Paetz’s suggested policy.
522. In addition, we have determined that greater direction is required (consistent with the objective we have recommended) regarding the function of the Frankton commercial area in the context of Mr Paetz’s suggested policy that additional commercial rezoning that would undermine that function be avoided.
523. It follows that we do not accept the suggestion of Mr Chris Ferguson in his evidence that the new Frankton policy should only constrain additional zoning within Frankton. Mr Paetz confirmed in response to our question that his intention was that the policy should extend to apply to areas outside Frankton – most obviously Queenstown itself – and we agree that this is appropriate.
524. Lastly, we do not think it necessary to refer to “future” additional commercial rezoning given that any additional rezoning will necessarily be in the future.
525. In summary, we recommend four new policies numbered 3.3.4-3.3.7 and worded as follows:

*“Provide a planning framework for the Frankton urban area that facilitates the integration of the various development nodes.*

*Recognise that Queenstown Airport makes an important contribution to the prosperity and resilience of the District.*

*Avoid additional commercial rezoning that will undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine increasing integration between those areas and the industrial and residential areas of Frankton.*

*Provide a planning framework for the commercial core of Three Parks that enables large format retail development.”*

526. We are satisfied that collectively these policies are the most appropriate way, in the context of high-level policies, to achieve Objectives 3.2.1.2-4 that we have recommended.

### 3.3. Policies 3.2.1.2.1 – 3 – Commercial and Industrial Services

527. Policy 3.2.1.2.3 as notified read:

*“Avoid non-industrial activities occurring within areas zoned for industrial activities.”*

528. Submissions on this policy sought to soften its effect in various ways. Mr Paetz recommended that Submission 361 be accepted with the effect that non-industrial activities related to or supporting industrial activities might occur within industrial zones, but otherwise that the policy not be amended.

529. Policy 5.3.4 of the Proposed RPS is relevant on this point. It provides for restriction of activities in industrial areas that, among other things, may result in inefficient use of industrial land.

530. We accept in principle that, given the guidance provided by the Proposed RPS, the lack of land available for industrial development, and the general unsuitability of land zoned for other purposes for industrial use, non-industrial activities in industrial zones should be tightly controlled.

531. The more detailed provisions governing industrial zones are not part of the PDP, being scheduled for consideration as part of a subsequent stage of the District Plan review. At a strategic level, we recommend acceptance of Mr Paetz’s suggested amendment with the effect that this policy (renumbered 3.3.8) would read:

*“Avoid non-industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities.”*

532. We consider that this policy is the most appropriate way, in the context of high-level policies, to achieve the aspects of Objectives 3.2.1.3 and 3.2.1.5 related to industrial activities.

533. Policies 3.2.1.2.1 and 3.2.1.2.2 need to be read together. As notified, they were worded as follows:

*“Avoid commercial rezoning that would fundamentally undermine the key local service and employment function role that the larger urban centres outside of the Queenstown and Wanaka Central Business Areas fulfil.*

*Reinforce and support the role that township commercial precincts and local shopping centres fulfil in serving local needs.”*

534. Submissions on Policy 3.2.1.2.1 sought either its deletion<sup>361</sup> or significant amendment to focus it on when additional commercial rezoning might be enabled<sup>362</sup>. Submissions on Policy 3.2.1.2.2 sought recognition of the role of industrial precincts in townships and broadening the focus beyond townships to commercial, mixed use and industrial zones generally, and to their role in meeting visitor needs<sup>363</sup>.

535. Mr Paetz recommended relatively minor amendments to these policies, largely consequential on his recommendation that the role of Frankton be recognised with a separate policy regime.

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<sup>361</sup> Submission 608: Opposed in FS1034

<sup>362</sup> Submission 806

<sup>363</sup> Submissions 726 and 806

536. Policy 5.3.3. of the Proposed RPS, already referred to in the previous section of our report, needs to be noted in this context also.
537. Logically, these policies should be considered in reverse order, addressing the positive role of township commercial precincts and local shopping centres first. We do not consider that it is necessary to both “reinforce and support” that role. These terms are virtually synonyms. We take the view, however, that greater direction is required in how such precincts and centres might be supported. We recommend reference to enabling commercial development that is appropriately sized for the role of those precincts and centres.
538. That is not to say that those areas do not have other roles, such as in meeting resident and visitor needs, and providing industrial services, but in our view, those are points of detail that can be addressed in the more detailed provisions of the PDP.
539. Mr Paetz suggested revision to Policy 3.2.1.2.1, to remove reference to the Queenstown and Wanaka town centres, would mean that there is an undesirable policy gap for centres within the Queenstown and Wanaka urban areas, but outside the respective town centres (apart from Frankton and Three Parks).
540. In summary, we recommend that these policies be renumbered 3.3.9 and 3.3.10, and amended to read:
- “Support the role township commercial precincts and local shopping centres fulfil in serving local needs by enabling commercial development that is appropriately sized for that purpose.*
- Avoid commercial rezoning that would undermine the key local service and employment function role that the centres outside of the Queenstown and Wanaka town centres, Frankton and Three Parks fulfil.”*
541. We consider that these policies are the most appropriate way, in the context of high-level policies, to achieve objective 3.2.1.5.

#### **3.4. Policies 3.2.1.3.1-2 – Commercial Capacity and Climate Change**

542. As notified, these policies read:

*“3.2.1.3.1 Provide for a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification;*

*3.2.1.3.2 Encourage economic activity to adapt to and recognise opportunities and risks associated with climate change and energy and fuel pressures.”*

543. Submissions on Policy 3.2.1.3.1 either supported the policy as is<sup>364</sup> or sought that it be more overtly enabling<sup>365</sup>. One submission<sup>366</sup> sought amendment to remove reference to capacity and to insert reference to avoiding, remedying or mitigating adverse effects.

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<sup>364</sup> Submissions 608: Opposed in FS1034

<sup>365</sup> Submissions 615, 621, 716 and 807: Supported in FS1097, FS1105, FS1117, FS1137, FS1145

<sup>366</sup> Submission 806

544. Submissions on 3.2.1.3.2 either supported the policy as is<sup>367</sup> or sought to delete reference to opportunities, and to energy and fuel pressures<sup>368</sup>.
545. Mr Paetz recommended that the policies remain as notified.
546. We regard the current form of Policy 3.2.1.3.1 as appropriate. If it were amended to be more enabling, then reference would have to be made to management of adverse effects. Simply providing for avoiding, remedying or mitigating adverse effects on the environment, as suggested by Queenstown Park Limited, would provide insufficient direction for the reasons discussed already. The existing wording provides room for the nature of the provision referred to be fleshed out in more detailed provisions. We therefore recommend that Policy 3.2.1.3.1 be retained as notified other than to renumber it 3.3.11.
547. Turning to notified Policy 3.2.1.3.2, we have already discussed the provisions of both the RPS and the Proposed RPS related to climate change. While the former provides no relevant guidance, the Proposed RPS clearly supports the first part of the policy. While Policy 4.2.2(c) talks of encouraging activities that reduce or mitigate the effects of climate change, the reasons and explanation for the objective and group of policies addressing climate change as an issue note that it also provides opportunities. We therefore recommend rejection of the submission seeking deletion of reference to opportunities in this context.
548. We heard no evidence, however, of energy and fuel pressures such as would suggest that they need to be viewed in the same light as the effects of climate change.
549. Accordingly, we recommend renumbering Policy 3.2.1.3.2 as 3.3.12 and amending it to read:
- “Encourage economic activity to adapt to and recognise opportunities and risks associated with climate change.”*
550. We consider that recommended Policies 3.3.11 and 3.3.12 are the most appropriate way, in the context of a package of high level policies, to achieve objectives 3.2.1.1, 3.2.1.2, 3.2.1.5, 3.2.1.6 and 3.2.1.9.

### **3.5. Policies 3.2.2.1.1 – 7 – Urban Growth**

551. As notified, these policies provided for fixing of Urban Growth Boundaries (UGBs) around identified urban areas and detailed provisions as to the implications of UGBs both within those boundaries and outside them. In his Section 42A Report, Mr Paetz recommended that all of these policies be deleted from Chapter 3 because of the duplication they created with the more detailed provisions of Chapter 4. By his reply evidence, Mr Paetz had reconsidered that position and recommended that the former Policy 3.2.2.1.1 be reinserted, reading as follows:

*“Apply Urban Growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Jacks Point), Arrowtown and Wanaka”.*

552. This policy also needs to be read with Mr Paetz’s recommended amended Policy 3.2.5.3.1 reading:

*“Urban development will be enabled within Urban Growth Boundaries and discouraged outside them.”*

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<sup>367</sup> Submission 806

<sup>368</sup> Submission 598: Supported in FS1287

553. The effect of the suggested Policy 3.2.5.3.1 is to materially amend the notified Policy 3.2.2.1.2 which sought avoidance of urban development outside of the UGBs.
554. We agree with Mr Paetz’s underlying recommendation that most of the policies formerly in Section 3.2.2 should be shifted and amalgamated with the more detailed provisions in Chapter 4, both to avoid duplication and to better focus Chapter 3 on genuinely ‘*strategic*’ matters.
555. We also agree with Mr Paetz’s recommendation that the decision as to whether there should be UGBs and the significance of fixing UGBs for urban development outside the boundaries that are identified, are strategic matters that should be the subject of policies in Chapter 3.
556. Submissions on Policies 3.2.2.1.1 and 3.2.2.1.2 covered the range from support<sup>369</sup> to seeking their deletion<sup>370</sup>.
557. One outlier is the submission from Hawea Community Association<sup>371</sup> seeking specific reference to a UGB for Lake Hawea Township. Putting aside Lake Hawea Township for the moment, within the extremes of retention or deletion, submissions sought softening of the effect of UGBs<sup>372</sup> or seeking to manage urban growth more generally, without boundaries on the maps<sup>373</sup>.
558. The starting point, but by no means the finishing point, is that the ODP already contains a policy provision enabling the fixing of UGBs and the UGB has been fixed for Arrowtown after a comprehensive analysis of the site-specific issues by the Environment Court<sup>374</sup>. It is also relevant that Policy 4.5.1 of the Proposed RPS provides for consideration of the need for UGBs to control urban expansion, but does not require them.
559. The evidence for Council supported application of UGBs on urban design grounds (from Mr Bird) and in terms of protection of landscape and rural character values (Dr Read). The Council also rested its case on UGBs on infrastructure grounds and Mr Glasner’s evidence set out the reasons why infrastructure constraints and the efficient delivery of infrastructure might require UGBs. However, his answers to the written questions that we posed did not suggest that infrastructure constraints (or costs) were actually an issue either in the Wakatipu Basin or the Upper Clutha Basin, where the principal demand for urban expansion exists. Specifically, Mr Glasner’s evidence was that the only areas where existing or already planned upgrades to water supply and sewerage systems would not provide sufficient capacity for projected urban growth would be in Gibbston Valley and at Makarora. To that extent, Mr Glasner’s responses tended to support the submissions we heard from Mr Goldsmith<sup>375</sup>. Mr Glasner did say, however, that the UGBs would be a key tool for long term planning, in terms of providing certainty around location, timing, and cost of infrastructure investments. We heard no expert evidence that caused us to doubt Mr Glasner’s evidence in this regard.

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<sup>369</sup> Submission 719

<sup>370</sup> Submission 806

<sup>371</sup> Submission 771, see also Submission 289 to the same effect

<sup>372</sup> Submission 807 seeking in the alternative provision for “limited and carefully managed opportunities for urban development outside the Urban Growth Boundary”: Opposed in FS1346

<sup>373</sup> Submission 608 – although at the hearing, counsel for Darby Planning LP advised it had withdrawn its opposition to UGBs: Opposed in FS1034

<sup>374</sup> See *Monk v Queenstown-Lakes District Council* [2013] NZEnvC12

<sup>375</sup> On this occasion, when appearing for Ayrburn Farm Estate Ltd, Bridesdale Farm Developments Ltd, Shotover Country Ltd and Mt Cardrona Station Ltd.

560. Mr Paetz also sought to reassure us that the areas within the currently defined UGBs are more than sufficient to provide for projected population increases<sup>376</sup>. Ultimately, however, that evidence goes more to the location of any UGBs (and to satisfying us that the NPSUDC 2016 is appropriately implemented) rather than the principle of whether there should be any at all (and is therefore a matter for the mapping hearings).
561. The evidence from submitters we heard largely either supported or accepted the principle of UGBs. Mr Dan Wells<sup>377</sup> was a clear exception. He emphasised that unlike the historic situation in Auckland where the metropolitan limits have previously been “locked in” by being in the Regional Policy Statement, UGBs in a District Plan do not have the same significance, because they can be altered by future plan changes (including privately initiated plan changes). Mr Wells also expressed the view that a resource consent process was just as rigorous as a plan change and there was no reason why the PDP should preclude urban expansion by resource consent. Mr Wells noted, however, that both processes had to be addressing development at a similar scale for this to be the case. In other words, a resource consent application for a one or two section development would involve must less rigorous analysis than a Plan Change facilitating development of one hundred sections.
562. To us, the most pressing reason for applying UGBs is that without them, the existing urban areas within the District can be incrementally expanded by a series of resource consent applications at a small scale, each of which can be said to have minimal identifiable effects relative to the existing environment.
563. This is of course the classic problem of cumulative environmental effects and while a line on a map may be somewhat arbitrary, sometimes lines have to be drawn to prevent cumulative effects even when they cannot be justified on an “effects basis” at the margin<sup>378</sup>.
564. The other thing about a line on a map is that it is clear. While, in theory, a policy regime might have the same objective, it is difficult to achieve the necessary direction when trying to describe the scope of acceptable urban expansion beyond land which is already utilised for that purpose. It is much clearer and more certain if the policy is that there be no further development, which is why we regard it as appropriate in relation to urban creep in the smaller townships and settlements of the District, as discussed further below.
565. In summary, we conclude that UGBs do serve a useful purpose (in section 32 terms they are the most appropriate way in the context of a package of high-level policies to implement the relevant objective, (3.2.2.1), as we have recommended it be framed.
566. Accordingly, we recommend that with one substantive exception, and one drafting change discussed shortly, Policy 3.2.2.1.1 be retained.
567. The substantive exception arises from our belief that it is appropriate to prescribe a UGB around Lake Hawea Township. The Hawea Community Association<sup>379</sup> sought that outcome and the representatives of the Association described the extent of consultation and community consensus to us on both imposition of a UGB and its location when they appeared

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<sup>376</sup> M Paetz, Reply Evidence at section 7

<sup>377</sup> Giving evidence for Millbrook Country Club, Bridesdale Farm Developments and Winton Partners Fund  
<sup>378</sup> Compare *Contact Energy Limited v Waikato Regional Council* CIV2006-404-007655 (High Court – Woodhouse J) at [69]-[83] in the context of setting rules around water quality limits

<sup>379</sup> Submission 771

before us. They also emphasised that their suggested UGB provided for anticipated urban growth.

