IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of Stream 17 – General Industrial Zone, Three Parks Commercial, 101 Ballantyne Road Rezoning, Business Mixed Use and Residential Design Guides and variations of Stage 3 of the Queenstown Lakes Proposed District Plan ("**PDP**")

LEGAL SUBMISSIONS FOR SCOPE RESOURCES LIMITED

DATED 7 AUGUST 2020

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1. INTRODUCTION

1.1. These submissions are made in support of Scope Resources Ltd's ("**SRL**") further submission on the submission by the Cardrona Cattle Company Ltd ("**CCCL**") on Stage 3 of the Queenstown Lakes Proposed District Plan ("**PDP**"), specifically in relation to the proposal to rezone CCCL's land to General Industrial zoning. SRL opposes the rezoning request by CCCL, on the basis that it does not meet the relevant statutory tests and is inconsistent with the sustainable management of its landfill as a strategically important physical resource for the region.

1.2. SRL appears today with four witnesses:

(a) Vanessa van Uden, consultant for SRL.

(b) Dr Clint Rissman, expert odour consultant for SRL.

(c) Jason Bartlett, expert traffic consultant for SRL.

(d) Nick Geddes, expert planning consultant for SRL.

2. THE VICTORIA FLATS LANDFILL

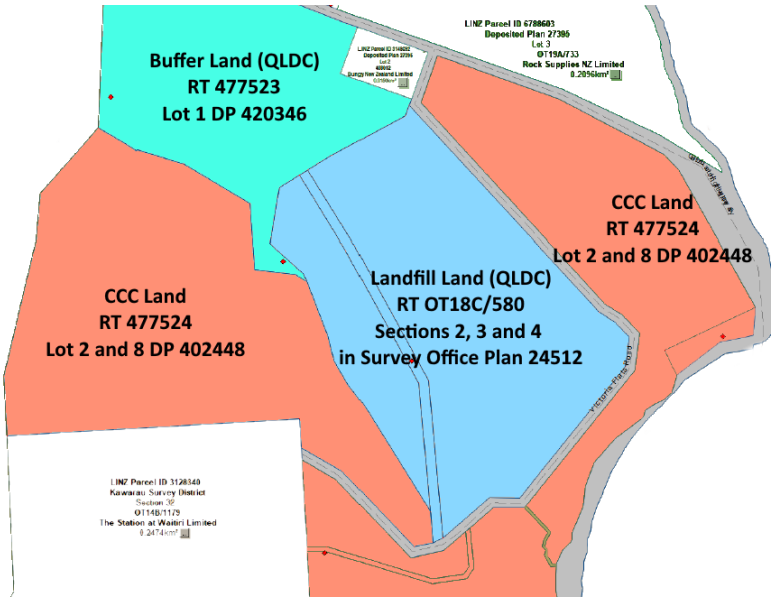
2.1. As Ms van Uden sets out in her evidence, the Victoria Flats or Victoria Bridge Landfill ("**Landfill**") was consented and began operating in 1999. SRL contracted with QLDC for the design, build and operation of the Landfill. The term of the contract runs for 35 years to 2034, or until the date the Landfill's regional consents expire. The Landfill provides solid waste services for all of the communities of the Queenstown Lakes district and the Central Otago district.

2.2. The Landfill is identified as a strategic asset of QLDC in its Significance and Engagement Policy. As Ms van Uden says, as the only landfill servicing the Central Otago and Queenstown Lakes districts, it is a significant physical resource in the region. The Landfill is located 17 kilometres to the east of Frankton, on the southern side of State Highway 6 ("**SH6**"). It is accessed via Victoria Flats Rd, which intersects with SH6. Waste is generally delivered to the site in "transfer loads", from stations located at Frankton, Wanaka, Alexandra, Cromwell and Ranfurly. Commercial operators also have arrangements to dispose of waste at the Landfill, eg skip bin service providers for hotels, builders or civil contractors and other activities carting demolition and construction waste to site.