568. No submitter lodged a further submission opposing that submission and we recommend that it be accepted.

569. The more minor drafting change is that Policy 3.2.2.1.1 as recommended by Mr Paetz refers both to the urban areas in the Wakatipu Basin and to Arrowtown. Clearly Arrowtown is within the Wakatipu Basin. It is not in the same category as Jacks Point that is specifically mentioned for the avoidance of doubt. We recommend that specific reference to Arrowtown be deleted.

570. Accordingly, we recommend that this policy be renumbered (as 3.3.13) and amended to read:

*“Apply Urban Growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Jacks Point), Wanaka, and Lake Hawea Township.”*

571. The second key question is how the PDP treats urban development outside the defined UGBs. There are two sides to this point. The first relates to the smaller townships and settlements of the District, where no UGB is proposed to be fixed. Putting aside Lake Hawea Township which we have recommended be brought within the urban areas defined by UGBs, these are Glenorchy, Kingston, Cardrona, Makarora and Luggate.

572. Policy 3.2.2.1.7 as notified related to these communities and provided:

*“That further urban development of the District’s small rural settlements be located within and immediately adjoining those settlements.”*

573. NZIA<sup>380</sup> sought that urban development be confined to within the UGBs. Queenstown Park Limited<sup>381</sup> sought amendment of the policy to ensure its consistency with other policies related to UGBs.

574. Mr Paetz recommended that the policy provision in this regard sit inside Chapter 4 and be worded:

*“Urban development is contained within existing settlements.”*

575. As notified, Policy 4.2.1.5 was almost identical to Policy 3.2.1.7. In that context, NZIA was the only submitter seeking amendment to the Policy; that it simply state:

*“Urban development is contained.”<sup>382</sup>*

576. Clearly Mr Paetz is correct and the duplication between these two policies needs to be addressed<sup>383</sup>. We consider, however, that the correct location for this policy is in Chapter 3 because it needs to sit alongside the primary policy on UGBs. Secondly, it needs to be clear that this is a complementary policy. As recommended by Mr Paetz, the policy is in fact

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<sup>380</sup> Submission 238: Opposed in FS1097, FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

<sup>381</sup> Submission 806

<sup>382</sup> Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

<sup>383</sup> Refer the Real Journeys Submission noted on the more general point of duplication

inconsistent with 3.2.2.1 because in the urban areas with UGBs, provision is made to varying degrees for further urban development outside the existing settled areas.

577. In summary, we recommend that the policy be renumbered (as 3.3.15) and read:

*“Locate urban development of the settlements where no UGB is provided within the land zoned for that purpose.”*

578. We accept that there is an element of circularity in referring to the existing zone provisions in this regard, but we regard this as the most appropriate way to achieve Objectives 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2 (as those objectives bear upon the point) given that the Township Zone provisions are a matter assigned to a subsequent stage of the District Plan review.

579. The last substantive issue that needs to be addressed under this heading is the extent to which urban development is provided for outside UGBs (and outside the other existing settlements).

580. The starting point is to be clear what it is the PDP is referring to when policies focus on *“urban development”*.

581. The definition of urban development in the PDP as notified reads:

*“Means any development/activity within any zone other than the rural zones, including any development/activity which in terms of its characteristics (such as density) and its effects (apart from bulk and location) could be established as of right in any zone; or any activity within an urban boundary as shown on the District Planning maps.”*

582. At first blush, this definition would suggest that any development within any of the many special zones of the PDP constitute *“urban development”* since they are not rural zones and the qualifying words in the second part of the definition do not purport to apply to all urban development. Similarly, no development of any kind within the rural zones is defined to be urban development. Given that one of the principal purposes of defining urban growth boundaries is to constrain urban development in the rural zones, the definition would gut these policies of any meaning.

583. This definition is largely in the same terms as that introduced to the Operative Plan by Plan Change 50. The Environment Court has described it, and the related definition of *“Urban Growth Boundary”* in the following terms<sup>384</sup>:

*“A more ambivalent and circular set of definitions would be hard to find.”*

584. The Court found that urban development as defined means:

*“... any development/activity which:*

- a. Is of an urban type, that is any activity of a type listed as permitted or controlled in a residential, commercial, industrial or other non-rural zone; or*
- b. Takes place within an “Urban Growth Boundary” as shown on the District’s Planning Maps.”*

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<sup>384</sup> *Monk v Queenstown-Lakes District Council* [2013] NZEnvC12 at [20]

585. The Court also commented that a definition is not satisfactory if it relies on an exercise of statutory interpretation<sup>385</sup>.

586. We entirely agree.

587. When counsel for the Council opened the Stream 1A and 1B hearing, we asked Mr Winchester to clarify for us what the definition really meant. He accepted that it was unsatisfactory and undertook to revert on the subject. As part of the Council's reply, both counsel and Mr Paetz addressed the issue. Mr Paetz suggested, supported by counsel, that a revised definition adapted from the definition used in the Proposed Auckland Unitary Plan (as notified) should be used, reading as follows:

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

588. This recommendation is against a background of a submission from Millbrook Country Club<sup>386</sup> seeking that the definition be revised to:

*"Means develop and/or activities which:*

- a. Creates or takes place on a site of 1500m<sup>2</sup> or smaller; and*
- b. Is connected to reticulated Council or community water and wastewater infrastructure; and*
- c. Forms part of ten or more contiguous sites which achieve both (a) and (b) above; but*
- d. Does not includes resort style development such as that within the Millbrook Zone."*

589. We also note MacTodd's submission<sup>387</sup> seeking that the definition be amended in accordance with the Environment Court's interpretation of the existing definition, as above.

590. Although counsel for Millbrook referred to the Proposed Auckland Unitary Plan definition of urban activities (as notified<sup>388</sup>) as part of his submissions<sup>389</sup>, it appears that Millbrook's formal submission had been drafted with an eye to the definition in the then Operative Auckland Regional Policy Statement that reads:

*"Urban development – means development which is not of a rural nature. Urban development is differentiated from rural development by its scale, density, visual character, and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services (such as water supply and drainage), by its generation of traffic and includes activities (such as manufacturing), which are usually provided for in urban areas."*

591. We also had the benefit of an extensive discussion with counsel for Millbrook, Mr Gordon, assisted by Mr Wells who provided planning evidence in support of the Millbrook submission, but not on this specific point.

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<sup>385</sup> See paragraph [24]

<sup>386</sup> Submission 696

<sup>387</sup> Submission 192

<sup>388</sup> Noting that the Independent Hearing Panel recommended deletion of that definition, apparently on the basis that it did no more than express the ordinary and natural meaning of the term, and Auckland Council accepted that recommendation in its decisions on the Proposed Plan

<sup>389</sup> As did counsel for Ayrburn Farm Estate Ltd and Others

592. A large part of that discussion was taken up in trying to identify whether the Millbrook development is in fact urban development, and if not, why not. Mr Gordon argued that Millbrook was something of a special case because it provides for activities that are neither strictly urban nor rural. He distinguished Jacks Point, which is contained within an existing UGB because it has provision in its structure planning for facilities like childcare, kindergartens, schools, convenience stores and churches, as well as being of a much larger scale than Millbrook.
593. We also had input from counsel for Darby Planning LP, Ms Baker-Galloway, on the point. She submitted that the definition should not be a quantitative approach, e.g. based on density, but should rather be qualitative in nature. Beyond that, however, she could not assist further.
594. We agree that quantitative tests such as those suggested by Millbrook are not desirable. Among other things, they invite developments that are designed around the quantitative tests (in this case, multiple 9 section developments or developments on sites marginally over 1500m<sup>2</sup>). We also note the example discussed in the hearing of houses on 2000-3000m<sup>2</sup> sites in Albert Town that are assuredly urban in every other respect.
595. We also have some difficulties with the definition suggested by Mr Paetz because some types of development are typically associated with urban areas, but also commonly occur in rural areas, such as golf courses and some industries. We think that there is value in the suggestion from Millbrook (paralleled in the referenced Operative Auckland Regional Policy Statement definition in this regard) that reference might be made to connections to water and wastewater infrastructure, but we do not think they should be limited to Council or community services. It is the reticulation that matters, rather than the identity of its provider. Jacks Point, for instance, has its own water and wastewater services, whereas Millbrook is connected to Council water supply and wastewater services.
596. Insofar as Millbrook sought an exclusion for “*resort style development*”, that rather begs the question; what is a resort?
597. Having regard to the submissions we heard from Millbrook, we think that the key characteristics of a resort are that it provides temporary accommodation (while admitting of some permanent residents) with a lower average density of residential development than is typical of urban environments, in a context of an overall development focused on on-site visitor activities. Millbrook fits that categorisation, but Jacks Point does not, given a much higher number of permanent residents, the geographical separation of the golf course from the balance of the development and the fact that the overall development is not focussed on on-site visitor activities. It is in every sense a small (and growing) township with a high-quality golf course.
598. The last point we have to form a view on is whether, as Mr Paetz recommends, the Waterfall Park Zone should similarly be excluded from the definition of urban development. Mr Paetz’s reply evidence accepted that the density of a permitted development within the Waterfall Park Zone would be closer to urban development and made it clear that the entire Waterfall Park Zone is an anomaly; in his words:

*“The sort of sporadic and ad hoc urban intensity zoning in the middle of the countryside that Council is looking to discourage through the PDP”<sup>390</sup>.*

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<sup>390</sup> M Paetz, Reply Evidence at 6.16

599. The Waterfall Park Zone has not been implemented. We have no evidence as to the likelihood that it will be implemented and form part of the 'existing' environment in future. Certainly, given Mr Paetz's evidence, we see no reason why a clearly anomalous position should drive the wording of the PDP policies on urban development going forward.

600. For these reasons, we do not consider special recognition of Waterfall Park is required.

601. A separate Hearing Panel (Stream 10) will consider Chapter 2 (Definitions) of the PDP. That Hearing Panel will need to form a view on the matters set out above and form a final view in the light of the submissions and evidence heard in that stream, what the recommendation to Council should be.

602. For our part, however, we recommend to the Stream 10 Hearing Panel that the definition of urban development be retained to provide clarity on the appropriate interpretation of the PDP<sup>391</sup> and amended to read:

*"Means development that is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development"*.

We further recommend that a new definition be inserted as a consequence of our recommendation as above:

*"Resort" – means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing visitor accommodation and forming part of an overall development focussed on on-site visitor activities."*

603. We have proceeded on the basis that when the objectives and policies we have to consider use the term 'urban development', it should be understood as above.

604. Turning then to the more substantive issue, whether urban development, as defined, should be avoided or merely discouraged outside the UGBs and other existing settlements, Mr Paetz's recommendation that Policy 3.2.5.3.1 be amended to provide the latter appears inconsistent with his support for Policy 4.2.2.1 which reads:

*"Urban Growth Boundaries define the limits of urban growth, ensuring that urban development is contained within those identified boundaries, and urban development is avoided outside of those identified boundaries."*

605. Mr Paetz did not explain the apparent inconsistency, or indeed, why he had recommended that Policy 3.2.5.3.1 should be amended in this way.

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<sup>391</sup> The need for clarity as to the classification of Millbrook and other similar resorts that might be established in future causes us to take a different view on the need for a definition than that which the Auckland Independent Hearings Panel came to.

606. Ultimately, we view this as quite a simple and straightforward question. Mr Clinton Bird, giving urban design evidence for the Council, aptly captured our view when he told us that you have either got an urban boundary or not. If you weaken the boundary, you just perpetuate urban sprawl.
607. This is the same approach that is taken in the Proposed RPS, which provides<sup>392</sup> that where UGBs are identified in a District Plan, urban development should be avoided beyond the UGB.
608. It follows that we favour a policy of avoidance of urban development outside of the UGB's, as provided for in the notified Policy 3.2.2.1.2. Our view is that any urban development in rural areas should be the subject of the rigorous consideration that would occur during a Plan Change process involving extension of existing, or creation of new, UGBs.
609. The revised definition we have recommended to the Stream 10 Panel provides for resort-style developments as being something that is neither urban nor rural and therefore sitting outside the intent of this policy.
610. In summary, and having regard to the amendments recommended to relevant definitions, we recommend retention of Policy 3.2.2.1.2 as notified (but renumbered 3.3.14) as being the most appropriate way, in the context of a package of high-level policies, in which to achieve Objectives 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2.

### **3.6. Section 3.2.2.2. Policies – Natural Hazards**

611. As notified, policy 3.2.2.2.1 read:

*“Ensure a balanced approach between enabling higher density development within the District’s scarce urban land resource and addressing the risks posed by natural hazards to life and property.”*

612. The sole submission specifically on it<sup>393</sup> sought its deletion or in the alternative, amendment “for consistency with the RMA”. The word “addressing” was the subject of specific comment – the submitter sought that it be replaced by “mitigated”.
613. Although Mr Paetz recommended that this Policy be retained in Chapter 3 as notified, for the same reasons we have identified that the relevant objective should be amalgamated with other objectives relating to urban development, we think that this policy should be deleted from Chapter 3, and the substance of the issue addressed as an aspect of urban development in Chapter 4. We think this is the most appropriate way in the context of a package of high-level policies to achieve the objectives of the plan related to urban development.

### **3.7. Section 3.2.3.1 Policies – Urban Development**

614. The policies all relate to a quality and safe urban development. As such, while Mr Paetz recommends that they remain in Chapter 3, for the same reasons as the more detailed urban development policies have been deleted and their subject matter addressed as part of Chapter 4, we recommend that the three policies in Section 3.2.3.1 all be deleted, and their subject matter be addressed as part of Chapter 4, that being the most appropriate way to achieve the objectives of the plan related to urban development.

### **3.8. Section 3.2.3.2 Policy – Heritage Items**

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<sup>392</sup> Proposed RPS, Policy 4.5.2

<sup>393</sup> Submission 806

615. Policy 3.2.3.2.1 as notified read:
- “Identify heritage items and ensure they are protected from inappropriate development.”*
616. Three submitters on this policy<sup>394</sup> sought that the policy should be amended to state that protection of identified heritage items should occur in consultation with landowners and tenants.
617. Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou, Te Rūnanga o Moeraki, Hokonui Rūnanga<sup>395</sup> sought that the policy be expanded to refer to wāhi Tūpuna as well as heritage items.
618. Mr Paetz did not recommend any amendment to this policy.
619. The RPS has an objective identifying recognition and protection of heritage values as part of the sustainable management of the built environment<sup>396</sup>. The policy supporting this objective, however, focuses on identification and protection of *“regionally significant heritage sites”* from inappropriate subdivision, use and development. The RPS predates addition of section 6(f) of the Act<sup>397</sup>. The upgrading of historic heritage as an issue under Part 2 means, we believe, that the RPS cannot be regarded as authoritative on this point.
620. The Proposed RPS has a suite of policies supporting Objective 5.2, which seeks an outcome whereby historic heritage resources are recognised and contribute to the region’s character and sense of identity. Policy 5.2.3, in particular, seeks that places and areas of historic heritage be protected and enhanced by a comprehensive and sequential set of actions. Those provisions include recognition of archaeological sites, wāhi tapu and wāhi taoka (taonga), avoidance of adverse effects, remedying other adverse effects when they cannot be avoided, and mitigating as a further fallback.
621. Unlike the previous policies, heritage items are not solely found in urban environments and therefore it is not appropriate to shift this policy into Chapter 4.
622. We do not recommend any amendments to it (other than to renumber it 3.3.16) for the following reasons:
- a. While consultation with landowners is desirable, this is a matter of detail that should be addressed in the specific chapter governing heritage;
  - b. Addition to refer to wāhi tupuna is not necessary as identification and protection of wāhi tupuna is already governed by Section 3.2.7 (generally) and the more specific provisions in Chapter 5.
  - c. While the reference to inappropriate development provides limited guidance, the submissions on this policy do not provide a basis for greater direction as to the criteria that should be applied to determine appropriateness, for instance to bring it into line with the Proposed RPS approach.
623. In summary, given the limited scope for amendment provided by the submissions on this policy, we consider its current form is the most appropriate way to achieve Objectives 3.2.2.1 and 3.2.3.1 in the context of a package of high-level policies.