2.3. Ms van Uden's understanding is that the Landfill site was identified in 1994 by QLDC as being particularly suitable for the operation as it was remote and not socially sensitive due to its distance from existing residential areas; had potential for a long life of 80 years or more; had good access and ease of operation, owing mostly to the flat site; and was a cost-effective location for the key districts it would serve. The current remaining "life" of the Landfill is another 40-50 years. Ms van Uden's evidence is that it would take a substantial capital investment to locate an alternative site for a landfill operation in the district, which would face a number of challenges. As such, the Landfill represents a key asset for the District, not only for now but into the future.

2.4. Against that background, CCCL seeks to rezone its land which surrounds the Landfill site for a more intensive form of use, from its current Rural zoning to General Industrial zoning.

2.5. CCCL is the owner of land surrounding the Landfill as shown below. The "Buffer Land" and the "Landfill Land" is both owned by QLDC are also shown in the plan. We will return to the Buffer Land later in these submissions when we turn to address the issue of the non-objection clause in relation to activities on the balance land.



2.6. A number of issues have been raised through the evidence or QLDC's legal submissions which we now turn to address, namely:

(a) QLDC's and this Panel's jurisdiction to entertain changes in zoning to land that was notified and decided on as part of Stage 1 of the Proposed District Plan process.

(b) The non-objection clause raised in the rebuttal evidence of Mr Giddens.

(c) SRL's status as a trade competitor of CCCL, owing to its ownership of land in the newly zoned Coneburn Industrial Estate, and the implications of that status for its further submission.

(d) The issue of reverse sensitivity, whether or not it constitutes a "direct effect on the environment" for the purposes of cl 6(4) of Sch 1 to the Resource Management Act 1991 ("**RMA**"), and the implications of the potential introduction of new sensitive receivers in relation to noise and odour issues.

(e) The other actual and potential direct effects on the operation of the Landfill, namely traffic.

3. JURISDICTION

3.1. Dealing first with the question of jurisdiction, at paragraphs 4.2 to 4.4 of QLDC's opening legal submissions on Stream 17, it sets out the legal orthodoxy as to whether a submission is *"on"* the proposed plan.[1] QLDC then says that it has made a departure from its approach to previous stages of the Review, by accepting the standing of submissions which seek rezoning of land that has not been notified in Stage 3, as described at paragraphs 6.2 to 6.5. The submission by CCCL is one of those submissions.

3.2. We respectfully submit that QLDC has erred in doing so and the Panel would also err if it were to take the same approach.

The submission is not "on" Stage 3

3.3. The submissions for QLDC at paragraph 6.3 seem to accept that the approach taken is inconsistent with the *Motor Machinists* test. This Panel (and the Environment Court, on appeal) is bound to apply that test. To the extent that the approach taken is inconsistent with it, then any such submissions (including CCCL's) should be disregarded.

3.4. As Mr Geddes sets out in his evidence for SRL, the zoning for the CCCL land was settled as part of Stage 1 of the Review. Applying the

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[1] Citing *Palmerston North City Council v Motor Machinists Ltd* [2012] NZHC 644, [2013] NZRMA 503.

Motor Machinists test, part of Stage 1 of the District Plan Review was "on" the land (and its Rural zoning), not Stage 3. Submissions and further submissions were invited and in many cases then made "on" Stage 1 proposed Rural zonings; hearings were held; and decisions were made confirming that zoning or otherwise. CCCL did not submit on Stage 1 of the Review in respect of its Victoria Flats site. There were no other submissions or any appeals against QLDC's decisions on Stage 1 affecting the Rural zoning of the site.

3.5. Under s 86F of the RMA, *"a rule in a proposed plan must be treated as operative (and any previous rule as inoperative) if the time for making submissions or lodging appeals on the rule has expired*", so for the CCCL land at Victoria Flats its Rural zoning must be treated as operative. The necessary implication is that the zoning cannot be altered, absent notification of a plan change or variation (or a new review).

QLDC is functus officio

3.6. In effect, QLDC (and, therefore, this Panel) is *functus officio* in respect of that Rural zoning, ie it has made an administrative decision in the exercise of a statutory power (here, decisions on Stage 1 of the Review pursuant to cl 10(4)(b) of Sch 1 to the RMA), which is the outcome of a completed process (here, hearings on Stage 1 of the Review under cl 8B of Sch 1 to the RMA), and which has been formally communicated to interested parties in a way that makes clear that it is not preliminary or provisional (here, via notification of those decisions pursuant to cl 11 of Sch 1 to the RMA).[2] It has no ability to revisit those decisions and its decisions are irrevocable. Its decision-making power in respect of the zoning of the CCCL land is spent.

Issues of natural justice and fairness

3.7. There is an oblique reference in QLDC's submissions to *"fairness matters"* justifying its approach to submissions on Stage 3 of the Review. This would appear to have arisen out of QLDC's previous approach of disregarding submissions during Stages 1 and 2 which

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[2] Applying the Court of Appeal's decision in *Goulding v Chief Executive of the Ministry of Fisheries* [2004] 3 NZLR 173 (CA) at 185-186.

sought to implement an ODP zoning over land notified in those stages, when the equivalent PDP zoning had not yet been notified.

3.8. Several points can be made in relation to issues of natural justice and/or fairness in relation to the CCCL submission.

3.9. First, and a key point, the CCCL submission does not "fit" within the submissions that were being discussed above. **No** submission was lodged by CCCL on the Rural zoning of its land. It could have challenged that Rural zoning, as others did in respect of other land. It missed the boat.

3.10. Secondly, if CCCL wished to implement a zoning change for its land as part of Stage 3, it was incumbent upon it (if it wished to have certainty as to its legal rights)[3] to convince QLDC to either include that land as a variation to the notified Stage 3, or given the Rural zoning is now effectively operative, to notify a plan change to apply an industrial zoning to the Victoria Flats site. CCCL failed to do either.

3.11. The section 32 report for this Stream referred at paragraph 7.68 to a *"proposal relating to a large area of land adjoining the Victoria Flats landfill…[which] considers the land could absorb a range of land uses including residential and accommodation activities"*, with the most appropriate use being *"predominantly industrial type activities"*. Crucially, QLDC then said:

> The information received for this proposal is not comprehensive and has not addressed the range of rezoning principles set out by the IHP.

3.12. The necessary implication of that is that the information provided by CCCL prior to notification of Stage 3 (and the variations to the other chapters notified as part of Stage 3) was insufficient to warrant a variation or plan change. It is noted that consequential variations have been made to chapters of the PDP as a result of the notified provisions for the General Industrial Zone – so the ability to seek a variation (and for that variation to be notified) has always existed.

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[3] Refer Council's reply submissions on Stream 13 (Queenstown Mapping) at paragraph 5.1.

3.13. Thirdly, CCCL never submitted as part of Stage 1 of the District Plan Review for a different zoning for its land, which now carries an operative Rural zoning. This is not a case where a rezoning submission was lodged but then deferred or disregarded at Stage 1, which might otherwise give rise to unfairness if it were to be similarly ignored now. In addition, it was only by chance and good planning practice on the part of Mr Geddes that the submission by CCCL on Stage 3 was picked up. This is precisely the point made by Kós J (as he then was) in *Motor Machinists*, where he said *"to override the reasonable interests of people and communities by a submissional side-wind would not be robust, sustainable management of natural resources. Given the other options available… [which included public or private plan changes], a precautionary approach to jurisdiction imposes no unreasonable hardship"* (at [82]).

3.14. If Mr Geddes had not detected the requested change in QLDC's summary of submissions (noting that the zoning of the land had already been determined), then CCCL's submission could have resulted in a substantially unfair outcome for SRL. Who knows how many other parties in the district may have reacted to the General Industrial zoning sought by CCCL, had they been aware of the submission? They were entitled to consider the Rural zoning as settled. Put simply, the point goes both ways.