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<sup>394</sup> Submissions 607, 615 and 621: Supported in FS1105, FS1137 and FS1345

<sup>395</sup> Submission 810: Supported in FS1098

<sup>396</sup> RPS Objective 9.4.1(c)

<sup>397</sup> And corresponding deletion of reference to historic heritage from section 7.

**3.9. Section 3.2.4.2 Policies – Significant Nature Conservation Values**

624. As notified, the two policies under this heading read:

*“3.2.4.2.1 Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna, referred to as Significant Natural Areas on the District Plan maps and ensure their protection.*

*3.2.4.2.2 Where adverse effects on nature conservation values cannot be avoided, remedied or mitigated, consider environmental compensation.”*

625. Submissions on 3.2.4.2.1 either sought acknowledgement that significant natural areas might be identified in the course of resource consent application processes<sup>398</sup> or sought to qualify the extent of their protection<sup>399</sup>.

626. Submissions on Policy 3.2.4.2.2 sought variously:

- a. A clear commitment to avoidance of significant adverse effects and an hierarchical approach ensuring offsets are the last alternative considered<sup>400</sup>;
- b. Amendment to make it clear that offsets are only considered as a last alternative to achieve no net loss of indigenous biodiversity and preferably a net gain<sup>401</sup>;
- c. To draw a distinction between on-site measures to avoid, remedy or mitigate adverse effects and environmental compensation *“as a mechanism for managing residual effects”*<sup>402</sup>;

627. Mr Paetz recommended no change to Policy 3.2.4.2.1, but that Policy 3.2.4.2.2. be deleted. His reasoning for the latter recommendation was partly because he accepted the points for submitters that Policy 3.2.4.2.2 was inconsistent with the more detailed Policy 33.2.1.8, but also because, in his view, the policy was too detailed for the Strategic Chapter<sup>403</sup>.

628. Mr Paetz cited a similar concern (that the relief sought is too detailed) as the basis to reject the suggestion that identification of significant natural areas might occur through resource consent processes.

629. The Department of Conservation tabled evidence noting agreement with Mr Paetz’s recommendations.

630. Ms Maturin appeared to make representations on behalf of Royal Forest and Bird Protection Society. She maintained the Society’s submission on Policy 3.2.4.2.1, arguing that the Policy was in fact inconsistent with more detailed policy provisions indicating that such areas would be identified through resource consent applications, and that the failure to note that would promote confusion, if not mislead readers of the PDP. She supported, however, Mr Paetz’s recommendation that the following policy be deleted.

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<sup>398</sup> Submissions 339, 373, 706: Supported in FS1040; Opposed in FS1097, FS1162, FS1254, FS1287, FS1313, FS1342 and FS1347

<sup>399</sup> Submissions 600 and 805: Supported in FS1209; Opposed in FS1034 and FS1040

<sup>400</sup> Submission 339, 706: Supported in FS1313; Opposed in FS1015, FS1097, FS1162, FS1254 and FS1287

<sup>401</sup> Submission 373: Supported in FS1040; Opposed in FS1015, FS1097, FS1254, FS1287, FS1342 and FS1347

<sup>402</sup> Submission 598: Supported in FS1287; Opposed in FS1040

<sup>403</sup> Section 42A Report at 12.89-12.90

631. In response to a question from us, Ms Maturin advised that the Society viewed any reference to environmental compensation or offsets as problematic and expressed the view that an applicant should provide a nationally significant benefit before offsets should even be considered.
632. Consideration of the submissions and evidence is against a background of the RPS having three objectives bearing on biodiversity issues:
- a. Objective 10.4.1:  
*“To maintain and enhance the life-supporting capacity of Otago’s biota.”*
  - b. Objective 10.4.2:  
*“To protect Otago’s natural ecosystems and primary production from significant biological and natural threats.”*
  - c. Objective 10.4.3:  
*“To maintain and enhance areas with significant habitats of indigenous fauna.”*
633. Policy 10.5.2 should also be noted, providing for maintenance and where practicable enhancement of the diversity of Otago’s significant indigenous vegetation and significant habitats of indigenous fauna meeting one of a number of tests (effectively criteria for determining what is significant).
634. Policy 3.2.2 of the Proposed RPS takes a more nuanced approach than does the RPS, following the same sequential approach as for landscapes (in Policy 3.2.4, discussed above). Policy 5.4.6, providing for consideration of offsetting of indigenous biological diversity meeting a number of specified criteria, also needs to be noted.
635. We agree with Mr Paetz’s recommendation on Policy 3.2.4.2.1. The reality is if the Strategic Chapters have to set out every nuance of the more detailed provisions, there is no point having the more detailed provisions. We do not regard the fact that the more detailed provisions identify that significant natural areas may be identified through resource consent processes as inconsistent with Policy 3.2.4.2.1. Similarly, given the terms of the RPS and the Proposed RPS (and section 6(c) of the Act, sitting in behind them) we consider the policy is correctly framed, looking first and primarily to protection.
636. We are concerned, however, that the effect of Mr Paetz’s recommendation that Policy 3.2.4.2.2 be deleted is that it leaves the protection of Significant Natural Areas as a bald statement that the more detailed provisions in Chapter 33 might be considered to conflict with.
637. In addition, none of the submissions on this specific point sought deletion of Policy 3.2.4.2.2. While the much more general UCES submission referred to already provides scope to delete any provision of Chapter 3 (since it seeks deletion of the entire chapter) we prefer that the policies state more clearly the extent of the protection provided, and the circumstances when something less than complete protection might be acceptable, in line with the approach of the Proposed RPS.
638. Having said that, we take on board Ms Maturin’s caution that this particular area is a veritable minefield for the unwary and that any policy has to be framed quite carefully.

639. The first point to make is that given the terms of the higher order documents, we think the submitters seeking a policy direction that significant adverse effects on Significant Natural Areas are not acceptable are on strong ground.
640. Secondly, submitters are likewise on strong ground seeking that it be clear that the first preference for non-significant adverse effects is that they be avoided or remedied. We are not so sure about referring to mitigation in the same light<sup>404</sup>.
641. While the High Court has provided guidance as to the distinction between mitigation and environmental offsets/environmental compensation<sup>405</sup>, we recommend that the policy sidestep any potential debate on the distinction to be drawn between the two.
642. Thirdly, the submission seeking a requirement for no net loss in indigenous biodiversity and preferably a net gain is consistent with the Proposed RPS (Policy 5.4.6(b)) and this also needs to be borne in mind.
643. Lastly, we recommend that the division between the two policies be shifted so that Policy 3.2.4.2.1 relates to the identification of Significant Natural Areas and Policy 3.2.4.2.2 outlines how those areas will be managed.

644. In summary, we recommend that the policies as notified be renumbered 3.3.17 and 3.3.18 and amended to read:

*“Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna as Significant Natural Areas on the District Plan maps (SNAs);*

*Protect SNAs from significant adverse effects and ensure enhanced indigenous biodiversity outcomes to the extent that other adverse effects on SNAs cannot be avoided or remedied.”*

### **3.10. Section 3.2.4.3 – Rare Endangered and Vulnerable Species**

645. Policy 3.2.4.3.1 suggests a general requirement that development not adversely affect survival chances of rare, endangered or vulnerable species. Submissions sought variously:
- a. Expansion of the policy to cover development *“and use”*<sup>406</sup>;
  - b. Qualifying the policy to limit *“significant”* adverse effects<sup>407</sup>;
  - c. Qualifying the policy to make it subject to the viability of farming activities not being impacted<sup>408</sup>; and
  - d. Retaining the policy as notified.
646. Given that we see these policies as the means to achieve recommended Objective 3.2.4.1, we do not consider it necessary or appropriate to insert an additional policy on maintenance of biodiversity as sought in submission 339 and 706<sup>409</sup>.

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<sup>404</sup> Although accepting that the Proposed RPS does so at Policy 5.4.6(a)

<sup>405</sup> Refer *Royal Forest & Bird Protection Society of New Zealand Inc v Buller District Council* [2013] NZHC 1346

<sup>406</sup> Submissions 339 and 706: Opposed in FS1162

<sup>407</sup> Submission 600: Supported in FS1209; Opposed in FS1034 and FS1040

<sup>408</sup> Submission 701: Supported in FS1162

<sup>409</sup> Opposed in FS1132, FS1162, FS1254 and FS1287

647. We have recommended the objective that this policy seeks to implement be deleted on the basis that it duplicates protection of areas with significant nature conservation values and the emphasis given elsewhere to maintenance of indigenous biodiversity.
648. Similar reasoning suggests that this policy is unnecessary. Any area which is relevant in any material way to the survival chances of rare, endangered or vulnerable species will necessarily be a significant natural area, as that term is defined. Consistently with that position, in the RPS policy discussed above (10.5.2), the fact that a habitat supports rare, vulnerable or endangered species is one of the specified criteria of significance. If any area falling within that description is not mapped as a SNA, then it should be so mapped so as to provide greater certainty both that the relevant objective will be achieved and for landowners, as to their ability to use land that is not mapped as a SNA. Accordingly, on the same basis as for the objective, we recommend that this policy be deleted, as being the most appropriate way, in combination with Policies 3.3.17 and 3.3.18, to achieve Objectives 3.2.1.7, 3.2.18, 3.2.4.1 and 3.2.4.3-4 inclusive as those objectives relate to indigenous biodiversity.

**3.11. Section 3.2.4.4 Policies – Wilding Vegetation**

649. As notified, policy 3.2.4.4.1 read:

*“That the planting of exotic vegetation with the potential to spread and naturalise is banned.”*

650. A number of submissions sought retention or minor drafting changes to this policy. Federated Farmers<sup>410</sup> however sought that the effect of the policy be softened to refer to appropriate management and reduction of risks.

651. In his Section 42A Report, Mr Paetz recognised that the policy might be considered too absolute. He recommended that it be revised to read:

*“Prohibit the planting of identified exotic vegetation with the potential to spread and naturalise.”*

652. As discussed in relation to Objective 3.2.4.4, wilding vegetation is a significant issue in the District. It is also quite a discrete point, lending itself to strategic direction<sup>411</sup>. We recommended that the objective aspired to is avoidance of wilding exotic vegetation spread. Management and reduction of risk would not achieve that objective, without a clear statement as to the outcome of management and/or the extent of risk reduction.

653. On the other hand, a prohibition of planting of exotic vegetation described only by the characteristic that it has potential to spread and naturalise would go too far. The public are unlikely to be able to identify all the relevant species within this very general description. Mr Paetz suggested limiting the prohibition to identified species<sup>412</sup>, but we think there also needs to be greater guidance as to what the extent of the ‘potential’ for spread needs to be to prompt identification, to ensure that the costs of a prohibition are not excessive, relative to the benefits and to make the suggested prohibition practicable, in terms of RPS Policy 10.5.3. We note in this regard the submissions on behalf of Federated Farmers by Mr Cooper that some wilding species are important to farming in the District at higher altitudes. For the same

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<sup>410</sup> Submission 600: Supported in FS1091 and FS1209; Opposed in FS1034 and FS1040

<sup>411</sup> A combination of circumstances which leads us to reject the suggestion of Mr Farrell that this issue does not justify having a high-level policy addressing it.

<sup>412</sup> Identified in this case meaning identified in the District Plan

reason, we consider there is room for a limited qualification of the policy prohibition, but only if wilding species can be acceptably managed for the life of the planting.

654. Accordingly, we recommend that Policy 3.2.4.4.1 be renumbered 3.3.27 and worded:

*“Prohibit the planting of identified exotic vegetation with the potential to spread and naturalise unless spread can be acceptably managed for the life of the planting.”*

655. We consider that this policy wording is the most appropriate way to achieve Objective 3.2.4.2 in the context of a high-level policy,

### **3.12. Section 3.2.4.5 Policies – Natural Character of Waterways**

656. Policy 3.2.4.5.1 as notified read:

*“That subdivision and/or development which may have adverse effects on the natural character and nature conservation values of the District’s lakes, rivers, wetlands and their beds and margins be carefully managed so that life-supporting capacity and natural character is maintained or enhanced.”*

657. The only amendments sought to this policy sought that reference be added to indigenous biodiversity<sup>413</sup>.

658. Mr Paetz did not recommend any change to the policy as notified.

659. Objectives 6.4.3 and 6.4.8 of the RPS require consideration in this context. Objective 6.4.3 seeks to safeguard life supporting capacity through protecting water quality and quantity. Objective 6.4.8 seeks to protect areas of natural character and the associated values of wetlands, lakes, rivers and their margins. While these objectives are strongly protective of natural character and life-supporting capacity values, the accompanying policies are rather more qualified. Policy 6.5.5 promotes a reduction in the adverse effects of contaminant discharges through, in effect, a ‘maintain and enhance’, approach but with the rider “while considering financial and technical constraints”. Policy 6.5.6 takes a similarly qualified approach to wetlands with an effective acceptance of adverse effects that are not significant or where environmental ‘compensation’ (what we would now call off-setting) is provided. Lastly Policy 6.5.6 takes an avoid, remedy or mitigate approach to use and development of beds and banks of waterways, but poses maintenance (and where practicable enhancement) of life-supporting capacity as a further test.

660. As previously noted, the RPS predates the NPSFM 2014 and therefore, its provisions related to freshwater bodies must therefore be treated with some care. While the NPSFM 2014 is principally directed at the exercise of powers by regional councils<sup>414</sup>, its general water quality objectives<sup>415</sup>, seeking among other things, safeguarding of life supporting capacity and maintenance or improvement of overall water quality need to be noted. Objective C1 is also relevant, seeking improved integrated management of fresh water and use and development of land. From that perspective, we do not regard there being any fundamental inconsistency between the RPS and the subsequent NPSFM 2014, such as would require implementation of a different approach to that stated in the RPS.