3.15. Finally, it is important to note that all QLDC said was that **it** would not "oppose" submissions seeking rezoning to a Stage 3 zoning on the basis of there being no scope.[4] QLDC's position, of course, does not prevent a submitter such as SRL raising the jurisdiction issue. Nor can it bind this Panel, which has to apply the law as it stands. All it could arguably be said to have done was to estop QLDC from raising the point itself in its recommendations.

Conclusion on jurisdiction

3.16. Counsel submit, for the reasons outlined above, that this Panel has no jurisdiction to consider the rezoning request sought in the submission by CCCL. Any finding to the contrary would be an error of law.

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[4] Reply submissions on Stream 13 at paragraph 5.6(f).

4. NON-OBJECTION CLAUSE

Background

4.1. CCCL has raised in its evidence a complaint that SRL is precluded from being heard on CCCL's submission by a non-objection clause contained within an agreement for sale and purchase between QLDC and the previous landowner. This is rejected.

4.2. At a resource consent hearing on 5 August 2020 involving the same parties, CCCL's land and the Landfill, CCCL did not pursue any argument that SRL is bound by the non-objection clause.

4.3. QLDC's legal counsel has also helpfully filed a brief Memorandum related to this hearing stream that confirms their opinion that SRL is not bound, nor is the Landfill land, by the non-objection clause.

4.4. For the record however, SRL sets out its view on this issue.

4.5. Harris Road No 36 Ltd ("**Harris Road**") used to own the Buffer Land shown in the plan above and also what is now the CCCL Land. By agreement dated 27 November 2008 Harris Road sold the Buffer Land to QLDC. A single page of the agreement containing cl 28 is attached to Mr Giddens's rebuttal evidence (where he gives inadmissible opinion evidence on the law). Clause 28 says:

> In consideration of the vendor entering into this agreement for sale and purchase the purchaser covenants with the vendor that the purchaser shall not at any time lodge any submissions against any planning proposal by the vendor to subdivide or develop the vendor's land and shall be deemed to have given written approval to any such planning proposal for the purposes of the Resource Management Act 1991 … This clause binds the successors entitle of the vendor to the rights under this agreement and the successors entitle of the purchaser to the rights under the agreement. The Contracts Privity Act 1982 shall enable the enforcement of the benefits under the provision of this clause.

4.6. The Buffer Land was subdivided from the balance of the Harris Road Land (which is now the CCCL Land) in 2009 and the current title to the Buffer Land was issued 29 September 2009.

4.7. Harris Road sold the CCCL Land to CCCL in 2018.

No notice of "covenant"

4.8. Covenants of this type create only an equitable interest. They are not enforceable against a purchaser (or a lessee) of the legal estate for value without notice.[5]

4.9. SRL did not have actual notice of cl 28 when it entered into its lease with the QLDC. It could not have, as its lease arrangements were first entered into in 1999. No equivalent of cl 28 appears in the lease to SRL. Without notation on the title of the Landfill Land, it is impossible to see how SRL had notice of the restrictions cl 28 seeks to impose.

4.10. The terms of cl 28 are therefore not binding on SRL.

Landfill Land not burdened land

4.11. There are a myriad of other defects in CCCL's argument. Even if SRL had notice of cl 28, it would not bind SRL.

4.12. There is no privity of contract between SRL and CCCL (or Harris Road). The Contracts (Privity) Act 1982 (now Part 2 Subpart 1 of the Contract and Commercial Law Act 2017) might allow successors in title to Harris Road to benefit from QLDC's promise under cl 28, but it could not possibly burden a third party with QLDC's obligations under cl 28.[6] Therefore the question is whether cl 28 as a covenant was intended to burden and to run with the Landfill Land.

4.13. Clause 28 did not identify what land is the burdened land. The clause clearly did not intend all land of the QLDC wherever situated to be burdened, nor did it specify the Landfill Land as land to be burdened with the covenant. The only land that might be interpreted as burdened is the Buffer Land. The sale and purchase agreement dealt with the Buffer Land. The clause says it binds "the successors entitle [sic] of the purchaser to the rights under this agreement", which could only mean the successors in title to the Buffer Land.

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5 See *New Zealand Industrial Park Ltd v Stonehill Trustee Ltd* [2019] NZCA 147, (2019) 20 NZPR 119 at [59]–[61].

6 See s 12.

CCC Land not clearly the benefited land

4.14. It is also not clear what land is intended to benefit from cl 28. The clause uses the phrase "vendor's land", which is not defined or identified.

Clause 28 too narrow to prevent objection to CCCL's application

4.15. Finally, even if cl 28 were binding on SRL, the Landfill Land were the burdened land and the CCC Land were the benefited land (all of which is not accepted), the clause is too narrow to prevent SRL from making submissions against the rezoning of the CCC Land.

4.16. Clause 28 provides that "*the purchaser shall not at any time lodge any submissions against any planning proposal by the vendor to subdivide or develop the vendor's land*". The phrase "*planning proposal*" is not defined and has no generally accepted meaning. More importantly, the CCCL submission seeking rezoning under a review of a district plan is not a proposal to subdivide nor to develop land.

5. TRADE COMPETITION

5.1. SRL's case has been put on the basis that it accepts (for the purposes of this District Plan Review and its further submission on the CCCL submission) that it is a trade competitor of CCCL, arising out of its ownership of Industrial-zoned land at Coneburn, and that it could gain an advantage through trade competition in making its further submission.

5.2. However, trade competitor status does not prevent SRL from lodging a further submission in opposition to CCCL's submission, nor participating in this Stream to oppose any relaxation of the rules applying to General Industrial Zone land (like that sought in CCCL's submission).

5.3. Counsel accept, as Mr Robinson suggested during the hearing of the earlier strike-out application, that clause 8 of Schedule 1 (which relates to further submissions) does not include the same constraints in relation to trade competition as clause 6 does in relation to primary submissions. However, to the extent that there was any oversight on

the part of Parliament,[7] SRL also do not pursue that technical argument.

"Directly affected"

5.4. Instead, SRL is content to rely on a submission that its further submission, and its participation in this Stream, complies with, by analogy, clause 6(4) of Schedule 1 to the RMA. Clause 6(4) is set out in full below:

> **6 Making of submissions under clause 5**
>
> […]
>
> (4) A person who could gain an advantage in trade competition through the submission may make a submission only if directly affected by an effect of the proposed policy statement or plan that –
>
> (a) adversely affects the environment; and
>
> (b) does not relate to trade competition or the effects of trade competition.

5.5. The nub of that submission is that SRL is directly affected by effects of CCCL's submission on the PDP that both (a) adversely affect the environment; and (b) do not relate to trade competition or the effects of trade competition.

5.6. The meaning of "directly affected" in the context of cl 6(4) was considered during the Select Committee stage of the Simplifying and Streamlining Bill. Although not recorded in the Select Committee Report, the Departmental Report prepared by the Ministry for the Environment ("**MfE**") to assist the Select Committee in its deliberations included a section titled "*Clarify what 'directly affected' means / provide guidance"*, following a request by a submitter.

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[7] Counsel anticipate this was a result of the proposal in the Resource Management (Simplifying and Streamlining) Amendment Bill 2009 as introduced to replace further submissions with a report commissioned by Council. When the right to make further submissions was reinstated at the Select Committee stage, it does not appear as if Parliament turned its mind to the prospect that the restrictions on trade competition ought to apply equally to it.

5.7. MfE reported that what "directly affected" means in an environmental effects context was explained by the Environment Court in *Canterbury Regional Council v Department of Conservation*,[8] where it said:

> The issue in this case is whether there are any parties that could be directly affected by the application [under s 312 of the RMA]. The word affected is used in s 94 of the Act, The word is still used elsewhere in the Act and in decisions under s 181 the Court has relied on a definition of: **appreciable effect more than minimal, one that differentiates the person from a generality, in order to define the direct effect.**
>
> (emphasis added)

5.8. MfE went on to say that the words "directly affected" will involve the consent authority or the Court undertaking a case-by-case examination of the facts as to whether the person is directly affected; and that, because *"consent authorities and the Court have had to consider the application [sic] 'directly affected' previously, this should not present unusual difficulty"*.