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<sup>413</sup> Submissions 339 and 706: Opposed in FS1015, FS1162, FS1254 and FS1287

<sup>414</sup> The policies are almost all framed in terms of actions regional councils are required to take

<sup>415</sup> Seeking among other things, safeguarding of the life supporting capacity and maintenance or improvement of overall water quality

661. The Kawarau WCO has a different focus to either RPS (operative or proposed) or the NPSFM 2014. It identifies the varying characteristics that make different parts of the catchment outstanding and for some parts of the catchment, directs their preservation as far as possible in their natural state, and for the balance of the catchment<sup>416</sup>, directs protection of the characteristics identified as being present. The Kawarau WCO is principally targeted at the exercise of the regional council's powers. To the extent it is relevant to finalisation of the PDP, its division of the catchment, with different provisions applying to different areas, does not lend itself to being captured in a general policy applying across the District.
662. Lastly Policies 3.1.1 and 3.1.2 of the Proposed RPS take a *'maintain and enhance'* position for the different characteristics of water and the beds of waterways, respectively, in the context of an objective<sup>417</sup> seeking that the values of natural resources are *"recognised, maintained or enhanced"*.
663. Against this background, we regard the adoption of the *'maintain or enhance'* test in the PDP policy as being both consistent with and giving effect to the relevant higher order documents.
664. An amendment to refer to indigenous biodiversity in this context would not reflect the form of the objective recommended, and so we do not support that change.
665. We do, however, recommend minor drafting amendments so that the policy be put more positively. We also do not consider that the word *"carefully"* adds anything to the policy since one would hope that all of the policies in the PDP will be implemented carefully.
666. Accordingly, we recommend that Policy 3.2.4.5.1 be renumbered 3.3.19 and amended to read:
- "Manage subdivision and/or development that may have adverse effects on the natural character and nature conservation values of the District's lakes, rivers, wetlands and their beds and margins so that their life-supporting capacity and natural character is maintained or enhanced."*
667. We consider that this policy is the most appropriate way in the context of a high-level policy to achieve the objectives of this chapter related to natural character and life supporting capacity of waterways and their margins (3.2.1.7, 3.2.4.1-4 inclusive, 3.2.5.1 and 3.2.5.2).

### **3.13. Section 3.2.4.6 Policies – Water Quality**

668. As notified, policy 3.2.4.6.1 read:

*"That subdivision and/or development be designed so as to avoid adverse effects on the water quality of lakes, rivers and wetlands in the District."*

669. Submissions on the policy sought variously:
- a. Provision for remediation or mitigation of adverse effects on water quality<sup>418</sup>;
  - a. Restriction to urban development<sup>419</sup>;

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<sup>416</sup> Excluding the lower Dart River, the lower Rees River, and the lower Shotover River that have provisions permitting road works and flood protection works.

<sup>417</sup> Proposed RPS, Objective 3.1

<sup>418</sup> Submission 598: Supported in FS1287; Opposed in FS1040

<sup>419</sup> Submission 600: Supported in FS1209; Opposed in FS1034

- b. Avoidance of significant adverse effects<sup>420</sup>;
- c. Provision for remediation or mitigation where avoidance is not possible<sup>421</sup>;
- d. Avoidance of significant adverse effects on water quality where practicable and avoidance, remediation or mitigation of other adverse effects<sup>422</sup>;
- e. Insert reference to adoption of best practice in combination with designing subdivision development and/or to avoid, remedy or mitigate adverse effects<sup>423</sup>.

670. Mr Paetz did not recommend any amendment to the policy as notified.

671. The same provisions of the RPS, the NPSFM 2014 and the Proposed RPS as were noted in relation to the previous policy are relevant in this context. We note in particular the qualifications inserted on the management of contaminant discharges in Policy 6.5.5 of the RPS.

672. The RPS also states<sup>424</sup> a policy of minimising the adverse effects of land use activities on the quality and quantity of water resources.

673. We accept the general theme of the submissions seeking some qualification of the otherwise absolute obligation to avoid all adverse effects on water quality, irrespective of scale or duration, given that the practical mechanisms to manage such effects (riparian management and setbacks, esplanade reserves, stormwater management systems and the like) are unlikely to meet such a high hurdle, even if that could be justified on an application of section 32 of the Act.

674. We think there is value in the minimisation requirement the RPS directs in combination with a best land use management approach (accepting the thrust of Submission 807 in this regard) so as to still provide clear direction. We do not accept, however, that the policy should be limited to urban development given that the adverse effects of development of land on water quality are not limited to urban environments.

675. While a minimisation policy incorporates avoidance, if avoidance is practically possible, we consider there is value in emphasising that avoidance is the preferred position.

676. In summary therefore, we recommend that Policy 3.2.4.6 be renumbered 3.3.26 and amended to read:

*“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.”*

677. We consider that this policy is the most appropriate way in the context of a high-level policy to achieve the objectives of this chapter related to water quality (3.2.1.8, 3.2.4.1 and 3.2.4.4).

### **3.14. Section 3.2.4.7 Policies – Public Access**

678. Policy 3.2.4.7.1 as notified read:

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<sup>420</sup> Submission 768  
<sup>421</sup> Submission 805  
<sup>422</sup> Submission 635: Supported in FS1301  
<sup>423</sup> Submission 807  
<sup>424</sup> RPS, Policy 5.5.5

*“Opportunities to provide public access to the natural environment are sought at the time of plan change, subdivision or development.”*

679. One submission seeking amendment to this policy<sup>425</sup> sought to emphasise that any public access needs to be ‘safe’ and would substitute the word “considered” for “sought”.
680. Another submission<sup>426</sup> sought that specific reference be made to recreation opportunities.
681. Mr Paetz does not recommend any amendment to this policy.
682. Policy 6.5.10 of the RPS targets maintenance and enhancement of public access to and along the margins of water bodies. This is achieved through “encouraging” retention and setting aside of esplanade strips and reserves and access strips and identifying and providing for other opportunities to improve access. There are a number of exceptions specified in the latter case<sup>427</sup>, but the thrust of the policy is that exceptional reasons are required to justify restriction of public access.
683. Objective 5.1 of the Proposed RPS seeks maintenance and enhancement of public access of all areas of value to the community. Policy 5.1.1, supporting that objective, takes a similar approach to the RPS, directing maintenance and enhancement of public access to the natural environment unless one of a number of specified criteria apply.
684. Neither of the higher order documents require that all opportunities for enhancing public access be seized.
685. While reference to public safety would be consistent with both the RPS and the Proposed RPS, we do not consider that the amendments sought in Submission 519<sup>428</sup> are necessary. The policy as it stands does not require public access, it suggests that public access be sought. Whether this occurs will be a matter for decision on a case by case basis, having regard as appropriate, to the regional policy statement operative at the time. The provisions of both the RPS and the Proposed RPS would bring a range of matters into play at that time, not just health and safety.
686. Similarly, we do not consider specific reference to recreational opportunities is required. Public access to the natural environment necessarily includes the opportunity to recreate, once in that environment (or that part of the natural environment that is publicly owned at least). If the motive underlying the submission is to enable commercial recreation activities then in our view, it needs to be addressed more directly, as an adjunct to provision for visitor industry activities, as was sought by Kawarau Jet Services Ltd<sup>429</sup> in the form of 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.”*

687. The suggested policy does not identify what might be an appropriate range of activities, or how issues of conflict between commercial operators over access to the waterways of the

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<sup>425</sup> Submission 519: Supported in FS1015; Opposed in FS1356

<sup>426</sup> Submission 836: Supported in FS1097, FS1341 and FS1342

<sup>427</sup> Including health and safety

<sup>428</sup> Supported by the evidence of Mr Vivian

<sup>429</sup> Submission 307: Supported in FS1097, FS1235, FS1341

District (previously an issue in a number of Environment Court cases) might be addressed. For all that, the suggested policy has merit. We will discuss shortly the appropriate policy response to commercial recreation activities in rural areas generally. We think the more specific issue of commercial recreation activities on the District's waterways is more appropriately addressed in Chapter 6 and we will return to it there.

688. We therefore recommend only a minor drafting change to put the policy (renumbered 3.3.28) more positively as follows:

*“Seek opportunities to provide public access to the natural environment at the time of plan change, subdivision or development.”*

689. We consider that this wording in the context of a high-level policy is the most appropriate way to achieve objective 3.2.4.5.

### **3.15. Section 3.2.4.8 – Policies – Climate Change**

690. The sole policy under this heading read as notified:

*“Concentrate development within existing urban areas, promoting higher density development that is more energy efficient and supports public transport, to limit increases in greenhouse gas emissions in the District”.*

691. Submissions seeking changes to this policy sought variously:

- a. To be less directive, seeking encouragement where possible and deletion of reference to greenhouse gas emissions<sup>430</sup>;
- b. Retaining the existing wording, but deleting the connection to greenhouse gas emissions<sup>431</sup>;
- c. Opposed it generally on the basis that suggested policy does not implement the objective<sup>432</sup>.

692. Mr Paetz did not recommend any amendment to the policy.

693. We see a number of problems with this policy. As Submission 519 identified, not all development is going to be within existing urban areas. Quite apart from the fact that the UGBs provide for controlled growth of the existing urban areas, non-urban development will clearly take place (and is intended to take place) outside the UGBs.

694. If the policy were amended to be restricted to urban development, as we suspect is the intention, it would merely duplicate the UGB policies and be unnecessary.

695. In summary, we recommend that the most appropriate way to achieve the objectives of this chapter is if Policy 3.2.4.8.1 is deleted.

696. That is not to say that the PDP has no role to play in relation to climate change. We have already discussed where and how it might be taken into account in the context of Objective 3.2.4.8.

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<sup>430</sup> Submission 519: Supported in FS1015; Opposed in FS1356

<sup>431</sup> Submissions 519 and 598: Supported in FS1015 and FS1287; Opposed in FS1356

<sup>432</sup> Submission 798

697. Submission 117 sought a new policy to be applied to key infrastructure and new developments, relating to adaption to the effects of climate change. The submission specifically identified hazard management as the relevant adaptation.
698. We have already recommended specific reference to the need to take climate change into account when addressing natural hazard issues in the context of Objective 3.2.2.1.
699. We view further policy provision for adaption to any increase in natural hazard risk associated with climate change better dealt with as an aspect of management of development in both urban and rural environments rather than more generally. Accordingly, we will return to it in the context of our Chapter 4 and 6 reports.
700. We note that notified Policy 3.2.1.3.2 related to adaptation to climate change in other respects. We discuss that policy below.

**3.16. Section 3.2.5 Policies - Landscape**

701. As notified, Policy 3.2.5.1.1 related both to identification of ONLs and ONFs on the District Plan maps and to their protection.
702. In his Section 42A Report, Mr Paetz recommended that the policy be deleted on the basis that it duplicated matters that were better addressed in Chapter 6.
703. By his reply evidence, Mr Paetz had reconsidered that view and recommended that the first part of the policy, providing for identification of ONLs and ONFs on the plan maps, be reinstated.
704. Submissions on the policy as notified sought variously:
- a. Either deletion of the ONL and ONF lines from the planning maps or alteration of their status so that they were indicative only<sup>433</sup>;
  - b. Qualifying the extent of protection to refer to inappropriate subdivision, use and development<sup>434</sup>;
  - c. Qualifying the reference to protection, substituting reference to avoiding, remedying or mitigating adverse effects, or alternatively management of adverse effects<sup>435</sup>.
705. The argument that ONLs and ONFs should not be identified on the planning maps rested on the contention (by Mr Haworth for UCES) that the lines as fixed are not credible. The exact location of any ONL and ONF lines on the planning maps is a matter for another hearing. However, we should address at a policy level the contention that there is an inadequate basis for fixing such lines and that establishing them will be fraught and expensive.
706. Dr Marion Read gave evidence on the work she and her peer reviewers undertook to fix the ONL and ONF lines. While Dr Read properly drew our attention to the fact that the exercise she had undertaken was not a landscape assessment from first principles, she clarified that qualification when she appeared before us. In Dr Read's view, the impact of not having worked from first principles was very minor in terms of the robustness of the outcome.

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<sup>433</sup> Submission 145: Supported in FS1097; Opposed in FS1162 and FS1254

<sup>434</sup> Submissions 355, 519, 598, 600, 805: Supported in FS1015, FS1117, FS1209 and FS1287; Opposed in FS1034, FS1097, FS1282, FS1320 and FS1356

<sup>435</sup> Submissions 519, 607, 615, 621, 624, 716: Supported in FS1015, FS1097, FS1105 and FS1137; Opposed by FS1282 and FS1356

707. That may well be considered something of an understatement given that Dr Read explained that she had gone back to first principles for all of the new ONL and ONF lines she had fixed. The areas where there might be considered a technical deficiency for failure to go back to first principles were where she had relied on previous determinations of the Environment Court.
708. We think it was both pragmatic and sensible on Dr Read's part that where the Environment Court had determined the location of an ONL or ONF line she took that as a given rather than reinventing that particular wheel. We asked a number of the parties who appeared before us if it was appropriate to rely on Environment Court decisions in this regard, and there was general agreement that it was<sup>436</sup>.
709. In summary, we do not accept the submission that the ONL and ONF lines are not credible. That is not to say that we accept that they are correct in every case and at every location. As above, that is a matter for differently constituted hearing panels to consider, but we are satisfied that the process that has been undertaken for fixing them is robust and can be relied upon unless and until credible expert evidence calls the location of those lines into question.
710. So far as the question of costs and benefits is concerned, Dr Read accepted in evidence before us that the process for confirming the lines set out in the planning maps will likely be fraught and expensive but as she observed, the current process where the status of every landscape (as an ONL, ONF, VAL or ORL) has to be determined as part of the landscape assessment for the purposes of a resource consent application is fraught and expensive. She did not know how one would go about trying to quantify and compare the relative costs of the two and neither do we.
711. What we do know is that the Environment Court found in 1999 that one could not properly state objectives and policies for areas of outstanding natural landscape unless they had been identified<sup>437</sup>. In that same decision, it is apparent that the Court approached the appeals on what ultimately became the ODP with considerable frustration that with certain notable exceptions, the parties appearing before it (including the Council) had not identified what they contended to be the boundaries of ONLs or ONFs. It appears<sup>438</sup> that the only reason that the Court did not fix lines at that point was the amount of effort and time that it would take to undertake a comprehensive assessment of the District. We are not in that position. The assessment has been undertaken by Dr Read and her peer reviewers to arrive at the lines currently on the maps. All the parties who have made submissions on the point will have the opportunity to call expert evidence to put forward a competing viewpoint in the later hearings on mapping issues.
712. Most importantly, at the end of the process, the Council will have recommendations as to where those lines should be based on the best available evidence.
713. We accept that even after they are fixed, it will still be open to parties to contend that a landscape or feature not currently classified in the plan as an ONL or ONF is nevertheless outstanding and should be treated as such for the purposes of determination of a future

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<sup>436</sup> Mr Goldsmith for instance expressed that view (for Allenby Farms Ltd, Crosshill Farms Ltd and Mt Cardrona Station Ltd). We note however that some parties sought to draw a distinction between lines that had been drawn by the Court after a contested hearing of landscape experts and those that were the result of consent orders and/or where the issue was not contested.