5.9. In our submission, it is clear that the case law that applied prior to 2009 in relation to the meaning of "directly affected", including the above statement from the Environment Court, continues to apply to those references in cl 6(4) of Sch 1 and elsewhere, where the term was introduced. Applying the Environment Court's guidance in *CRC v DoC*, what is crucial is not whether the effect itself is a "direct" or "indirect" effect, but *whether the particular submitter is appreciably affected by an effect which differentiates them from the public-at-large*.

5.10. We submit that:

(a) SRL is directly affected by effects that adversely affect the environment, namely traffic effects and reverse sensitivity effects; and

(b) in respect of the latter, reverse sensitivity effects are a direct effect as applied in *CRC v DoC*, and are not an "indirect" effect which might otherwise fall foul of cl 6(4).

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[8] *Canterbury Regional Council v Department of Conservation* EnvC Christchurch C081/04, 22 June 2004.

Reverse sensitivity is a direct effect on SRL

5.11. The generally accepted definition of "reverse sensitivity" is:[9]

> The legal vulnerability of an established activity to complaint from a new land use. It arises when an established land use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The "sensitivity" is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.

5.12. Unpacked into its constituent parts, the definition of reverse sensitivity requires:

(a) An adverse environmental effect caused by an existing lawful use to nearby land.

(b) The introduction of a new benign or "sensitive" activity to nearby land.

(c) A "reverse" reaction, namely the generation of complaints to regulatory authorities regarding the otherwise-lawful activities of the existing use.

(d) A corresponding potential or actual effect on the existing use's ability to continue to operate at the same level prior to the introduction of the new activity.

5.13. Effect (d) above is a direct effect on the existing use. It is not, using the commonly understood example of diversion of sales, the indirect transfer of market share from an existing operator to a competitor who establishes within the operator's catchment, caused by people no longer attending the operator's store or service station and instead spending money at its competitor's. That is a classic indirect effect. The same effect might be felt by all similar operators within the catchment, or between catchments. Put simply, the effect does not discriminate.

5.14. By contrast, the "directness" of the effect on the existing use from the new sensitive activity is the result of the potential for restrictions being

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9 Nolan (ed) *Environmental and Resource Management Law* (6th edition, Lexis Nexis, Wellington, 2018 at [13.32], citing *Affco New Zealand v Napier City Council* EnvC Wellington W082/2004, 4 November 2004 at [29].

placed upon it by a district or regional council; or (using SRL as an example) potentially having to substantially alter (say) the conditions of its air discharge consent when it comes time to renew it at the end of its term, or having any future roll-over of the designation applying to the landfill modified by new constraints not because of any change in the off-site effects, but because of the introduction of the new activity. That is something that is being done by someone else to the existing use which *"differentiates that person from the public generally"*, applying *CRC v DoC*.

5.15. It is the same for other major infrastructure providers, such as airports. For example, airports often own land on which visitor accommodation is operated (eg the Novotel Auckland Airport; or the Rydges Wellington Airport). Airports also generate substantial noise, which is an unavoidable consequence of their operation.

5.16. Taking the categorisation of reverse sensitivity as an indirect effect to its logical conclusion, that would prohibit, for example, Wellington International Airport Limited from objecting to a rezoning proposal for the land at Miramar Golf Club for a Formosa-style[10] country club visitor accommodation complex, with multiple new villa-style dwellings with outdoor entertainment areas within spitting distance of the runway. It would also prevent Auckland International Airport Ltd from opposing a plan change for a new visitor accommodation zone on the boundary of its landholding along State Highway 20 with no sound insulation and no ventilation, requiring occupants to open their windows for fresh air. That cannot be the position at law.