<sup>437</sup> C180/99 at [97]

<sup>438</sup> From paragraph [99]

resource consent process<sup>439</sup>. Nevertheless, we think there is value in the PDP providing direction in this regard.

714. We also note that Policy 3.2.3 of the Proposed RPS directs that areas and values, among other things, of ONLs and ONFs be identified. We are required to have regard to that policy and that is exactly what the PDP does. It defines areas of ONLs and ONFs. We note the submission of Otago Regional Council in this regard<sup>440</sup>, supporting the identification of ONLs and ONFs, reflecting in turn the policies of the Proposed RPS directing identification of outstanding and highly-valued features and landscapes we have previously discussed<sup>441</sup>.
715. In summary, we do not accept the UCES submission that the ONL/ONF lines should be deleted, or alternatively tagged as being indicative only.
716. The secondary question is whether if, as we would recommend, Policy 3.2.5.1.1 is retained, it, or a subsequent strategic policy in this part of Chapter 3, should specify what course of action is taken consequential on that identification or whether, as Mr Paetz recommends, those matters should be dealt with in Chapter 6.
717. In summary, we recommend that a separate policy be inserted following what was Policy 3.2.5.1.1 stating in broad terms that the policy is for management of activities affecting ONLs and ONFs. Quite simply, we see this as part of the strategic direction of the Plan. While Chapter 6 contains more detailed provisions, Chapter 3 should state the overall policy.
718. We have already discussed at some length the appropriate objective for ONLs and ONFs, considering as part of that analysis, the relevant higher order provisions, and concluding that the desired outcome should be that the landscape and visual amenity values and natural character of ONLs and ONFs are protected against the adverse effects of subdivision use and development that are more than minor and/or not temporary in duration.
719. To achieve that objective, we think it is necessary to have a high-level policy addressing the need to avoid more than minor adverse effects on those values and on the natural character of ONLs and ONFs that are not temporary in duration.
720. We have had regard to the many submissions we received at the hearing emphasising the meaning given to the term “avoid” by the Supreme Court in *King Salmon* (not allow or prevent the occurrence of<sup>442</sup>).
721. It was argued for a number of parties that an avoidance policy in relation to ONLs and ONFs would create a ‘dead hand’ on all productive economic activities in a huge area of the District.
722. A similar ‘*in terrorem*’ argument was put to the Supreme Court in *King Salmon* which rejected the contention that the interpretation they had given to the relevant policies of the NZCPS would be unworkable in practice<sup>443</sup>. The Court also drew attention to the fact that use and development might have beneficial effects rather than adverse effects.

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<sup>439</sup> Refer Unison Networks Limited v Hastings District Council CIV2007-485-896

<sup>440</sup> Submission 798

<sup>441</sup> Proposed RPS, Policies 3.2.3 and 3.2.5

<sup>442</sup> [2014] NZSC38 at [93]

<sup>443</sup> See [2014] NZSC38 at [144]-[145]

723. The evidence we heard was that many of the outstanding landscapes in the District are working landscapes. Dr Read’s evidence is that the landscape character reflects the uses currently being made of it and in some cases, the character of the landscapes is dependent on it. Clearly continuation of those uses is not inconsistent with the values that lead to the landscape (or feature) in question being categorised as outstanding.
724. Our recommendation makes it clear that minor and temporary effects are not caught by this policy. That will permit changes to current uses that are largely consistent with those same values. If a proposal would have significant adverse effects on an ONL or an ONF, in our view and having regard to the obligation on us to recognise and provide for the preservation of ONLs and ONFs, that proposal probably should not gain consent.
725. In summary therefore, we recommend that there be two policies in relation to ONLs and ONFs in Chapter 3 (numbered 3.3.29 and 3.3.30) reading as follows:
- “Identify the District’s Outstanding Natural Landscapes and Outstanding Natural Features on the District Plan maps.”*
- “Avoid adverse effects on the landscape and visual amenity values and natural character of the District’s Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor in extent and or not temporary in duration.”*
726. We consider that these policies are the most appropriate way to achieve Objective 3.2.5.1, in the context of the package of high-level policies recommended in this report.
727. Turning to non-outstanding landscapes, Policy 3.2.5.2.1 as notified read:
- “Identify the district’s Rural Landscape Classification on the District Plan maps, and minimise the effects of subdivision, use and development on these landscapes.”*
728. With the exception of UCES<sup>444</sup>, who submitted (consistently with its submission on Policy 3.2.5.1.1) that there should be no determinative landscape classifications on planning maps, most submitters accepted the first half of the policy (identifying the Rural Landscape Classification on the maps) and focussed on the consequences of that identification. Many submitters sought that adverse effects on these landscapes be avoided, remedied or mitigated either by amending the policy or by adding a stand-alone policy to that effect<sup>445</sup>. Some of those submitters also sought reference to inappropriate subdivision, use and development.
729. Another option suggested was to substitute ‘manage’ for ‘minimise’<sup>446</sup>.
730. Mr Paetz recommended that the policy be deleted on the basis that both aspects of the policy were better addressed in Chapter 6.
731. We do not concur. Consequential on the recommendation as above, that the policies for ONLs and ONFs should state both the intention to identify those landscapes and features on the planning maps and separately and in broad terms, the course of action proposed, we consider

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<sup>444</sup> Submission 145: Supported in FS1097; Opposed in FS1162

<sup>445</sup> Submissions 437, 456, 513, 515, 522, 531, 532, 534, 535, 537, 608, 643, 696, 805: Supported in FS1097, FS1256, FS1286, FS1292, and FS1322; Opposed in FS1034, FS1068, FS1071 and FS1120

<sup>446</sup> Submission 519, 598: Supported in FS1015, FS1117 and FS1292; Opposed in FS1282 and FS1356

that it follows that Chapter 3 should also follow the same format for non-outstanding landscapes.

732. It is also consequential on the recommendations related to the ONL and ONF policies that that we do not recommend that the UCES submission be accepted. Having identified ONLs and ONFs on the planning maps, there seems to be little point in not identifying the balance of the rural landscape.

733. Accordingly, the only suggested changes are minor drafting issues and a change of terminology, consequential on the recommendation as above that these balance rural landscapes be termed Rural Character Landscapes so that the renumbered Policy 3.3.31 would read:

*“Identify the District’s Rural Character Landscapes on the District Plan Maps.”*

734. Turning to the consequences of identification, a number of the submitters on this policy noted the need for it to reflect the terminology and purpose of the Act. This is an example of the general point made at an earlier part of this report, where utilising the terminology of the Act provides no direction or guidance as to the nature of the course of action to be undertaken.

735. This is still more the case with those submissions seeking that adverse effects be managed.

736. For these reasons, we do not recommend acceptance of the relief sought in these submissions.

737. We do, however, accept that the focus on minimising adverse effects is not entirely satisfactory.

738. While we do not accept the opinion of Mr Ben Farrell (that a policy of minimising adverse effects is ambiguous), the relevant objective we have recommended seeks that rural character and amenity values in these landscapes be maintained and enhanced by directing new subdivision, use and development to occur in appropriate areas – areas that have the potential to absorb change without materially detracting from those values.

739. We also have regard to notified Policy 6.3.5.1 which states that subdivision and development should only be allowed *“where it will not degrade landscape quality or character, or diminish identified visual amenity values.”*

740. We think that particular policy goes too far, seeking no degradation of landscape quality and character and diminution of visual amenity values and needs to have some qualitative test inserted<sup>447</sup>, but the consequential effect of aligning the policy with the objective together with incorporating elements from Policy 6.3.5.1 is that the policy addressing activities in Rural Character Landscapes should be renumbered 3.3.32 and read:

*“Only allow further land use change in areas of the Rural Character Landscape able to absorb that change and limit the extent of any change so that landscape character and visual amenity values are not materially degraded.”*

741. We consider that the recommended Policies 3.3.31 and 3.3.32 are the most appropriate way to achieve Objectives 3.2 1.9 and 3.2.5.2, in the context of the package of high-level policies recommended in this report.

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<sup>447</sup> To that extent we accept the substance of Submissions 456, 598 and 806 on Policy 6.3.5.1.

**3.17. Section 3.2.5.3 – Policies – Urban Development**

742. As notified, this policy read:

*“Direct urban development to be within urban growth boundaries (UGBs) where these apply, or within the existing rural townships.”*

743. Mr Paetz recommended that this policy be amended to provide both for urban development within and outside UGBs.

744. Either in its notified form or as Mr Paetz has recommended it be amended, this policy entirely duplicates the policies discussed above related to urban development (the recommended revised versions of Policies 3.2.2.1.2 and 3.2.2.1.6).

745. Accordingly, we recommend that the most appropriate way to achieve the objectives of this chapter related to urban development is that it be deleted, consistent with the Real Journeys’ submission that duplication generally be avoided.

**3.18. Section 3.2.5.4 Policies – Rural Living**

746. As notified, these two policies addressed provision for rural living as follows:

*“3.2.5.4.1 Give careful consideration to cumulative effects in terms of character and environmental impact when considering residential activity in rural areas.*

*3.2.5.4.2 Provide for rural living opportunities in appropriate locations.”*

747. There were two submissions on Policy 3.2.5.4.1, one seeking its deletion on the basis that it may conflict with case law related to weighting of cumulative effects, the permitted baseline and the future environment<sup>448</sup> and the other seeking more effective guidance on how much development is too much<sup>449</sup>.

748. Most of the submissions on Policy 3.2.5.4.2 supported the policy in its current form. One submitter<sup>450</sup> sought that the Council should continue with its plans to rezone land west of Dalefield Road to Rural Lifestyle or Rural Residential, but did not seek any specific amendment to the policy. Mr Paetz did not recommend any change to the wording of these policies.

749. While we do not support the submission seeking that Policy 3.2.5.4.1 be deleted, the submitter has a point in that the policy is expressed so generally that it may have consequences that cannot currently be foreseen. Notwithstanding that, clearly cumulative effects of residential activity is an issue requiring careful management, as we heard from Dr Read. The problem is that a policy indicating that cumulative effects will be given *“careful consideration”* is too non-specific as to what that careful consideration might entail. As Submission 806 suggests, greater clarity is required as to how it will operate in practice.

750. The policies of Section 6.3.2 (as notified) give some sense of what is required (acknowledging the finite capacity of rural areas to accommodate residential development, not degrading landscape character and visual amenity, taking into account existing and consenting

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<sup>448</sup> Submission 519: Supported in FS1015; Opposed in FS1356

<sup>449</sup> Submission 806: Supported in FS1313

<sup>450</sup> Submission 633

subdivision or development). We recommend that some of these considerations be imported into policy 3.2.5.4.1 to confine its ambit, and thereby address the submitter's concern.

751. One issue in contention was whether the description in the ODP of rural non-outstanding landscapes as being "*pastoral (in the poetic and picturesque sense rather than the functional sense) or Arcadian landscapes*"<sup>451</sup> should be retained. Mr Goldsmith<sup>452</sup> argued that this description, which was coined by the Environment Court<sup>453</sup>, should be retained if circumstances have not changed.
752. The evidence of Dr Read was that this description has proven confusing, and has been interpreted as a goal, rather than as a description. Her June 2014 Report<sup>454</sup> fleshed this out, suggesting that neither lay people nor professionals have had a clear understanding of what an arcadian landscape is, and that a focus on replicating arcadia has produced an English parkland character in some areas of the Wakatipu Basin that, if continued, would diminish the local indigenous character.
753. Dr Read also emphasised the need to acknowledge the differences between the character of the Upper Clutha Basin and the Wakatipu Basin.
754. Mr Goldsmith acknowledged those differences but suggested to us that the PDP treated the Wakatipu Basin as if it were the Hawea Flats, whereas his description of the ODP was that it did the reverse (i.e. treated the Hawea Flats as they were the Wakatipu Basin)<sup>455</sup>.
755. We take his point and have accordingly looked for a broader description that might exclude ONL's and ONF's (where the focus is necessarily on protection rather than enabling development), but capture both areas, while allowing their differences (and indeed the differences in landscape character within the Wakatipu Basin that Mr Goldsmith sought recognition for) to be taken into account.
756. Mr Jeff Brown<sup>456</sup> suggested to us that the ultimate goal is met if the character of an area remains '*rural*'<sup>457</sup>, and therefore the test should be if the area retains a rural '*feel*'. While this comes perilously close to a test based on the '*vibe*'<sup>458</sup>, we found Mr Brown's evidence helpful and have adapted his suggested approach to provide a more objective test.
757. The interrelationship with Policy 3.2.5.4.2 also needs to be noted. Better direction as to what a careful consideration of cumulative effects means, requires, among other things, identification of where rural living opportunities might be appropriate. As Submission 633 notes, one obvious way in which the PDP can and does identify such appropriate locations is through specific zones. Another is by providing greater direction of areas within the Rural Zone

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451 ODP 4.2.4(3)

452 Addressing us on this occasion on behalf of GW Stalker Family Trust and others

453 In C180/99

454 '*Wakatipu Basin Residential Subdivision and Development: Landscape Character Assessment*'

455 Legal Submissions for GW Stalker and others at 6.3(c)

456 Giving evidence on behalf of Ayrburn Farms Ltd, Bridesdale Farms Developments Ltd, Shotover Park Ltd and Trojan Helmet Ltd

457 NZIA's Submission 238 makes a similar point

458 Refer the film, 'The Castle' (1997)

where rural living developments are not appropriate<sup>459</sup>. We agree that a greater level of direction would assist plan users in this regard.

758. In summary, we recommend the following amendments to Policies 3.2.5.4.1 and 3.2.5.4.2 (renumbered 3.3.22 and 3.3.24), together with addition of a new Policy 3.3.23 as follows:

*“Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for rural living developments.*

*Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas.*

*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.”*

759. We consider that the combination of these policies operating in conjunction with recommended Policies 3.3.29-3.3.32, are the best way in the context of high-level policies to achieve Objectives 3.2.1.8, 3.2.5.1 and 3.2.5.2, as those objectives relate to rural living developments.
760. It is appropriate at this point that we address the many submissions we had before us from infrastructure providers seeking greater recognition of the needs of infrastructure.
761. Objective 3.2.1.9 discussed above is the reference point for any additional policies on infrastructure issues.
762. In the rural environment, the principal issue for determination is whether infrastructure might be permitted to have greater adverse effects on landscape values than other development, and if so, in what circumstances and to what extent. Consideration also has to be given as to whether recognition needs to be given at a strategic level to reverse sensitivity effects on infrastructure in the rural environment.
763. Among the suggestions from submitters, new policies were sought to enable the continued operation, maintenance, and upgrading of regionally and nationally significant infrastructure and to provide that such infrastructure should where practicable, mitigate its impacts on ONLs and ONFs <sup>460</sup>.