5.17. It would be different if, for example, in the Auckland context, the competing visitor accommodation were proposed to be in Takapuna. It is that adjacency or proximity in the current situation, with the CCCL land directly bordering the Landfill on three sides, that gives rise to potential reverse sensitivity effects which qualify under cl 6(4).

6. EFFECTS OF THE PROPOSED REZONING

Traffic

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[10] Reference here is to the Formosa Auckland Country Club and Golf Resort, which incorporates both a golf course, conference facilities, and associated visitor accommodation.

6.1. Dealing first with the traffic effects on Victoria Flats Rd, the evidence for QLDC notes that the CCCL submission was supported by *"limited information in terms of traffic-related activities and possible effects and no technical / expert report supporting the submission"*. Mr Smith for QLDC noted that a rezoning to GIZ would *"ultimately result in a much higher traffic volume from the area, and a greatly increased risk to all users"*. Mr Smith was of the opinion that the submission could not be supported on traffic movement/safety grounds.

6.2. Mr Bartlett, the traffic expert for SRL records that current information provided by it and QLDC places traffic flow on Victoria Flats Rd somewhere in the vicinity of 45 to 145 vehicle movements per day. He has also estimated that the traffic generation of the rezoning proposal, using both local examples and New Zealand and Australian average trip rates based on built floor area, would be in the vicinity of 14,000 to 38,000 vehicle movements per day. In his opinion, this level of traffic generation would *"have an effect [that is, a direct effect] on the Landfill operation by delays and reduced safety at the access to the Landfill from Victoria Flats Rd and at the nearby intersection of Victoria Flats Rd and SH6".*

6.3. Modelling undertaken by Mr Bartlett shows a 15 second (LOS C) delay for vehicle movements into and out of the Landfill onto Victoria Flats Rd. Mr Bartlett's comparison with modelling at the Howards Drive intersection shows delays of up to 23 seconds (LOS C) in the morning peak and 62 seconds (LOS F) in the evening peak, which Mr Bartlett considers to be similar to the delay likely to be incurred by Landfill vehicles at the SH6 intersection with Victoria Flats Rd.

6.4. Mr Bartlett concludes by saying the requested zoning *"will have significant effects on the operation of the Landfill"* from a traffic perspective, including delay to all vehicle movement at the Landfill access, the nearby SH6 intersection and *"possibly other critical locations within the road network"*. More significantly, perhaps, he also points to a reduction in safety as a result of the significant increase in traffic at those intersections, with no current plans to upgrade them.

6.5. CCCL has filed rebuttal evidence from Mr Raymond Edwards in support of its rezoning proposal. Notably, the rebuttal filed does not take issue with Mr Bartlett's modelling or projections. His critique is limited to Mr Bartlett's opinion on potential engineering solutions to upgrade the

existing SH6 access. It is noted that the response from Waka Kotahi – the NZ Transport Agency ("**NZTA**"), annexed to his evidence at Appendix D, is far less rosy than Mr Edwards' summary portrays. In particular, NZTA appears sceptical of the proposed scale and intensity of the proposed land use, the appropriateness of industrial and residential land use in that location from a traffic perspective, and the lack of detail provided around impacts on the overall capacity of SH6 and the Shotover Bridge.

6.6. Any suggestion of an engineered solution is expressly subject to *"an assessment of effects of the proposal on the highway network capacity"*. The only such assessments currently before the Panel are those provided by Messrs Smith and Bartlett, both of whom conclude that the proposed zoning is unsupportable on traffic grounds.

Reverse sensitivity

6.7. The principal off-site effects from the Landfill operation that may give rise to reverse sensitivity effects, on the definition above, are noise and odour.

6.8. In her evidence, Ms van Uden for SRL notes that despite all reasonably practicable efforts to contain the effects of the Landfill to the site, complaints have still been received, with 10 in the last year relating to odour. In the case of two instances of those complaints, odour was found to be strong but not offensive beyond the boundary of the site. This demonstrates the sensitivity of receivers to nuisance effects such as noise and odour, even when they are a substantial distance away.