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<sup>459</sup> Mr Goldsmith (on this occasion when appearing for GW Stalker Family Trust and Others) suggested to us that specific areas might be identified and nominated the north side of Malaghans Road and a portion of Speargrass Flat Road as potential areas that could be specifically identified as being unable to absorb further development, rather than relying on generic policies. Mr Ben Farrell similarly supported what he termed a finer grained approach to management of the Wakatipu Basin. We note that PDP Chapter 24 notified as part of the Stage 2 Variations seeks to provide greater guidance to development within the Wakatipu Basin

<sup>460</sup> Submissions 251, 433: Supported in FS1077, FS1092, FS1097, FS1115, FS1121 and FS1211; Opposed in FS1040 and FS1132

764. Transpower New Zealand Limited<sup>461</sup> sought the inclusion of a new definition for regionally significant infrastructure which would include:
- a. *“Renewable electricity generation facilities, where they supplied the National Electricity Grid and local distribution network; and*
  - b. *The National Grid; and*
  - c. *The Electricity Distribution Network; and*
  - d. *Telecommunication and Radio Community facilities; and*
  - e. *Road classified as being of national or regional importance; and*
  - f. *Marinas and airports; and*
  - g. *Structures for transport by rail”.*
765. Transpower’s focus on nationally and regionally significant infrastructure is consistent with Policy 4.3.2 of the Proposed RPS, which now reads:
- a. *“Recognise the national and regional significance of all of the following infrastructure:*
  - b. *Renewable electricity generation activities, where they supply the national electricity grid and local distribution network;*
  - c. *Electricity transmission infrastructure;*
  - d. *Telecommunication and radiocommunication facilities;*
  - e. *Roads classified as being of national or regional importance;*
  - f. *Ports and airports and associated navigation infrastructure;*
  - g. *Defence facilities;*
  - h. *Structures for transport by rail.”*
766. This policy wording differs from the corresponding policy (3.5.1) in the notified version of the Proposed RPS that was the relevant document at the date of hearing<sup>462</sup> in the following material respects:
- a. (a) now applies to renewable electricity generation “activities”, rather than facilities;
  - b. Reference to associated navigation infrastructure has been added to (e);
  - c. Recognition of defence facilities is new.

In addition, the term ‘*electricity transmission infrastructure*’ is now defined to mean the National Grid (adopting the definition in the NPSET 2008).

767. The submission of Aurora Energy Limited<sup>463</sup> suggested a different definition of regionally significant infrastructure that varied from both that suggested by Transpower and the Proposed RPS, but included among other things, electricity distribution networks, community water supply systems, land drainage infrastructure and irrigation and stock water infrastructure. Aurora also sought the inclusion of an additional definition for ‘*critical electricity lines*’<sup>464</sup>.
768. Mr Paetz’s Section 42A Report largely adopted the ‘*definition*’ of regionally significant infrastructure in the notified version of the Proposed RPS with the following changes:

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<sup>461</sup> Submission 805: Supported in whole or in part in FS1077, FS1106, FS1121, FS1159, FS1208, FS1211, FS1253 and FS1340

<sup>462</sup> And that obviously formed the basis of the relief sought in the Transpower submission

<sup>463</sup> Submission 635: Supported in whole or in part in FS1077, FS1097 and FS1211; Opposed in FS1132

<sup>464</sup> Opposed in FS1301 and FS1322

- a. Mr Paetz recommended that renewable electricity generation facilities qualify where they are operated by an electricity operator (a defined term under the Electricity Act 1992) so as to exclude small and community-scale electricity generators;
  - b. He suggested reference to '*designated*' airports;
  - c. He deleted reference to ports, there being none in a landlocked District;
  - d. He deleted reference to rail structures, there being no significant rail lines within the District.
769. This recommendation produced considerable discussion and debate during the course of the hearing.
770. QAC pointed out that Glenorchy is a designated airport, but one would struggle to regard it as regionally significant. QAC agreed that reference might appropriately be limited to Queenstown and Wanaka airports.
771. Transpower New Zealand Limited expressed considerable concern that the National Grid was not specifically mentioned. We found this a little puzzling since the NPSET uses the term '*electricity transmission infrastructure*' and the National Grid clearly comes within that term (the NPSET 2008 in fact defines them to be one and the same thing). Also, quite apart from the NPSET 2008, no one could seriously contend that the National Grid was not regionally and nationally significant.
772. The discussion we had with representatives of Transpower did however, highlight an issue at the other end of the spectrum. While the Decisions Version of the Proposed RPS now puts it beyond doubt (by adopting the NPSET 2008 definition), the general term '*electricity transmission infrastructure*' could be argued to include every part of the electricity transmission network, down to individual house connections, which while extremely important to the individuals concerned, could not be considered regionally significant.
773. We invited the representative of Aurora Energy, Ms Dowd, to come back to us with further information on those parts of Aurora's electricity distribution network that might properly be included within the term regionally significant infrastructure. She identified those parts of the Aurora Network operating at 33kV and 66kV and four specific 11kV lines servicing specific communities. Ms Dowd also drew our attention to the fact that a number of other Regional Policy Statements and District Plans have a focus on "*critical infrastructure*".
774. In Mr Paetz's reply evidence, he suggested a further iteration of this definition to limit electricity transmission infrastructure to the National Grid (necessarily excluding any electricity transmission lines in the Aurora network), add reference to key centralised Council infrastructure, and refer only to Queenstown and Wanaka airports.
775. Having regard to the Proposed RPS, as we are bound to do, we take the view that the focus should primarily be on regionally significant infrastructure (not some more broad ranging description such as '*critical*' infrastructure).
776. Secondly, identification of '*regionally*' significant infrastructure is primarily a matter for the Regional Council, except where the Proposed RPS might be considered ambiguous or inapplicable.
777. We therefore agree with Mr Paetz that reference to ports and rail structures might be deleted.

778. We cannot recommend acceptance of Mr Paetz’s suggestion that key Council infrastructure should be included. While it would satisfy the Aurora test of critical infrastructure, the Regional Council has not chosen to identify it as regionally significant and while critical to the District, it is difficult to contend that it has significance beyond the District boundaries.
779. For similar reasons, we do not recommend identifying particular aspects of the Aurora distribution network. Again, while they would meet a test of critical infrastructure from the District’s perspective, the Regional Council has not identified them as *‘regionally significant’* – in the Decisions Version of the Proposed RPS, the Regional Council has explicitly excluded electricity transmission infrastructure that does not form part of the National Grid. Mr Farrell’s contention that tourism infrastructure should be included within *‘regionally significant infrastructure’* fails for the same reasons.
780. We also think that the reference to roads of national or regional significance can be simplified. These are the state highways.
781. Reference to Airports can, as QAC suggested, be limited to Queenstown and Wanaka Airports, but as a result of the amendment in the Proposed RPS to the relevant policy, reference should be made to associated navigation infrastructure.
782. We do not consider, however, that reference needs to be made to defence facilities. NZ Defence Force did not seek that relief in its submission<sup>465</sup> which is limited to relief related to temporary activities (in Chapter 35), from which we infer the Defence Force has no permanent facilities in the District. Certainly, we were not advised of any.
783. Lastly, the representatives of Transpower New Zealand Limited advised us that there are no electricity generation facilities supplying the National Grid in the District. The Roaring Meg and Wye Creek hydro generation stations are embedded in the Aurora line network and the Hawea Control Structure stores water for the use of the large hydro generation plants at Clyde and Roxburgh (outside the District) but does not generate any electricity of its own. We think that having regard to Policy A of the NPSREG 2011, this aspect of the definition needs to be amended to recognise the national significance of those activities.
784. In summary, we recommend that the Stream 10 Hearing Panel consider a definition of regionally significant infrastructure for insertion into the PDP as follows:
- “Regionally significant infrastructure – means:*
- a. Renewable electricity generation activities undertaken by an electricity operator; and*
  - b. The National Grid; and*
  - c. Telecommunication and radiocommunication facilities; and*
  - d. State highways; and*
  - e. Queenstown and Wanaka Airports and associated navigation infrastructure.”*

785. This then leaves the question of the extent to which recognition of regionally significant infrastructure is required in the PDP.

786. Mr Paetz did not recommend an enabling approach to new infrastructure given the potential conflicts with section 6(a) and (b) of the Act.

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<sup>465</sup> Submission 1365

787. We appreciate his point. The Proposed RPS would not require that and in the extensive discussion earlier regarding the inter-relationship between significant infrastructure, in particular the National Grid, and the objective related to ONLs and ONFs, we concluded that the NPSET 2008 did not require provisions that would permit development of the National Grid in ways that would have significant adverse effects on ONLs and ONFs.
788. We do think, however, that it would be appropriate to provide some recognition to the locational constraints that infrastructure can be under.
789. Nor are locational constraints solely limited to infrastructure. The District has a number of examples of unique facilities developed for the visitor industry in the rural environment that by their nature, are only appropriate in selected locations. We have also already discussed submissions on behalf of the mining industry seeking to provide for the location-specific nature of mining<sup>466</sup>.
790. As with infrastructure, provisions providing for such developments cannot be too enabling, otherwise they could conflict with the Plan's objectives (and the relevant higher order provisions) related to the natural character of waterways, ONLs and ONFs and areas of indigenous vegetation and significant habitats of indigenous fauna. However, we consider that it is appropriate to make provision for such facilities.
791. Accordingly, we recommend that the following policy (numbered 3.3.25) be inserted:
- “Provide for non-residential development with a functional need to locate in the rural environment, including regionally significant infrastructure where applicable, through a planning framework that recognises its locational constraints, while ensuring maintenance and enhancement of the quality of the rural environment.”*
792. So far as regionally significant (and other) infrastructure in rural areas is concerned, this general recognition will need to be augmented by more specific policies. We will return to the point in the context of Chapter 6.
793. We have also considered the separate question, as to whether specific provision needs to be made for reverse sensitivity effects on infrastructure (regionally significant or otherwise) at a strategic level, in the rural environment. Clearly the Proposed RPS (Policy 4.3.4) supports some policy provision being made and we accept that this is an issue that needs to be addressed. The only issue is where it is best covered. We have concluded that this is a matter that can properly be left for the Utilities and Subdivision Chapters of the PDP.
794. This leaves open the question of provision for infrastructure in urban environments. We have taken the view that with limited exceptions, the high-level policy framework for urban development should be addressed in an integrated manner in Chapter 4. Consistent with that position, we will return to the question of infrastructure in that context.
795. It follows that we consider that recommended Policy 3.3.25 is the most appropriate way to achieve Objectives 3.2.1.8, 3.2.1.9, 3.2.5.1 and 3.2.5.2 as they relate to locationally-constrained developments, supplemented by more detailed policies in Chapters 4, 27 and 30.

### **3.19. Section 3.2.5.5 Policies – Ongoing Agricultural Activities**

796. As notified there are two related policies on this subject that read as follows:

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<sup>466</sup> Policy 5.3.5 of the Proposed RPS also supports recognition of mining in this context

- “3.2.5.5.1 Give preference to farming activity in rural areas except where it conflicts with significant nature conservation values;  
 3.2.5.5.2 Recognise that the retention of the character of rural areas is often dependent on the ongoing viability of farming and that evolving forms of agricultural land use which may change the landscape are anticipated.”

797. These policies attracted a number of submissions.
798. Some submissions sought deletion of Policy 3.2.5.5.1<sup>467</sup>.
799. Many other submissions sought that Policy 3.2.5.5.1 be broadened to refer to “*other activities that rely on rural resources*.”<sup>468</sup>
800. Some submissions sought deletion of the qualification referring to significant nature conservation values<sup>469</sup>.
801. Many of the same submitters sought that Policy 3.2.5.5.2 be broadened, again to refer to activities that rely on rural resources, and to expand the reference to agricultural land use to include “*other land uses*”<sup>470</sup>.
802. Other more minor changes of emphasis were also sought.
803. Consideration of these policies takes place against a background of evidence we heard from Mr Philip Bunn of the challenges farmers have in continuing to operate in the District, particularly in the Wakatipu Basin.
804. The theme of many of the submitters who appeared before us was to challenge the preference given to farming over other land uses. As such, this formed part of the more general case seeking recognition of non-farming activities in the rural environment, particularly visitor industry related activities and rural living, but also including recreational use<sup>471</sup>.
805. We discussed with the counsel and expert planners appearing for those submitters the potential ambit of a reference to activities “*relying on rural resources*”. From the answers we received, this is a somewhat elastic concept, depending on definition. Some counsel contended, for instance, that rural living (aka houses) would satisfy the test of being reliant on rural resources<sup>472</sup>.

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<sup>467</sup> Submissions 598, 608, 696: Supported in FS1097 and FS1287; Opposed in FS1034, FS1091, and FS1132

<sup>468</sup> Submissions 345, 375, 437, 456, 513, 515, 522, 531, 532, 534, 535, 537: Supported in FS1097, FS1256, FS1286 and FS1322; Opposed in FS1068, FS1071, FS1120 and FS1282

<sup>469</sup> Submissions 701 and 784: Supported in FS1162

<sup>470</sup> Submissions 343, 345, 375, 437, 456, 515, 522, 531, 532, 534, 535: Supported in FS1097, FS1292 and FS1322; Opposed in FS1068, FS1071 and FS1282. See also Submissions 607, 615, 643; Supported in FS1097, FS1105 and FS1077 to like effect

<sup>471</sup> See e.g. submission 836

<sup>472</sup> For example, Ms Wolt advanced that position, appearing for Trojan Helmet Ltd, and supported by Mr Jeff Brown’s evidence. Mr Tim Williams, giving planning evidence for Skyline Enterprises Ltd, Totally Tourism Ltd, Barnhill Corporate Trustee Ltd & DE, ME Bunn & LA Green, AK & RB Robins & Robins Farm Ltd, Slopehill JV, expressed the same opinion from a planning perspective. By contrast Chris Ferguson, the planning witness for Darby Planning LP and Hansen Family Partnership, suggested that a slightly different test (functional need) would be met by rural contracting depots but not by ‘*rural living*’.

806. We have made recommendations above as to how use of rural land for rural living should be addressed at a strategic policy level. We therefore do not consider that changes are necessary to these policies to accommodate that point, particularly given the potential ambiguities and definitional issues which might arise.

807. Turning to use of rural land by the visitor industry, Policy 6.3.8.2 provides wording that in our view is a useful starting point. As notified, this policy read:

*“Recognise that commercial recreation and tourism related activities locating within the rural zones may be appropriate where these activities enhance the appreciation of landscapes, and on the basis that they would protect, maintain or enhance landscape quality, character and visual amenity values.”*

808. This wording would respond to the evidence of Mr Jeff Brown on behalf of Kawarau Jet Services Limited supporting specific reference to commercial recreational activities in recreational areas and on lakes and rivers in the district<sup>473</sup>. We do not think that specific reference needs to be made to lakes and rivers in this context, as, with the exception of Queenstown Bay, they are all within the Rural Zone. As discussed above, any unique issues arising in relation to waterways can more appropriately be addressed in Chapter 6.

809. Policy 6.3.8.2 was supported by Darby Planning LP<sup>474</sup>, but a number of other submissions with interests in the visitor industry sector sought amendments to it. Some submissions<sup>475</sup> sought that the policy refer only to managing adverse effects of landscape quality, character and visual amenity values. Others sought that the policy be more positive towards such activities. Real Journeys Limited<sup>476</sup> for instance sought that the policy be reframed to encourage commercial recreation and tourism related activities that enhanced the appreciation of landscapes. Submissions 677<sup>477</sup> and 696<sup>478</sup> suggested a *“recognise and provide for”* type approach, combined with reference only to appreciation of the District’s landscapes. Lastly, Submission 806 sought to remove any doubt that recreational and tourism related activities are appropriate where they enhance the appreciation of landscapes and have a positive influence on landscape quality, character and visual amenity values, as well as provision of access to the alpine environment.

810. Mr Barr did not recommend any change to this policy in the context of Chapter 6 and we were left unconvinced as to the merits of the other amendments sought in submissions. In particular, converting the policy merely to one which states the need to manage adverse effects does not take matters very far.

811. Similarly, appreciation of the District’s landscapes is a relevant consideration, but too limited a test, in our view, for the purposes of a policy providing favourably for the visitor industry.

812. We have already discussed the defects of a *“recognise and provide for”* type approach in the context of the District Plan policies.

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<sup>473</sup> J Brown, EIC at 4.11

<sup>474</sup> Submission 608: Opposed in FS1034

<sup>475</sup> Submissions 610, 613: Supported in FS1097.

<sup>476</sup> Submission 621: Supported in FS1097

<sup>477</sup> Supported in FS1097; Opposed in FS1312

<sup>478</sup> Supported in FS1097

813. Lastly, incorporation of provision of access to the alpine environment as being a precondition for appropriateness would push the policy to far in the opposite direction, excluding visitor industry activities that enable passive enjoyment of the District’s distinctive landscapes.
814. In summary, we recommend that Policy 6.3.8.2 be shifted into Chapter 3, renumbered 3.3.21 but otherwise not be amended.
815. Reverting to farming activities in rural areas, we accept that the policy of giving preference to farming might go too far, particularly where it is not apparent what the implications are of that preference. Mr Paetz recommended that these two policies be amended to read:
- “3.2.5.5.1 Enable farming activity in rural areas except where it conflicts with significant nature conservation values;*
- 3.2.5.5.2 Provide for evolving forms of agricultural land use.”*
816. We agree that an enabling focus better expresses the underlying intent of the first policy (as well as being consistent with Policy 5.3.1 of the Proposed RPS), but we also think that some reference is required to landscape character, since as already discussed, not all farming activities are consistent with maintenance of existing landscape character.
817. We also think that while it is appropriate to enable changing agricultural land uses (to address the underlying issue of lack of farming viability), reference to landscape character has been lost, and that should be reinserted, along with reference to protection of significant nature conservation values.
818. We also see the opportunity for these two policies to be combined. We recommend one policy replace Policies 3.2.5.5.1 and 2, numbered 3.3.20 and worded as follows:
- “Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with significant nature conservation values or degrade the existing character of rural landscapes.”*
819. We are satisfied that recommended Policy 3.3.20 is the most appropriate way to achieve Objectives 3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1 and 3.2.5.2 in the context of a package of high-level policies and taking account of the additional policies we recommend for Chapter 6.
- 3.20. Section 3.2.6.3 Policies – Urban Development**
820. Policies 3.2.6.3.1 and 3.2.6.3.2 related to the location and design of open spaces and community facilities. While Mr Paetz recommended that these policies remain as is, for similar reasons as above, we recommend that these are more appropriately deleted from Chapter 3 and their subject matter addressed in the context of Chapter 4.
- 3.21. Overall Conclusion on Chapter 3 Policies**
821. We have considered all the of the policies we have recommended for this chapter. We are satisfied that individually and collectively, they are the most appropriate way to achieve the Chapter 3 policies at this high level, taking account of the additional policies we recommend for Chapters 4 and 6. We note that the revised version of Chapter 3 annexed as Appendix 1 contains three additional policies we have not discussed (3.3.33-35 inclusive). These policies are discussed in the Stream 1A Report and included in our revised Chapter 3 for convenience,

in order that the chapter can be read as a whole. Lastly, we consider that understanding of the layout of the policies would be assisted by insertion of headings to break up what would otherwise be a list of 35 policies on diverse subjects. We have therefore inserted headings intended to capture the various groupings of policies.

#### 4. PART B RECOMMENDATIONS

822. Attached as Appendix 1 is our recommended Chapter 3.

823. In addition, as discussed in our report, we recommend to the Stream 10 Hearing Panel that the following new and amended definitions be included in Chapter 2:

***“Nature Conservation Values** – means the collective and interconnected intrinsic values of indigenous flora and fauna, natural ecosystems (including ecosystem services), and their habitats.*

***Regionally significant infrastructure** - means:*

- a. Renewable electricity generation activities undertaken by an electricity operator; and*
- b. The National Grid; and*
- c. Telecommunication and radio communication facilities; and*
- d. State Highways; and*
- e. Queenstown and Wanaka airports and associated navigation infrastructure.*

***Urban Development** – means development which is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development.*

***Resort-** means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor accommodation and forming part of an overall development focused on on-site visitor activities.”*

824. Lastly, as discussed in the context of our consideration of Objective 3.2.5.2, if the Council intends that provisions related to the Rural Character Landscape apply in the Wakatipu Basin, and more generally, outside the Rural Zone, we recommend Council notify a variation to the PDP to make that clear.

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# 6 LANDSCAPES AND RURAL CHARACTER

## 6.1

# Purpose

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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. This chapter 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. The relevant Chapter 3 objectives and policies are identified in brackets following each policy.

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.

## 6.2

# Values

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The District's landscapes are of significant value to the people who live in, work in or visit the District. The District relies in a large part for its social and economic wellbeing on the quality of the landscape, open spaces and the natural and built environment. Those landscapes also have inherent values, particularly to tangata whenua.

The landscapes consist of a variety of landforms created by uplift and glaciations, which include mountains, ice-sculpted rock, scree slopes, moraine, fans, a variety of confined and braided river systems, valley floors and lake basins. These distinct landforms remain easily legible and strong features of the present landscape.

Indigenous vegetation also contributes to the quality of the District's landscapes. While much of the original vegetation has been modified, the colour and texture of indigenous vegetation within these landforms contribute to the distinctive identity of the District's landscapes.

The open character of rural land is a key element of the landscape character that can be vulnerable to degradation from subdivision, development and non-farming activities. The prevalence of large farms and landholdings contributes to the open space and rural working character of the landscape. The predominance of open space over housing and related domestic elements is a strong determinant of the character of the District's rural landscapes.

Some rural areas, particularly those closer to the Queenstown and Wanaka urban areas and within parts of the Wakatipu Basin, have an established pattern of housing on smaller landholdings. The landscape character of these areas has been modified by vehicle accesses, earthworks and vegetation planting for amenity, screening and shelter, which have reduced the open character exhibited by larger scale farming activities.

While acknowledging these rural 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 is 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.

The lakes and rivers both on their own and, when viewed as part of the distinctive landscape, are a significant element of the national and international identity of the District and provide for a wide range of amenity and recreational opportunities. They are nationally and internationally recognised as part of the reason for the District's importance as a visitor destination, as well as one of the reasons for residents to belong to the area. Managing the landscape and recreational values on the surface of lakes and rivers is an important District Plan function.

Landscapes have been categorised into three classifications within the Rural Zone. These are Outstanding Natural Landscapes (ONL) and Outstanding Natural Features (ONF), where their use, development and protection are a matter of national importance under Section 6 of the RMA. The Rural Landscapes (RLC) makes up the remaining Rural Zoned land and has varying types of landscape character and amenity values. Specific policy and assessment matters are provided to manage the potential effects of subdivision and development in these locations <sup>1</sup>.

## 6.3 Policies

### Rural Landscape Categorisation

- 6.3.1 Classify the Rural Zoned landscapes in the District as:
- Outstanding Natural Feature (ONF);
  - Outstanding Natural Landscape (ONL);
  - Rural Character Landscape (RCL) (3.2.5.1, 3.2.5.2, 3.3.29, 3.3.31).
- 6.3.2 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 categories applied to the balance of the Rural Zone and from the policies of this chapter related to those categories. (3.2.1.1, 3.4.4.4, 3.3.21).
- 6.3.3 Provide a separate regulatory regime for the Gibbston Valley (identified as 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 categories and the policies of this chapter related to those categories do not apply unless otherwise stated. (3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.5.2, 3.3.20-24, 3.3.32).

### Managing Activities in the Rural Zone, the Gibbston Character Zone, the Rural Residential Zone and the Rural Lifestyle Zone

- 6.3.4 Avoid urban development and subdivision to urban densities in the rural zones. (3.2.2.1, 3.2.5.1, 3.2.5.2, 3.3.13-15, 3.3.23, 3.3.30, 3.3.32).
- 6.3.5 Ensure that the location and direction of lights does not cause excessive glare and avoids unnecessary degradation of views of the night sky and of landscape character, including of the sense of remoteness where it is an important part of that character. (3.2.5.1, 3.2.5.2, 3.3.19, 3.3.20, 3.3.30, 3.3.32).
- 6.3.6 Ensure the District's distinctive landscapes are not degraded by production forestry planting and harvesting activities. (3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.29, 3.3.31).
- 6.3.7 Enable continuation of the contribution low-intensity pastoral farming on large landholdings makes to the District's landscape character. (3.2.1.7, 3.2.5.1, 3.2.5.2, 3.3.20).

<sup>1</sup>. Greyed out text indicated the provision is subject to variation and is therefore not part of the Hearing Panel's recommendation.

- 6.3.8 Avoid indigenous vegetation clearance where it would significantly degrade the visual character and qualities of the District's distinctive landscapes. (3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.30, 3.3.32).
- 6.3.9 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. (3.2.1.7, 3.2.4.1, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.20, 3.3.30, 3.3.32).
- 6.3.10 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). (3.2.5.1, 3.3.30).
- 6.3.11 Encourage any landscaping to be ecologically viable and consistent with the established character of the area. (3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.30, 3.3.32).

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## Managing Activities in Outstanding Natural Landscapes and on Outstanding Natural Features

- 6.3.12 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 will be reasonably difficult to see from beyond the boundary of the site the subject of application. (3.2.1.1, 3.2.5.1, 3.3.21, 3.3.30).
- 6.3.13 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 wahi tūpuna. (3.2.3.1, 3.2.5.1, 3.2.7.1, 3.3.16, 3.3.30, 3.3.33 - 35, Chapter 5).
- 6.3.14 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 Landscape is not adversely affected. (3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1, 3.3.20, 3.3.30).
- 6.3.15 The landscape character and amenity values of 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. (3.2.5.1, 3.3.25, 3.3.30).
- 6.3.16 Maintain the open landscape character of Outstanding Natural Features and Outstanding Natural Landscapes where it is open at present. (3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1, 3.3.20-21, 3.3.30).
- 6.3.17 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. (3.2.1.9, 3.2.5.1, 3.3.25, 3.3.30).
- 6.3.18 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. (3.2.1.9, 3.2.5.1, 3.3.25, 3.3.30).

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## Managing Activities in Rural Character Landscapes

- 6.3.19 Recognise that subdivision and development is unsuitable in many locations in Rural Character Landscapes and successful applications will need to be, on balance, consistent with the objectives and policies of the Plan. (3.2.1.1, 3.2.1.7, 3.2.5.2, 3.3.20-24, 3.3.32).
- 6.3.20 Encourage plan changes applying Rural Lifestyle and Rural Residential Zones to land as the appropriate 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. (3.2.1.8, 3.2.5.2, 3.3.22, 3.3.24, 3.3.32).
- 6.3.21 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. (3.2.1.8, 3.2.5.2, 3.3.23, 3.3.32).
- 6.3.22 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. (3.2.1.1, 3.2.1.7, 3.2.5.2, 3.3.21, 3.3.24-25, 3.3.32).
- 6.3.23 Ensure incremental changes from subdivision and development do not degrade 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. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.21, 3.3.24, 3.3.32).
- 6.3.24 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. (3.2.1.9, 3.2.5.2, 3.3.25, 3.3.32).
- 6.3.25 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. (3.2.1.9, 3.2.5.2, 3.3.25, 3.3.32).
- 6.3.26 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. (3.2.1.1, 3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.20-21, 3.3.24-25, 3.3.30, 3.3.32).
- 6.3.27 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. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.20-21, 3.3.24-25, 3.3.32).
- 6.3.28 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. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.20-21, 3.3.24-26, 3.3.32).
- 6.3.29 Encourage development to utilise shared accesses and infrastructure, and to locate within the parts of the site where it will minimise disruption to natural landforms and to rural character. (3.2.1.1, 3.2.1.8, 3.3.21, 3.3.24, 3.3.32).

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## Managing Activities on Lakes and Rivers

- 6.3.30 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. (3.2.1.1, 3.2.4.1, 3.2.4.3, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.21, 3.3.26, 3.3.30, 3.3.32).
- 6.3.31 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. (3.2.4.3, 3.2.5.1, 3.3.30).
- 6.3.32 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. (3.2.1.1, 3.2.4.1, 3.2.4.4, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.21, 3.3.30, 3.3.32).
- 6.3.33 Provide for appropriate commercial and recreational activities on the surface of water bodies that do not involve construction of new structures. (3.2.1.1, 3.2.4.4, 3.2.5.1, 3.2.5.2, 3.3.21, 3.3.30, 3.3.32).

## 6.4

## Rules

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- 6.4.1 The Landscape Chapter and Strategic Direction Chapter's objectives and policies are relevant and applicable in all zones where landscape values are at issue.
- 6.4.2 The landscape assessment matters do not apply to the following within the Rural Zone:
- 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 <sup>1</sup>.

<sup>1</sup>. Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

# 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

## 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<sup>611</sup>.
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<sup>612</sup> 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<sup>613</sup> 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<sup>614</sup>. 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<sup>615</sup>. Counsel for Skyline Enterprises Ltd and others, Ms Robb, put a similar proposition to us, submitting<sup>616</sup>:

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<sup>611</sup> Submissions 145, 632, 636, 643, 669, 688, 693, 702: Opposed in FS1097, FS1162, FS1254 and FS1313

<sup>612</sup> Supported in FS1097

<sup>613</sup> C180/99

<sup>614</sup> See e.g. Submission 806

<sup>615</sup> J Brown, EIC at [2.2]

<sup>616</sup> 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<sup>617</sup> 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”<sup>618</sup>.
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<sup>619</sup>, while complying with the legal obligations the Act imposes.
1118. We have not considered submissions<sup>620</sup> 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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<sup>617</sup> When giving submissions for Ayrburn Farms Ltd, Bridesdale Farm Ltd, Shotover Country Ltd and Mt Cardrona Station Ltd

<sup>618</sup> NPSUDC 2016 Forward at pages 3 and 4

<sup>619</sup> Noting that that was how Ms Robb concluded her submissions – putting her position in terms of how the PDP had struck that balance.