6.9. Dr Rissman's expert opinion is that the rezoning proposal is likely to result in a *"significant increase in the number of odour complaints, which could include enforcement action against the landfill, potential restriction on operational hours or lead to objections to renewals of the air discharge consent"* for the Landfill, arising from the introduction of new sensitive receivers. No air emissions expert has produced contrary evidence to Dr Rissman's statement.

6.10. In terms of noise, the Landfill is currently permitted to create up to 65 dB L_{Aeq} at its boundary. Mr Geddes explains in his evidence that the Landfill must also meet 50 dB L_{Aeq} at the notional boundary of any residential unit under its designation. Appendix 4 to Mr Geddes' evidence perhaps demonstrates this best. Mr Geddes says that the

Landfill will not be able to be developed up to its consented limits, which currently sit only 15 m from its current boundary, if the CCCL land is rezoned because of that requirement. His view is that the Landfill will not be able to internalise that 15 dB in the 20 m between boundaries, which will inevitably result in restrictions on the Landfill operation.

6.11. It appears from CCCL's rebuttal evidence that CCCL may be amending its relief insofar as residential type activities which would have this specific implication for the landfill.

6.12. Mr Giddens' view seems to be that if SRL is complying with the requirements of its designation and the air discharge consent, then *"the effects of the landfill on the CCCL land should not be significant (and be no more than minor using the wording of the condition)".* However, even a minor effect can give rise to reverse sensitivity effects that are unacceptable. They do not need to be significant to give rise to unacceptable reverse sensitivity effects, especially if the operation is both (a) regionally significant and (b) particularly susceptible to complaints as a result of the nature of the activity. A minor effect on a new receiver would still, if the notification tests were applied to it, grant a right to that receiver to make a submission in opposition on any proposal to renew consents for air discharges and the like. The real prospect of further conditions or constraints on SRL's activities is hard to ignore, if that were to be the case.

6.13. Furthermore, it is clear from the evidence for SRL that complaints may still occur *beyond* the Landfill Buffer Area. The extent of the Landfill Buffer Area is not the only place where potential or actual effects from the Landfill on sensitive activities could be unacceptable. Equally, it follows that reverse sensitivity effects can be generated from land outside the Landfill Buffer Area as well. As such, the amendments offered up by Mr Giddens in his rebuttal evidence at paragraph 50 do not go far enough to mitigate the potential for reverse sensitivity effects on the Landfill operations. Respectfully, the more appropriate course of action would be to allow the land to retain its current (operative) Rural zoning.

6.14. This would bring the rezoning proposal into conflict with the district-wide provisions in the Utilities Chapter of the PDP, which include:

(a) an objective that *"the growth and development of the District is supported by utilities that are able to operate effectively and efficiently"* (Objective 30.2.5);

(b) a policy of *"providing landfill sites with the capacity to cater for the present and future disposal of solid waste"* (Policy 30.2.5.2);

(c) a policy requiring QLDC to *"recognise the future needs of utilities and **ensure** their provision in conjunction with the provider"* (Policy 30.2.5.3);

(d) a further objective that *"the establishment, continued operation and maintenance of utilities supports the well-being of the community"*; and

(e) a policy requiring QLDC to *"manage land use, development and/or subdivision in locations which could compromise the safe and efficient operation of utilities"*, including the Landfilll.

6.15. Mr Geddes can comment on these provisions when he gives his evidence. However, the rezoning proposal by CCCL would appear to be directly contrary to those important and directive district-wide objectives, which (under the *King Salmon* approach) point strongly against the relief sought.

7. CONCLUSION

7.1. In conclusion, SRL opposes the submission by CCCL to rezone the CCC Land for General Industrial use, on the basis that there is no jurisdiction to do so, and in any event that it would be inconsistent with the functions of the QLDC under s 31, not the most appropriate way to achieve the objectives of the Proposed District Plan under s 32, and will not achieve the purpose of sustainable management under s 5 and Part 2 of the RMA.

DATED 7 August 2020

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D A Nolan QC
Counsel for SRL