<sup>620</sup> 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<sup>621</sup> 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<sup>622</sup> 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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<sup>621</sup> Submission 238: Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

<sup>622</sup> 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<sup>623</sup>;
  - b. Requesting it acknowledge urban landscapes and their values, and that references to farmland, farms and farming activities be amended<sup>624</sup>;
  - c. Requesting it acknowledge the role of infrastructure and the locational constraints that activity has<sup>625</sup>;
  - 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<sup>626</sup>;
  - e. Requesting it acknowledge the appropriateness of rural living, subject to specified preconditions<sup>627</sup>;
  - f. Requesting insertion of a broader acknowledgement of activities that might be enabled in rural locations<sup>628</sup>;
  - g. Support for its current text<sup>629</sup> or its intent<sup>630</sup>.
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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<sup>623</sup> Submission 110: Opposed in FS1097

<sup>624</sup> Submission 238: Opposed in FS1107, FS1226, FS1234, FS1238, FS1241, FS1242, FS1248, FS1249 and FS1255

<sup>625</sup> Submissions 251, 433, 805: Supported in FS1077, FS1092, FS1097, FS1115 and FS1117

<sup>626</sup> Submission 442

<sup>627</sup> Submissions 375, 430, 437, 456: Supported in FS1097; Opposed in FS1084, FS1087, FS1160 and FS1282

<sup>628</sup> Submission 608: Supported in FS1097, FS1154 and FS1158; Opposed in FS1034

<sup>629</sup> Submission 600: Opposed in FS1034

<sup>630</sup> 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:

*“Those 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<sup>631</sup>. 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.

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<sup>631</sup> 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<sup>632</sup> 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<sup>633</sup> 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:
- 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.
  - The urban areas of the District are too small to constitute a landscape in their own right<sup>634</sup>.
  - 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<sup>635</sup>, identification of the balance of rural landscapes on the planning maps<sup>636</sup> and a change in the label for those rural landscapes<sup>637</sup>.
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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<sup>632</sup> Consistent with Real Journeys Limited’s submission (Submission 621)

<sup>633</sup> Submission 238: Supported in FS1097; Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

<sup>634</sup> 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.

<sup>635</sup> Submission 806

<sup>636</sup> Submission 761

<sup>637</sup> 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<sup>638</sup>;
- 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<sup>639</sup>;
- 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<sup>640</sup>;
- d. A request for clarification as to whether landscape classification objectives and policies apply to special zones like Millbrook<sup>641</sup>;
- e. A request for clarification that landscape classification objectives and policies do not apply to the Rural Lifestyle Zone and the Rural Residential Zone<sup>642</sup>;

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<sup>638</sup> Submissions 608, 610, 613: Opposed in FS1034

<sup>639</sup> Submission 806: Supported in FS1229

<sup>640</sup> Submissions 443 and 452

<sup>641</sup> Submission 696

<sup>642</sup> 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<sup>643</sup>;
  - g. A request to add the Hydro Generation Zone as a further zone excluded from the landscape classifications<sup>644</sup>;
  - h. A request to add reference to trails undertaken by the Queenstown Trail or Upper Clutha Tracks Trusts<sup>645</sup>;
  - i. A request to delete Rule 6.4.1.4 or clarify the reference to ONLs<sup>646</sup>.
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

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<sup>643</sup> Submission 836: Supported in FS1085

<sup>644</sup> Submission 580: Opposed in FS1040

<sup>645</sup> Submission 671

<sup>646</sup> 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<sup>647</sup> 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

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<sup>647</sup>

*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<sup>648</sup> 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<sup>649</sup> 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<sup>650</sup> 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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<sup>648</sup> The exclusion formerly in Rule 6.4.1.2(a) has been effectively removed by the Stage 2 Variations.

<sup>649</sup> Submission 806

<sup>650</sup> 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<sup>651</sup>, shifting provision for lighting into the rural chapter<sup>652</sup>, carving out an exception for navigation and safety lighting<sup>653</sup>, and generally to give greater prominence to the significance of the night sky as a key aspect of the District’s natural environment<sup>654</sup>.

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<sup>651</sup> Submission 761

<sup>652</sup> Submission 806

<sup>653</sup> Submission 621: Supported in FS1097; Opposed in FS1282

<sup>654</sup> 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<sup>655</sup>. As discussed in Part C of our 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<sup>656</sup> 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<sup>657</sup>. Another submission sought that the policy be deleted in this context and shifted to the rural chapter<sup>658</sup>.

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<sup>655</sup> Submission 568

<sup>656</sup> In the Section 42A Report at page 22

<sup>657</sup> Submission 117

<sup>658</sup> 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<sup>659</sup>, deletion of the reference to the size of land holdings<sup>660</sup>, deletion of the policy entirely or its amendment to recognise that it is the maintenance of landscape values that contributes to landscape character<sup>661</sup>.

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<sup>662</sup>, 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<sup>663</sup>, its retention<sup>664</sup> or softening the policy to refer to avoiding, remedying or mitigating indigenous vegetation clearance<sup>665</sup> or

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<sup>659</sup> Submission 238: Supported in FS1097; Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

<sup>660</sup> Submission 600: Supported in FS1209; Opposed in FS1034 and FS1282

<sup>661</sup> Submission 806

<sup>662</sup> See e.g. Submission 110

<sup>663</sup> Submission 806

<sup>664</sup> Submission 600: Supported in FS1209; Opposed in FS1034

<sup>665</sup> 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<sup>666</sup>. 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<sup>667</sup> sought amendment to this policy – that it refers to ‘biodiversity’ rather than ‘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<sup>668</sup> 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.”*

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<sup>666</sup> Submission 378: Opposed in FS1049 and FS1282

<sup>667</sup> Submissions 378 and 806: Opposed in FS1049 and FS1282

<sup>668</sup> 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<sup>669</sup>, clarification that a significant degree of degradation is required<sup>670</sup> and its deletion<sup>671</sup>.
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<sup>672</sup> 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<sup>673</sup>. 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.

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<sup>669</sup> Submission 375: Opposed in FS1097 and FS1282

<sup>670</sup> Submissions 519 and 598: Supported in FS1015, FS1097 and FS1287; Opposed in FS1282 and FS1356

<sup>671</sup> Submissions 355 and 598: Supported in FS1287; Opposed in FS1282 and FS1320

<sup>672</sup> Giving evidence for Matukituki Trust

<sup>673</sup> 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<sup>674</sup>;
- b. Seeking to delete reference to the assessment matters, but retain the emphasis on subdivision and development being generally inappropriate<sup>675</sup>;
- c. Seeking to delete it entirely<sup>676</sup>;
- d. Seeking to amend the concluding words to soften the expectations as the number of locations where developments will be inappropriate<sup>677</sup>;
- e. Seeking to amend the policy to state the intention to protect ONLs or ONFs from inappropriate subdivision, use or development<sup>678</sup>;
- f. Seeking to qualify the policy to provide specifically for infrastructure with its own test, or alternatively add a new policy the same effect<sup>679</sup>.

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.”*

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<sup>674</sup> Submissions 249, 355, 502, 519, 621: Supported in FS1012, FS1015 and FS1097; Opposed in FS1282, FS1320 and FS1356

<sup>675</sup> Submissions 375, 437, 456: Opposed in FS1015, FS1097, FS1160 and FS1282

<sup>676</sup> Submissions 624, 806

<sup>677</sup> Submissions 598: Supported in FS1097, FS1117 and FS1287; Opposed in FS1282

<sup>678</sup> Submission 581: Supported in FS1097; Opposed in FS1282

<sup>679</sup> 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<sup>680</sup> between the reduced capacity of the Wakatipu Basin ONLs to absorb change, compared to the ONLs in the balance of the District<sup>681</sup>.
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<sup>682</sup>. 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<sup>683</sup> 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<sup>684</sup>.
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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<sup>680</sup> C180/99 at [136]

<sup>681</sup> See ODP Section 1.5.3iii(iii)

<sup>682</sup> Refer the discussion in *Lakes District Rural Landowners Society Inc v Queenstown Lakes District Council* C75/2001 at 41-46

<sup>683</sup> 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.

<sup>684</sup> 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<sup>685</sup> holding that reference back to Part 2 of the Act<sup>686</sup> 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<sup>687</sup>, 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.”*<sup>688</sup>
1231. The specific question of how this particular criterion should be framed was considered in a later decision in the sequence finalising the ODP<sup>689</sup>.
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<sup>690</sup>. Counsel for the Council, Mr Marquet, is recorded as having argued that they protected landowners’ rights.

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<sup>685</sup> *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52

<sup>686</sup> And therefore to a broad judgment on the application of section 5

<sup>687</sup> As part of her evidence on behalf of X-Ray Trust Ltd.

<sup>688</sup> C180/99 at [74]

<sup>689</sup> C74/2000

<sup>690</sup> That is, serving no useful purpose

1233. The Court took the position<sup>691</sup> 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<sup>692</sup>, introduction of reference to inappropriate subdivision, use and development both with and without reference to the

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<sup>691</sup> C74/2000 at [15]

<sup>692</sup> Submissions 621 and 806: Opposed in FS1282

specific values currently identified<sup>693</sup>, reference to a method that would identify the values in question<sup>694</sup>, and expansion of the policy to include reference to Wāhi Tupuna<sup>695</sup>

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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<sup>693</sup> Submissions 355 and 806: Supported in FS1097; Opposed in FS1282 and FS1320

<sup>694</sup> Submission 355: Supported in FS1097; Opposed in FS1282 and FS1320

<sup>695</sup> 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<sup>696</sup>.
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*

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<sup>696</sup> 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<sup>697</sup> 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<sup>698</sup>, 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.”*

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<sup>697</sup> Submission 598

<sup>698</sup> Submission 580

1266. In relation to activities in ONLs and ONFs, Trojan Helmet Limited<sup>699</sup> 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<sup>700</sup>.
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.

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<sup>699</sup> Submission 437: Supported (in part) in FS1097

<sup>700</sup> 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<sup>701</sup> 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<sup>702</sup> 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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<sup>701</sup> C180/99 at [72]

<sup>702</sup> 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 through 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<sup>703</sup>;
- b. That it refer only to assessment against the assessment matters<sup>704</sup>;
- c. Deleting reference to the assessment matters and providing for adverse effects to be avoided, remedied or mitigated<sup>705</sup>;
- d. Qualifying the application of the policy by reference to the requirements of regionally significant infrastructure<sup>706</sup>.

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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<sup>703</sup> Submission 806

<sup>704</sup> Submissions 355, 761: Supported in FS1097; Opposed in FS1282 and FS1320

<sup>705</sup> 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

<sup>706</sup> 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<sup>707</sup> sought to broaden the focus of the policy to include resort activities and development.
1295. Queenstown Park Ltd<sup>708</sup> 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<sup>709</sup>.
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<sup>710</sup>. 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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<sup>707</sup> Submission 696

<sup>708</sup> Submission 806

<sup>709</sup> Mr Chris Ferguson suggested in his evidence that the reference be to Special Zones for this reason

<sup>710</sup> 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 Variations, 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:
- Seeking deletion of the final sentence referring to sprawl along roads<sup>711</sup>;
  - Seeking to insert reference to inappropriate development in the Rural Zone<sup>712</sup>;
  - 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<sup>713</sup>.
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<sup>714</sup>. 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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<sup>711</sup> Submission 456

<sup>712</sup> Submission 600: Supported in FS1209; Opposed in FS1034

<sup>713</sup> Submission 761: Opposed in FS1015

<sup>714</sup> 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<sup>715</sup>.

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<sup>716</sup>;
- a. Seeking to delete or amend reference to “*openness*”<sup>717</sup>;
- b. Amending the policy to require a significant effect or to focus on significant values<sup>718</sup>;

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<sup>715</sup> Submission 456

<sup>716</sup> Submission 378: Opposed in FS1049 and FS1282

<sup>717</sup> Submissions 437, 456: Supported in FS1097; Opposed in FS1160

<sup>718</sup> Submissions 598 and 621: Supported in FS1287; Opposed in FS1282

- c. Seeking that specific reference to mitigation be deleted<sup>719</sup>
- d. Softening the policy to be less directive<sup>720</sup>.

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<sup>721</sup> 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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<sup>719</sup> Submission 621: Opposed in FS1282

<sup>720</sup> Submission 696

<sup>721</sup> 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<sup>722</sup> sought deletion of visibility from public roads as a test.

1324. One submitter<sup>723</sup> sought greater clarity that this policy relates to subdivision and development on RCLs. Another submitter<sup>724</sup> sought reference be inserted to *“inappropriate subdivision, use and development”*.

1325. Lastly, Transpower New Zealand Limited<sup>725</sup> 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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<sup>722</sup> E.g. Submissions 513, 515, 531, 537, 608: Supported in FS1097, FS1256, FS1286 and FS1292; Opposed in FS1034

<sup>723</sup> Submission 761: Opposed in FS1015

<sup>724</sup> Submission 806

<sup>725</sup> 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<sup>726</sup> 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:

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<sup>726</sup> 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<sup>727</sup>;
  - 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<sup>728</sup>;
  - c. Seeking to reframe the policy to be enabling of planting and screening where it contributes to landscape quality or character<sup>729</sup>.
1341. Many submitters sought deletion of the policy in the alternative. One submitter<sup>730</sup> 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<sup>731</sup>.
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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<sup>727</sup> Submission 356: Supported in FS1097

<sup>728</sup> Submissions 437, 456, 513, 515, 522, 531, 537, 608: Supported in FS1097, FS1256, FS1286 and FS1292; Opposed in FS1034

<sup>729</sup> Submission 806

<sup>730</sup> Submission 513

<sup>731</sup> 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<sup>732</sup> and to delete reference to visibility substituting reference to minimising or mitigating disruption to natural landforms and rural character<sup>733</sup>.

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

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<sup>732</sup> Submission 635

<sup>733</sup> 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”*<sup>734</sup>;
- a. Deletion of the latter part of the policy identifying the nature of the controls intended<sup>735</sup>;
- b. Qualifying the reference to enhancement so that it occurs *“where appropriate”*<sup>736</sup>;
- 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<sup>737</sup>.

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:

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<sup>734</sup> Submission 110

<sup>735</sup> Submission 621

<sup>736</sup> Submission 635

<sup>737</sup> 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<sup>738</sup>.
- 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<sup>739</sup>

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<sup>740</sup> and to seek additional guidance along the same lines as sought for the previous policy<sup>741</sup>

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<sup>742</sup>.

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<sup>738</sup> Submission 621

<sup>739</sup> Submissions 766 and 806: Supported in FS1341

<sup>740</sup> Submission 621

<sup>741</sup> Submissions 766, 608 and 806: Supported in FS1341

<sup>742</sup> 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<sup>743</sup> 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<sup>744</sup>, 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<sup>745</sup> 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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<sup>743</sup> Submission 307

<sup>744</sup> Refer Section 3.14 above

<sup>745</sup> 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<sup>746</sup> 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<sup>747</sup> 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<sup>748</sup> the Stream 10 Hearing Panel consider amendment of the existing definition of 'trail' as follows:

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<sup>746</sup> Submission 580: Opposed in FS1040

<sup>747</sup> Refer the discussion of this point at Section 8.4 above.

<sup>748</sup> 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